

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  
THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS  
CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE  
STORE"

Applicants

**MOTION RECORD OF THE MONITOR  
(Stay Extension)  
(Returnable April 3, 2023)**

March 23, 2023

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Lawyers for the Monitor,  
FTI Consulting Canada Inc.

TO: SERVICE LIST

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

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

**ONTARIO  
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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

**NOTICE OF MOTION  
(Stay Extension)  
(Returnable April 3, 2023)**

FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (the "**Monitor**") will make a motion before a judge presiding over the Commercial List on April 3, 2023 at 9:00 a.m. or as soon after that time as the motion can be heard, by judicial videoconference via Zoom.

**THE MOTION IS FOR** an order substantially in the form of the draft order included at Tab 4 of the Motion Record of the Monitor, extending the Stay Period (as defined in the Initial Order dated April 14, 2014, as amended and restated) to and including September 15, 2023.

**THE GROUNDS FOR THE MOTION ARE:**

1. The facts in support of this motion are set out in the Affidavit of William E. Aziz sworn March 23, 2023 and the Thirty-First Report of the Monitor dated March 23, 2023 (the "**Thirty-First Report**"). All capitalized terms used and not otherwise defined herein have the meanings given to them in the Thirty-First Report.

***Background***

2. On April 14, 2014, this Court made an Initial Order, among other things, granting a stay of proceedings in relation to the Applicants and its business and property, appointing the Monitor in connection with these CCAA proceedings and authorizing the Applicants to file a plan of compromise or arrangement, subject to further orders of the Court.

3. The Applicants sold substantially all of their assets in separate Court-approved asset purchase transactions to National Money Mart Company, easyfinancial Services Inc., and CSF Asset Management Ltd.

4. On November 19, 2015, the Court granted an order (the “**Sanction Order**”), among other things, sanctioning a plan of compromise or arrangement concerning, affecting and involving the Applicants (the “**Plan**”) and authorizing the Monitor to implement the Plan.

5. Pursuant to the terms of the Plan and the Sanction Order, the Monitor was granted certain enhanced powers and authorization to, among other things, facilitate the completion and administration of the estate of the Applicants and apply to the Court for any orders necessary or advisable to carry out its powers and obligations.

6. Certain litigation remains outstanding in respect of the Applicants:

- (a) **Remaining Estate Actions.** The Litigation Trustee and Litigation Counsel (each as defined in the Plan) continue to pursue claims against KPMG LLP, Cassels Brock & Blackwell LLP and Canaccord Genuity Corp. (the “**Remaining Estate Actions**”), which were not settled or compromised pursuant to the Settlement Agreements (as defined in the Plan) or the Plan.

- (b) **TPL Action and the Consumer Borrower Class Action.** The estate of Cash Store has filed an action against certain defendants known as third party lenders (the “**TPL Action**”). A class proceeding has also been filed by certain consumer borrower class action plaintiffs against the same parties (the “**Consumer Borrower Class Action**”).

7. On November 4, 2022, the Court granted an order extending the Stay Period up to and including April 3, 2023.

*Stay Extension*

8. The Applicants, under the supervision of the Monitor, continue to act in good faith and with due diligence in these CCAA Proceedings.

9. Since the previous extension of the Stay Period, the Monitor has:

- (a) closely monitored the Remaining Estate Actions, the TPL Action and the Consumer Borrower Class Action;
- (b) responded to inquiries from creditors, bondholders and other parties interested in Cash Store’s CCAA proceedings; and
- (c) conducted Cash Store’s affairs in accordance with the Initial Order and other orders of the Court.

10. The Remaining Estate Actions continue to be a source of potential recovery for certain Cash Store creditors. A timetable has been established for the Remaining Estate Actions and trial dates have been set for April-June 2025.



11. The Court most recently granted a stay extension of approximately five months in length in order to ensure a degree of supervision over the pace of the Remaining Estate Actions. Since that time the Monitor has held, and will continue to hold, regular meetings with Litigation Counsel to obtain updates on the progress of the Remaining Estate Actions and report to the Court as necessary.

12. The Monitor seeks a further extension of the Stay Period of approximately five months in length to September 15, 2023 to, among other things, permit the Remaining Estate Actions, the TPL Action and the Consumer Borrower Class Action to proceed and enable the Applicants and the Monitor to continue administering the Plan and any subsequent funds obtained in the post-implementation period.

13. The Monitor projects that the Applicants will have sufficient liquidity to fund their activities to September 15, 2023. The administration of the estate by the Monitor is now funded through the Litigation Funding and Indemnity Reserve which is funded pursuant to the Litigation Funding Agreement approved by the Court on October 28, 2021.

14. The Monitor believes that the length of the requested extension is reasonable and appropriate in the circumstances and recommends that it be granted by this Court.

15. The Monitor also relies on the following:

- (a) section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (b) rules 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure* (Ontario), as amended; and

- (c) such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Affidavit of William E. Aziz, sworn March 23, 2023;
- (b) the Thirty-First Report of the Monitor, filed March 23, 2023; and
- (c) such further and other materials as counsel may advise and this Court may permit.

March 23, 2023

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Lawyers for the Monitor

TO: SERVICE LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, AND IN THE MATTER  
OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY  
KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., et al.

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

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SUPERIOR COURT OF JUSTICE  
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**McCarthy Tétrault LLP**  
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Lawyers for the Monitor

# Tab 2

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

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

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ARRANGEMENT OF 1511419 ONTARIO INC., FORMERLY  
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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

**STAY EXTENSION MOTION**

**AFFIDAVIT OF WILLIAM E. AZIZ**  
**Litigation Trustee for 1511419 Ontario Inc.,**  
**f/k/a Cash Store Financial Services Inc.**  
(sworn March 23, 2023)

I, **WILLIAM E. AZIZ**, of the Town of Oakville, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. The Applicant, 1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc., "**Cash Store**") was a public company that operated as a payday lender across Canada from 2002 until it filed for creditor protection under the *Companies' Creditors Arrangement Act* RSC 1985, c. C-36, as amended ("**CCAA**") on April 14, 2014.

2. Pursuant to the Initial Order of Regional Senior Justice Morawetz dated April 15, 2014 (as amended and restated):
  - (a) FTI Consulting Canada Inc. was appointed as the monitor of the Applicants (the “**Monitor**”); and
  - (b) BlueTree Advisors Inc. (“**BlueTree**”) was appointed as the Chief Restructuring Officer (“**CRO**”) of the Applicants.
3. BlueTree Advisors III Inc. (“**BlueTree III**”) was subsequently appointed as the Litigation Trustee of Cash Store (the “**Litigation Trustee**”) pursuant to the Sanction Order of the CCAA Court dated November 19, 2015.
4. I am the President of BlueTree and BlueTree III and as such have direct knowledge of the matters to which I depose herein. Where my knowledge is based on information or belief, I so state.
5. During the course of Cash Store’s CCAA proceedings, investigations were undertaken at my direction on behalf of Cash Store, with the assistance of employees of Cash Store, counsel and the Monitor, that revealed its potential litigation claims against (among others):
  - (a) its former auditor, KPMG LLP (“**KPMG**”);
  - (b) its former counsel, Cassels Brock & Blackwell LLP (“**CBB**”); and
  - (c) its former financial advisor, Canaccord Genuity Inc. (“**Canaccord**”).

6. In my capacity as CRO, I engaged counsel (“**Litigation Counsel**”) to further investigate and, where warranted, prosecute these potential claims.

### **Commencement of Actions and Preliminary Motions**

7. Among other actions, Cash Store commenced three professional negligence actions (the “**Actions**”) against KPMG, CBB and Canaccord (the “**Defendants**”) by notices of action dated November 27, 2014.
8. Before the Actions were defended, Cash Store and the Defendants engaged in a mediation before the Honourable Justice Winkler in January 2016. The mediation was unsuccessful.
9. The Defendants defended the Actions on May 26, 2016.
10. Since defending the Actions, the Defendants have each brought three significant motions:
  - (a) In April of 2017, a motion to relieve former Directors and Officers of Cash Store of their confidentiality obligations to Cash Store, which motion was granted. A copy of the decision is attached as Exhibit “**A**”;
  - (b) In June of 2017, motions for security for costs, at which Cash Store was ordered to post security for costs in the amount of \$533,333 for each action (\$1.6 million in aggregate) which would cover the steps in the action up to documentary review and production. The ordered security was deposited with the Court on July 31, 2017. A copy of the Order in the action against KPMG is attached as Exhibit “**B**”; and
  - (c) In October of 2018, motions for summary judgments.

### **Motions for Summary Judgment**

11. The motions for summary judgment and appeals took 33 months to resolve. They were brought by notices of motion dated March 14, 2017. The motions argued that the Actions were not commenced within the applicable limitations period. They were heard on October 4 and 5, 2018. Further written submissions were provided in December of 2018.
12. Justice McEwen released his decision dismissing the summary judgment motions on April 5, 2019. Justice McEwen held that, given the limited record before him, he could not determine the matter in a fair and just manner by way of summary judgment. His Honour explained that the actions involve a complicated factual matrix relating to professional negligence and a significant damages claim and thus a full evidentiary record, including *viva voce* evidence of the parties, would be required to achieve a fair and just result. Justice McEwen held that there exists a genuine issue respecting the discoverability of Cash Store's claims that will require a trial on each of the three Remaining Estate Actions. A copy of Justice McEwen's decision is attached hereto as Exhibit "C".
13. The Defendants each sought leave to appeal Justice McEwen's decision, which motions were dismissed by the Divisional Court on September 19, 2019.
14. The Defendants were ordered to pay costs of \$300,000 for the unsuccessful summary judgment motion, and costs of \$24,000 for the unsuccessful leave to appeal motion. These amounts were paid to Litigation Counsel by the Defendants.
15. At a case conference on October 1, 2019, the Defendants asked Justice McEwen to convene a mini-trial on the limitations issue, which request was opposed by Cash Store. Written



submissions were provided on or before October 11, 2019, and on December 17, 2019, Justice McEwen dismissed the request.

16. Justice McEwen noted, among other things, that the case involves complicated liability analyses and overlap between the issues of negligence and discoverability and, as such, a trial on all issues is preferable. A copy of Justice McEwen's endorsement is attached as Exhibit "D".

### **The Search for Litigation Funding**

17. Aside from the Actions, Cash Store has no remaining material assets and so it requires litigation funding to pursue the Actions. Significant amounts have been and will need to be spent on documentary discovery services and expert reports. Litigation funding was necessary for Cash Store to advance these Actions including for the documentary discovery process.
18. With the attempt to have Cash Store's case dismissed on a summary basis dismissed, I, as the Litigation Trustee, was able to advance its search for litigation funding.
19. With the assistance of Litigation Counsel, I engaged in an extensive litigation funding search and protracted negotiations with all affected stakeholders. That process was slow. Each potential funder required an exclusivity agreement for the period in which it investigated the strength of the claim and Cash Store's potential recoveries. These investigations included:

- (a) Early discussions with Bentham IMF (now Omni Bridgeway) and Burford Capital in 2017 that were hindered by the outstanding summary judgment motions;
  - (b) In 2019, Cash Store applied for funding through The Judge, a London-based broker of litigation funding. In 2020, The Judge accepted Cash Store's application and approached potential funders, including Augusta Ventures Limited ("**Augusta**"), Bench Walk Advisors LLC, LCM Capital Management Ltd., Orchard Global Asset Management, Therium Capital Management Limited, Thomas Miller Legal, Vannin Capital PCC and Woodsford Litigation Funding Limited;
  - (c) The Judge also assisted with approaching insurance providers who could provide After-The-Event ("**ATE**") insurance providers for Cash Store's potential adverse costs exposure, including Marsh Specialty-Litigation Risk Solutions and Quantum Legal Costs Cover Ltd.; and
  - (d) I also reached out to Brookfield Asset Management, Forum Equity Partners, Balance Capital and Cash Store's Ad Hoc Committee of noteholders.
20. The parties returned to Court on June 23, 2020 to set a timetable for the remaining steps in the Actions. At the time, Cash Store was well advanced in negotiations with a funder and expected to finalize a litigation funding agreement imminently. A timetable for the remaining steps in the Actions was set. A copy of Justice McEwen's endorsement is attached as Exhibit "**E**".
21. Unfortunately, in part due to the uncertainty caused by the pandemic, the funder declined to proceed and a litigation funding agreement was not reached until September 8, 2021.

As a result, Cash Store could not commit to incur the significant expense of commencing the document discovery process without secure funding and did not meet the deadlines set at the June 23, 2020 case conference.

22. As described above, Litigation Counsel and I engaged with numerous litigation funders throughout 2020 and 2021. In April of 2021, Augusta confirmed that it had funding and the internal approvals required to move forward with funding. A period of complicated multi-party negotiations followed. Ultimately, I as Litigation Trustee entered into a litigation funding agreement (the “**LFA**”) with Augusta Pool 4 Canada Limited on September 8, 2021 to finance the anticipated disbursements to progress the Actions to trial and provide ATE adverse costs insurance.
23. As indicated in my affidavit of October 8, 2021 and supported by the Monitor’s Twenty-Eighth Report, the LFA is fair and reasonable to all affected stakeholders and represented the best terms available on the market. The LFA was approved by order of Chief Justice Morawetz on October 28, 2021. A copy of Chief Justice Morawetz’ order is attached as Exhibit “**F**”.

### **Documentary Productions**

24. With funding secured, I directed Litigation Counsel to immediately begin working on the production of Cash Store’s documents. This has been a costly and time-consuming effort.
25. The Litigation Trustee obtained mirror drives representing substantially all of Cash Store’s documents, containing in excess of 25 million documents. However, the

overwhelming majority of these documents will be irrelevant to the matters at issue in the Actions, and the Litigation Trustee does not have the assistance of any key personnel from Cash Store to assist it with identifying potentially relevant documents.

26. Litigation Counsel, under the direction of the Litigation Trustee, has adopted various processes to narrow the document set to only those documents that are relevant to the matters at issue in the Actions. They have made extensive use of documentary production technology and logic rules to reduce the document set to approximately 1.3 million. An ongoing review of those documents is supported by artificial intelligence technology that prioritizes the review of those documents that are most likely to be relevant.
27. The document review process is entering its final quality control phase on a narrower set of documents. Cash Store expects to produce its documents on or before March 31, 2023 and expects to be able to advise the Court that it has done so on the return of this motion.

**Timetable Set on March 8, 2023**

28. On March 8, 2023, the parties attended at a case conference before Justice McEwen. The purpose of the case conference was to set a new timetable for the remaining steps in the Actions now that Cash Store was in a position to agree to a timeline for the production of documents.
29. Ahead of the case conference, the parties agreed to a timetable for the remaining steps in the Actions as follows:

<b>Date</b>	<b>Litigation Phase</b>
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
March 31, 2025	Delivery of Cash Store Reply Report
April 2025	Pre-trial conference
May 2025	Six-week trial to commence, subject to Court availability

30. The timelines for the various steps are consistent with the timetable that was previously agreed upon and ordered by the Court on June 23, 2020.
31. At the case conference, Justice McEwen set the following court dates:
- (a) A pre-trial conference to be held on April 8 and 9, 2025;
  - (b) A trial to commence on April 28, 2025 and run for six weeks; and
  - (c) Closing submissions to take place on June 23 to 25, 2025.
32. The Litigation Trustee supports the extension of the stay of proceedings against Cash Store for a further five months. Litigation Counsel will continue to have regular meetings with the Monitor to keep it apprised of the progress of the Actions.

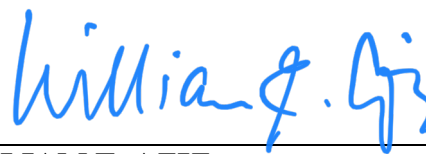
33. I swear this Affidavit in support of the Monitor's motion for an extension of the stay of proceedings and for no other purpose.

SWORN BEFORE ME BY VIDEO CONFERENCE by William E. Aziz on March 23, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant was in the City of Naples, in the State of Florida, and the commissioner was in the City of Toronto, in the Province of Ontario.



\_\_\_\_\_  
Commissioner for Taking Affidavits

**JAMES P. E. HARDY**



\_\_\_\_\_  
**WILLIAM E. AZIZ**  
**BlueTree Advisors III Inc.**  
**Litigation Trustee to 1511419 Ontario**  
**Inc. (f/k/a The Cash Store Financial**  
**Services Inc.)**

This is Exhibit "A" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



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A Commissioner for taking affidavits

**JAMES P. E. HARDY**

2017 ONSC 2472  
Ontario Superior Court of Justice [Commercial List]

1511419 Ontario Inc. v. KPMG LLP

2017 CarswellOnt 5770, 2017 ONSC 2472, 278 A.C.W.S. (3d) 468, 47 C.B.R. (6th) 325

**1511419 ONTARIO INC. (FORMERLY KNOWN AS THE CASH STORE  
FINANCIAL SERVICES INC.) (Plaintiff) and KPMG LLP (Defendant)**

F.L. Myers J.

Heard: April 12, 2017

Judgment: April 21, 2017

Docket: CV-14-10771-00CL

Counsel: Gerald L.R. Ranking, Dylan Chocla, for Defendant

Megan Keenberg, for Plaintiff

John Fabello, for former independent Directors and Officers of Plaintiff

Matthew Lerner, for former inside Directors and Officers of Plaintiff, Gordon Reykdal and Ed McClelland

Subject: Civil Practice and Procedure; Corporate and Commercial; Insolvency

**Headnote**

Bankruptcy and insolvency --- Companies' Creditors Arrangement Act — Arrangements — Miscellaneous

On November 24, 2014, plaintiff C Inc. commenced litigation against multiple defendants, including its former auditor, LLP, as well as C Inc.'s former directors and officers — C Inc. alleged that K LLP committed auditor's negligence concerning preparation of its financial statements for 2011 through 2013 — In 2015, C Inc. negotiated global settlement to resolve 22 pieces of litigation brought by and against it, including resolution of C Inc.'s claim against its former directors and officers — As debtor under [Companies' Creditors Arrangement Act \("CCAA"\)](#), C Inc. required approval of court to enter into global settlement — Global settlement was centrepiece of C Inc.'s plan of compromise and arrangement under [CCAA](#) — C Inc. required approval of its plan of compromise and arrangement by both its creditors and court under statute — Former directors' contractual obligation to refuse to speak to K LLP was contained in side letter agreement that was part of global settlement of litigation that was centrepiece of plan of compromise and arrangement of C Inc. under [CCAA](#) — C Inc. did not disclose side letter agreement to K LLP, creditors, or to court in [CCAA](#) plan approval process — K LLP brought motion for order relieving former members of board of directors of C Inc. (or its predecessor) of their contractual obligation to refuse to "cooperate with, meet with or talk to" K LLP concerning this litigation except under compulsion of court order or summons to witness — Motion granted — Prohibition against communicating with K LLP contained in undisclosed side letter agreement was not binding on former directors of C Inc. — C Inc. required approval of court to enter into side letter agreement — As it did not disclose side letter agreement to its creditors, K LLP, or to court, C Inc. thereby failed to obtain required court approval to agree to side letter agreement — As such, C Inc. lacked authority to enter into impugned term in side letter agreement and could not rely upon it — Disclosure to interested parties and to court of terms for which approval is sought or mandated is minimum requirement — [CCAA](#) debtors are supervised by court under watchful eyes of their creditors and other interested parties — Transparency is part of quid pro quo that comes with enjoying protections of [CCAA](#).

**Table of Authorities**

**Cases considered by F.L. Myers J.:**

*Air Canada, Re* (2004), 2004 CarswellOnt 469, 47 C.B.R. (4th) 169 (Ont. S.C.J. [Commercial List]) — considered

*Harmony Shipping Co. S.A. v. Saudi Europe Line Ltd.* (1979), [1979] 1 W.L.R. 1380, [1979] 3 All E.R. 177, [1980] 1

*Lloyd's Rep.* 44 (Eng. C.A.) — considered



*Hryniak v. Mauldin* (2014), 2014 CarswellOnt 640, 2014 CarswellOnt 641, 37 R.P.R. (5th) 1, 46 C.P.C. (7th) 217, 27 C.L.R. (4th) 1, (sub nom. *Hryniak v. Mauldin*) 366 D.L.R. (4th) 641, 2014 CSC 7, 453 N.R. 51, 12 C.C.E.L. (4th) 1, 314 O.A.C. 1, 95 E.T.R. (3d) 1, 21 B.L.R. (5th) 248, [2014] 1 S.C.R. 87, 2014 SCC 7 (S.C.C.) — considered

*M. (N.) v. Drew Estate* (2003), 2003 ABCA 231, 2003 CarswellAlta 1106, 34 C.P.C. (5th) 225, 230 D.L.R. (4th) 697, [2004] 1 W.W.R. 87, 18 Alta. L.R. (4th) 42, 330 A.R. 233, 299 W.A.C. 233 (Alta. C.A.) — referred to

*Northland Properties Ltd., Re* (1989), 34 B.C.L.R. (2d) 122, (sub nom. *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*) [1989] 3 W.W.R. 363, (sub nom. *Northland Properties Ltd. v. Excelsior Life Insurance Co. of Canada*) 73 C.B.R. (N.S.) 195, 1989 CarswellBC 334 (B.C. C.A.) — considered

*Sable Offshore Energy Inc. v. Ameron International Corp.* (2013), 2013 SCC 37, 2013 CarswellNS 428, 2013 CarswellNS 429, 359 D.L.R. (4th) 381, 37 C.P.C. (7th) 225, 22 C.L.R. (4th) 1, 446 N.R. 35, 1052 A.P.R. 1, 332 N.B.R. (2d) 1, [2013] 2 S.C.R. 623 (S.C.C.) — considered

*Stelco Inc., Re* (2005), 2005 CarswellOnt 1188, 2 B.L.R. (4th) 238, 9 C.B.R. (5th) 135, 196 O.A.C. 142, 253 D.L.R. (4th) 109, 75 O.R. (3d) 5 (Ont. C.A.) — referred to

*Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG* (2013), [2013] EWHC 581 (Eng. Comm. Ct.) — referred to

#### Statutes considered:

*Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

Generally — referred to

*Interprovincial Summonses Act*, R.S.O. 1990, c. I.12

Generally — referred to

#### Rules considered:

*Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

Generally — referred to

R. 50.13 — referred to

#### Words and phrases considered:

##### **Pierringer agreement**

*Pierringer* agreements require Court approval in the context of the ongoing litigation to which they apply. They entail a dismissal of proceedings against some defendants and a reconstitution of the claims to assert several liability rather than joint liability against the remaining defendants.

MOTION brought by defendant for order relieving former members of board of directors of plaintiff of their contractual obligation to refuse to cooperate with, meet with or talk to defendant concerning this litigation except under compulsion of court order or summons to witness.

##### ***F.L. Myers J.:***

#### **The Motion**

1 The defendant KPMG LLP moves for an order relieving former members of the board of directors of the plaintiff (or its predecessor) Cash Store of their contractual obligation to refuse to "cooperate with, meet with or talk to" KPMG concerning this litigation except under compulsion of a court order or summons to witness.

2 The former directors' contractual obligation to refuse to speak to the defendant is contained in a side letter agreement that was part of a global settlement of litigation that was the centerpiece of the plan of compromise and arrangement of Cash Store under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.

3 Cash Store (or those who were responsible for its actions at the time) did not disclose the side letter agreement to the defendant, the creditors, or to the Court in the *CCAA* plan approval process.

4 For the reasons that follow, I find that the prohibition against communicating with KPMG contained in the undisclosed side letter agreement is not binding on the former directors of Cash Store. Cash Store required approval of the Court to enter into the side letter agreement. As it did not disclose the side letter agreement to its creditors, KPMG, or to the Court, Cash Store thereby failed to obtain the required Court approval to agree to the side letter agreement. As such, Cash Store lacked authority to enter into the impugned term in the side letter agreement and cannot rely upon it.

## **The Facts**

### ***The Initial Order under the CCAA***

5 On April 14, 2014, Regional Senior Justice Morawetz granted an initial order in favour of Cash Store under the *CCAA*. The initial order stayed enforcement actions by creditors against Cash Store and, in return, limited the insolvent Cash Store's authority to carry on business and to utilize its property without Court approval. See, for example, paras. 4, 6(a), 7, and 10.

### ***The Litigation***

6 On November 24, 2014, Cash Store commenced litigation against KPMG who was its former auditor; Cassels Brock & Blackwell LLP its former legal counsel; Canaccord Genuity Corp. its former financial advisor; its former directors and officers; and a number of its lenders.

7 In this action, Cash Store alleges that KPMG committed auditor's negligence concerning the preparation of its financial statements for 2011 through 2013. Cash Store seeks damages of \$300 million and disgorgement of KPMG's fees. In its statement of defence, KPMG claims, among other things, that the former directors and officers of Cash Store who retained and instructed the auditors never told them the facts that Cash Store now says ought to have been disclosed in its financial statements. KPMG and the other professional firm defendants assert rights to claim over for contribution and indemnity against former directors and officers of Cash Store.

### ***The Global Settlement***

8 In 2015, Cash Store negotiated a global settlement to resolve 22 pieces of litigation brought by and against it. The global settlement included a resolution of Cash Store's claim against its former directors and officers. Under that settlement, the directors and officers insurer agreed to pay substantial funds towards the resolution of Cash Store's litigation. As a *CCAA* debtor, Cash Store required approval of the Court to enter into the global settlement.

9 The global settlement was the centerpiece of Cash Store's plan of compromise and arrangement under the *CCAA*. Cash Store required the approval of its plan of compromise and arrangement by both its creditors and the Court under the statute.

10 Cash Store's claims against KPMG, Canaccord Genuity, and Cassels Brock were not settled in the global settlement. Under the terms of Cash Store's plan of compromise and arrangement, those claims would continue and would be carried by a Litigation Trustee and Litigation Counsel on behalf of creditors.

11 The settlement against the former directors and officers is said to require them to cooperate with Cash Store in the prosecution of its ongoing litigation. Cash Store's evidence is that the cooperation covenants were memorialized in a side letter agreement dated September 22, 2015 at the request of the former directors and officers.

12 On this motion, KPMG sought production of the side letter agreement. Cash Store has declined to produce it. Instead, it has disclosed a redacted version. The terms that are disclosed provide that the side letter agreement is conditional upon the approval of the global settlement and Cash Store's plan of compromise and arrangement. The only substantive term disclosed from the side letter agreement provides:

The former directors and officers will] not directly or indirectly through their representatives or counsel, cooperate with, meet with or talk to any party to any of the Estate Claims other than Cash Store, for the purpose of, or with the effect

of, addressing the Estate Claims or any matter at issue therein, unless compelled to do so by court order or summons to witness from a court of competent jurisdiction and in the event of such compulsion shall notify the Litigation Trustee and Litigation Counsel in writing

13 Although referred to throughout their materials and before me as "cooperation obligations," Cash Store has not disclosed any terms of the side letter or any agreement that impose obligations on its former directors and officers to cooperate with it or to positively help Cash Store in its ongoing litigation against KPMG or the other professional firm defendants.

#### ***Cash Store Agrees to a Pierringer Agreement and to Provide Third Party Releases***

14 Cash Store included a *Pierringer* provision and third party releases in favour of the former directors and officers as terms of the global settlement and its plan of compromise and arrangement. These provisions are designed to protect the former directors and officers by preventing claims over being made against them by KPMG and the other remaining professional firm defendants. The *Pierringer* agreement also required approval of the Court.

15 *Pierringer* agreements have been recognized as very helpful methods to advance settlements in complex lawsuits. The Supreme Court of Canada has approved of the use of *Pierringer* agreements as long as the terms proposed are fair and avoid possible prejudice associated with these types of agreements. *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2013] 2 S.C.R. 623, 2013 SCC 37 (S.C.C.) (CanLII), at paras 24 to 27.

16 Promoting settlement while preserving the fairness of the ongoing litigation process to the remaining parties is at the heart of *Pierringer* agreement approval. In *Sable*, the Supreme Court of Canada was satisfied with the fairness of the process because, in that case, the terms of the *Pierringer* agreement were fully disclosed and protections were provided for disclosed concerns in order to ensure that the defendants in that case would be able to fairly "know and present their case."

17 In this case, the side letter agreement was not disclosed. Based on what was disclosed, KPMG and the other professional firm defendants objected and negotiated terms referred to as the Non-Party Protocol. The Non-Party Protocol requires the former directors and officers of Cash Store to produce relevant documents for discovery and binds them and Cash Store not to oppose a motion by any of the remaining defendants if any of them wish to examine a former director or officer for discovery. It also binds the former directors and officers to respond to a summons to witness for trial if one is served upon their counsel. Most of the former directors and officers reside outside of Ontario. The latter provision therefore saved significant time and expense that would have been necessary in attempting to summon witnesses for trial under the *Interprovincial Summonses Act*, RSO 1990, c I.12 or to arrange for commission evidence to be taken outside of Ontario.

18 As Cash Store did not disclose the term of the side letter agreement prohibiting the former directors and officers of Cash Store from communicating with KPMG and the remaining professional firm defendants, no one had an opportunity to object or to make submissions as to whether the inclusion of that term as part of the *Pierringer* agreement was lawful, fair, or caused avoidable prejudice.

#### ***Approval of the Plan***

19 Cash Store submits in para. 20 of its factum that with the Non-Party Protocol in place, KPMG, Cassels Brock, and Canaccord withdrew their objections to its plan of compromise and arrangement so that the plan (including the global settlement and the *Pierringer* agreement) was approved by the Court on November 19, 2015.

20 In para. 29 of its factum in support of the approval of its plan of compromise and arrangement, Cash Store submitted that, "[t]he settlements are central to the resolution of these CCAA proceedings and are highly interconnected." It confirmed in para. 30 of its factum that it was a condition precedent of each settlement that the plan of compromise and arrangement be approved with the third party releases in favour of its former directors and officers among others as sought.

21 At para. 78 of its factum in support of the approval of its plan of compromise and arrangement, Cash Store described the consideration that it received from its former directors and officers as consisting of: a cash payment, cancellation of a related security, and:

(c) the cooperation of the D&Os in the prosecution of the Applicants' Remaining Estate Actions for the potential benefit of the Applicants' creditors.

22 Cash Store led no evidence on the approval motions to support that submission in its factum.

### ***KPMG Asks to Meet Directors with their Counsel***

23 KPMG has moved for summary judgment to dismiss parts of Cash Store's remaining claims against it in this action. KPMG's counsel contacted the lawyer for the former directors to request a meeting with a former director, Mr. Mondor, and possibly others, to discuss the facts concerning Cash Store's receipt in 2012 of certain correspondence referred to by KPMG as the "Whistleblower Letters." Counsel for the former Directors advised counsel for KPMG that the former directors could not meet with them due to obligations that they had undertaken to Cash Store. Counsel for KPMG wrote to Litigation Counsel for Cash Store and asked for production of the agreement that prevented the former directors from meeting him (now known to be the side letter agreement) and to ask for the release of the former directors from its terms. Litigation Counsel refused both requests.

### **Analysis**

24 As pleaded, 10 of the 13 former directors of Cash Store reside in Alberta. One resides in British Columbia and one in Ontario. KPMG argues that requiring it to execute inter-provincial summonses for all of them just to talk to them to collect evidence and possibly seek affidavits from them adds cost and delay to the litigation that is contrary to the goals of the civil justice system recognized by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7 (S.C.C.). KPMG argues that Cash Store has no legitimate business rationale for gagging its former directors and officers. Rather, Cash Store just seeks to run up the cost and cause needless delays in the litigation for KPMG and the other professional firm defendants. KPMG is willing to meet with the former directors with their counsel and understands that to the extent that the former directors have confidentiality obligations concerning confidential information, that information is legitimately withheld at the pre-trial stage at least.

25 KPMG relies upon the decision of Lord Denning in *Harmony Shipping Co. S.A. v. Saudi Europe Line Ltd.*, [1979] 3 All E.R. 177 (Eng. C.A.) at 180

So far as witnesses of fact are concerned, the law is as plain as it can be. There is no property in a witness. The reason is because the court has a right to every man's evidence. Its primary duty is to ascertain the truth. Neither one side or the other can debar the court from ascertaining the truth either by seeing a witness beforehand or by purchasing his evidence or by making communication to him. In no way can one side prohibit the other from seeing a witness of fact, from getting the facts from him or from calling him to give evidence or from issuing him with a subpoena.

[Emphasis added.]

26 See also *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2013] EWHC 581 (Eng. Comm. Ct.) at paras 19, 22, and 27.

27 Cash Store argues that in 2015 it negotiated settlements to 22 different pieces of litigation including the claim against its former directors and officers. In doing so, it settled and exhausted its former directors' and officers' insurance policy. The settlements were the product of extensive negotiations and multiple mediation efforts. They included releases and *Pierringer* agreements. Ms. Keenberg acknowledged that the settlements required Court approval even if they had not been contained in Cash Store's plan of compromise and arrangement.

28 Ms. Keenberg submitted that obtaining cooperation obligations from the former directors and officers was part of consideration that made up the global settlement and was part of Cash Store's plan of compromise and arrangement. The cooperation obligations were referred to para. 78 (c) of the factum supporting the motion. When KPMG objected to the terms initially proposed for the *Pierringer* agreement, the Non-Party Protocol was negotiated to resolve KPMG's concerns. The law does not require that a *Pierringer* agreement always include terms like the Non-Party Protocol. It was a concession to KPMG and the other remaining professional firm defendants.

29 Ms. Keenberg notes that there is no suggestion in the side letter agreement that any former director or officer will not be available to testify. The agreement expressly confirms that the former directors and officers will testify if summoned or otherwise ordered to do so. She argues that there is no question of suppressing testimony or any basis to find the terms of the side letter agreement to be contrary to law or public policy, unfair, or prejudicial.

30 Ms. Keenberg submits that it would be unprecedented were the Court to deprive a CCAA debtor of part of the consideration that it obtained under its approved plan of compromise and arrangement. In this case, the former directors' and officers' documents are being preserved as agreed. Summonses for trial can be served on Ontario counsel. KPMG does not have these rights against other third parties. They are part of a contractual arrangement which should not be ignored by the Court.

31 Cash Store relies upon case law in which courts have held that there is no obligation on a potential witness to agree to be interviewed out of court. See, for example, the Alberta Court of Appeal decision in *M. (N.) v. Drew Estate*, 2003 ABCA 231 (Alta. C.A.), at para. 12. As a general rule, I have no doubt that is correct. Cash Store argues that this answers KPMG's motion. KPMG has no right to compel any witness to speak to it, so it has no say in the issues between Cash Store and its former directors and officers as embodied in the side letter agreement.

32 The inside directors, represented by Mr. Lerner, argue that the former directors have the sole rights to determine if they will cooperate with any party in litigation. The question of whether witnesses wish to speak to parties is not covered by the *Rules of Civil Procedure* and it is wholly outside of this Court's jurisdiction. Mr. Lerner distinguishes issues of documentary and oral discovery and evidence at trial, on the one side, from interviews with witnesses on the other. All of the former matters are governed by the *Rules of Civil Procedure* and occur under the general auspices of the Court. But the right to cooperate and be interviewed out of court is a right of each witness and is his or her right to bargain away as he or she sees fit.

33 Mr. Lerner argues further that the terms as between his clients and Cash Store as to cooperation and non-cooperation were not part of the *Pierringer* agreement and were not before the Court for approval at all. This is directly contrary to the submission made by Ms. Keenberg, Cash Store's factum on the *Pierringer* agreement, global settlement, and plan approval motion and Mr. Aziz's affidavit before me.

34 Mr. Lerner argues that approval of the *Pierringer* agreement did not prejudice KPMG or the other remaining professional firm defendants in that they never had the right to interview the formers directors and officers informally out of court. Therefore the prohibition against speaking did not require Court approval as part of the *Pierringer* agreement. Similarly, the Non-Party Protocol did not require Court approval. By contrast, to obtain third party releases, the former directors and officers were required to tell the Court the consideration that they provided to the debtor. That explains why emphasis was placed on the "cooperation obligations" in para. 78 (c) of the factum supporting plan approval. But the agreement to refrain from speaking to KPMG did not form part of the consideration for the third party releases so it stands on a different footing that is outside of the proper scope of the Court's regulation or review.

35 There were three overlapping Court approval motions at play in November:

- a. The *Pierringer* agreement;
- b. The global settlement agreement; and
- c. Cash Store's plan of compromise and arrangement.

36 *Pierringer* agreements require Court approval in the context of the ongoing litigation to which they apply. They entail a dismissal of proceedings against some defendants and a reconstitution of the claims to assert several liability rather than joint liability against the remaining defendants. In this case, KPMG had not yet commenced its third party claims against the former directors and officers. The *Pierringer* terms and third party releases were intended to prevent that from happening. The issue on the *Pierringer* agreement approval motion was whether the pro-settlement purpose of the agreement fairly offsets any potential prejudice caused by the agreement to the remaining defendants' ability to "know and present their case."

37 While ordinarily non-parties have no duty to cooperate with parties to litigation, they are also ordinarily not prohibited from doing so. What was being proposed was to add a layer of legal obligation, a gag order, that made the former directors and officers quite different than ordinary non-parties. The lawfulness of such a provision is not at all clear. But I do not need to rule on that broad point on this motion.

38 The issue that was before the Court for approval was the fairness of the remaining litigation process as it was affected by the *Pierringer* agreement. In my view, it does not matter that the gag proposed is not addressed specifically by the *Rules of Civil Procedure*. Mr. Lerner tried to create a distinction between processes that fall under the *Rules* and those that are outside. He argued that the Court had no jurisdiction treading on his clients' rights to bargain about matters outside the *Rules of Civil Procedure*. In my view, that is a clever argument but it raises a straw man. The issue was not whether a matter was covered by the *Rules*. As stated above, the issue was the fairness of the remaining litigation process as it was affected by the proposed *Pierringer* terms. The ability to interview witnesses to obtain evidence and affidavits for motions or trial is certainly an aspect of the litigation process. It is not one specifically covered by the *Rules*, but that does not prohibit consideration of it under a general assessment of fairness or a balancing of proposed settlement terms against the equitable treatment of the defendants. The *Rules* are not a complete code for the management of lawsuits before this Court. The Court retains the inherent jurisdiction to control its process specifically in relation to matters where a gap exists in applicable legislation. *Stelco Inc., Re* [2005 CarswellOnt 1188 (Ont. C.A.)], 2005 CanLII 8671, at para. 35. In assessing the balance of the equities under the *Pierringer* agreement, it was relevant to the remaining defendants and to the Court to know that while the former directors and officers were agreeing to provide "procedural access" recited in the Non-Party Protocol, they had also gagged themselves from talking to the remaining defendants otherwise. That term directly affects the way the remaining defendants will both get to know and present their cases (to borrow the phrase used by the Supreme Court of Canada in *Sable*).

39 For the purposes of this motion, I agree with Cash Store, that the terms of the side letter agreement were part and parcel of the *Pierringer* agreement, the global settlement, and the plan. The creditors who by then were acting for Cash Store ought therefore to have put the side letter agreement before the Court for approval. They did not do so. Accordingly, the gag term of the side letter agreement relied upon by Cash Store was not approved as part of the *Pierringer* Agreement granted by the Court.

40 In paras. 82 to 88 of its factum filed for approval of its plan of arrangement and compromise, Cash Store discussed approval of settlements under the applicable case law dealing with settlements between a *CCAA* debtor and third parties. Among the cases upon which it relied was the decision of Farley J. in *Air Canada, Re* (2004), 47 C.B.R. (4th) 169 (Ont. S.C.J. [Commercial List]). In that case Farley J. adopted the "fair and reasonable" test for the approval of settlements as set out by MacEachern, CJBC in *Northland Properties Ltd., Re* [1989 CarswellBC 334 (B.C. C.A.)], 1989 CanLII 2672. In that case, the B.C. Court of Appeal was required to comment on a side deal entered into between a creditor and the debtor under which the creditor's claim was settled. The Court wrote:

[30] There is no doubt that side deals are a dangerous game and any arrangement made with just one creditor endangers the appearance of the bona fides of a plan of this kind and any debtor who undertakes such a burden does so at considerable risk. In this case, however, it is apparent that this agreement was not made for the purpose of ensuring a favourable vote because at the time the deal was struck the companies had not reached an accommodation with the bank. I think the companies were negotiating, as businessmen do, on values for the purpose of putting a plan together.

[31] Further, the arrangement with Relax was fully disclosed in the plan. This does not ensure its full absolution if it was improper, but at least it removes any coloration of an underhanded or secret deal...

[Emphasis added.]

41 Prior to his appointment to the bench, the great jurist Justice Louis Brandeis wrote the following words that remain as vibrant and applicable today as when they were written over 100 years ago:

If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects.<sup>1</sup>

42 Disclosure to interested parties and to the Court of the terms for which approval is sought or mandated is a minimum requirement. *CCAA* debtors are supervised by the Court under the watchful eyes of their creditors and other interested parties. Transparency is a part of the *quid pro quo* that comes with enjoying the protections of the *CCAA*. This is reflected in the Monitor's role as the Court's eyes and ears, its power to access all information and records of the debtor, its obligation to report to the Court periodically, and the Monitor's specific obligation to provide information concerning the debtor and its restructuring efforts upon request. See paras. 32, 33 (f) and 36 of Cash Store's initial order.

43 Moreover, transparency obligations flow from the public nature of Court proceedings.

44 At the hearing of the motion before me, counsel for Cash Store submitted that para. 78 (c) of its factum on the global settlement and plan approval motion amounted to disclosure of the side letter agreement to the Court. Nothing in the sentence disclosed in the factum alerted the Court, the creditors, or KPMG to the fact that, as part of the global settlement and *Pierringer* terms proposed, Cash Store had purported to obtain an agreement by its former directors and officers that they would not talk to the remaining defendants without a summons to witness or court order. Euphemistic references to "cooperation obligations" at the oral hearing of the plan approval motion as attested to by Mr. Aziz were equally no disclosure at all of the gag provision of the side letter agreement. Accordingly, I find that Cash Store did not disclose the impugned provision of the side letter to the parties or to the Court in respect of the motions to approve the global settlement or Cash Store's plan of compromise and arrangement.

45 I do not agree with Mr. Lerner's effort to parse some terms which he says were relevant to the third party releases and were required to be disclosed and others which he says were not. It was not up to the debtor and the former directors and officers to decide if the remaining professional firm defendants should or would object to the proposed terms. Nor were they entitled to withhold disclosure of terms that could be relevant to the balancing of prejudices and the assessment of the overall lawfulness, fairness, and reasonableness of the terms for which the Court's approval was required under the *CCAA*.

46 Secret side deals are not consistent with the transparency required of a *CCAA* debtor or with a public, Court-based process.

47 It follows that I reject Ms. Keenberg's submission that the Court's approval of the the global settlement, the *Pierringer* agreement, and Cash Store's plan of compromise and arrangement included approval of the undisclosed term of the side letter agreement prohibiting the former directors and officers from communicating with KPMG and the remaining professional firm defendants except under summons or Court order. Accordingly, Cash Store had no authority to enter into that term as part of an agreement. Therefore, Cash Store cannot rely upon or enforce the impugned term and it does not bind the former directors and officers.

48 I make no finding as to if or how this holding affects the approvals that Cash Store has obtained of the *Pierringer* agreement, the global settlement, and its plan of compromise and arrangement. While the Court is cognizant of counsel's submission that this outcome could have an effect on prior approvals purportedly obtained, if approval of the side letter agreement was required for any of those approvals to be effective, then it was incumbent on those in charge of Cash Store to seek the approval of the side letter agreement by proper means at that time.

### Costs

49 The parties agreed that the successful party should be entitled to \$5,000 in costs. Cash Store shall therefore pay KPMG LLP \$5,000 in costs all-in forthwith. No other costs were sought or are awarded.

### Order

50 Order to go in terms of para. 1 of KPMG's notice of motion dated March 24, 2017. KPMG does not need the Court's permission to seek to interview former directors as sought in the notice of motion. If case management directions are sought concerning processes to obtain evidence from former directors and officers or as to scheduling of the action, the parties are always at liberty to convene a 9:30 appointment under the *Practice Direction* and [Rule 50.13](#).

*Motion granted.*

#### Footnotes

- 1 *Brandeis and the History of Transparency*, online: Sunlight Foundation <<https://sunlightfoundation.com/2009/05/26/brandeis-and-the-history-of-transparency/>>



This is Exhibit "B" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



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A Commissioner for taking affidavits

**JAMES P. E. HARDY**

Court File No. CV-14-10771-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

THE HONOURABLE )  
 )  
MR. JUSTICE MYERS )

Monday, THE 5<sup>th</sup>  
DAY OF June, 2017

BETWEEN:



**1511419 ONTARIO INC. (formerly known as THE CASH STORE  
FINANCIAL SERVICES INC.)**

Plaintiff

- and -

**KPMG LLP**

Defendant

**INITIAL ORDER  
SECURITY FOR COSTS**

**THIS MOTION**, made by the defendant, KPMG LLP, for an order directing the plaintiff to post security for costs was heard on Friday, June 2<sup>nd</sup> at the Courthouse, 361 University Avenue, Toronto, Ontario and reserved to this day.

**ON READING** the Motion Record of the defendant, the Omnibus Motion Record of the Plaintiff, the Omnibus Supplemental Motion Record of the Plaintiff, the Omnibus Second Supplemental Motion Record of the Plaintiff and the *facta* and other materials filed and on hearing the submissions of the lawyers for the parties,

1. **THIS COURT ORDERS** that within 60 days after this order is served on the plaintiff, the plaintiff shall pay into court the sum of \$533,333 as security for the costs of this proceeding up to and including documentary review and production. Security shall be in cash or by an unconditional letter of credit with no time limit drawn on a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46.

2. **THIS COURT FURTHER ORDERS** that the plaintiff shall pay into court a further sum as security for costs in respect of pre-trial examinations 45 days before the date scheduled for the first examination, in an amount to be agreed by the parties or determined by further order of this Honourable Court.

3. **THIS COURT FURTHER ORDERS** that the plaintiff shall pay into court one or more instalments as security for costs in relation to trial preparation and trial to be set by this Honourable Court at the pretrial conference, if not earlier, or in an amount to be agreed by the parties.

4. **THIS COURT FURTHER ORDERS** that until the security required by this order has been given, the plaintiff may not take any step in this proceeding, except an appeal from this order.





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CM CHIBA, Registrar  
Superior Court of Justice

330 UNIVERSITY AVE.	330 AVE. UNIVERSITY
7TH FLOOR	7E ÉTAGE
TORONTO, ONTARIO	TORONTO, ONTARIO
M5G 1R7	M5G 1R7

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JUN 13 2017

PER / PAR: 

1511419 ONTARIO INC. (formerly known as THE CASH  
STORE FINANCIAL SERVICES INC.)  
Plaintiff

-and-

KPMG LLP

Defendant

Court File No. CV-14-10771-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**Proceeding commenced at  
Toronto**

**INITIAL ORDER  
SECURITY FOR COSTS**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
333 Bay Street, Suite 2400  
Bay Adelaide Centre, Box 20  
Toronto, ON M5H 2T6

**Gerald L.R. Ranking (LSUC: 23855J)**

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Tel: 416 865 4419

**Dylan Chochla (LSUC: 62137I)**

dchochla@fasken.com  
Tel: 416 868 3425

Fax: 416 364 7813

Lawyers for the Defendant,  
KPMG LLP

This is Exhibit "C" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



---

A Commissioner for taking affidavits

**JAMES P. E. HARDY**

CITATION: 1511419 Ontario Inc. v. KPMG, 2019 ONSC 228  
COURT FILE NOS.: CV-14-10771-00CL, CV-14-10773-00CL, and CV-14-10774-00CL  
DATE: 20190405

ONTARIO

SUPERIOR COURT OF JUSTICE

<b>BETWEEN:</b>	)	
	)	
<b>CV-14-10771-00CL</b>	)	
	)	
1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.)	)	<i>John Finnigan and Megan Keenberg, for the Plaintiff</i>
	)	
	)	
Plaintiff	)	
	)	
<b>- and -</b>	)	
	)	
KPMG	)	<i>Gerry Ranking and Dylan Chochla, for the Defendant KPMG</i>
	)	
	)	
Defendant	)	
	)	
<b>- AND -</b>	)	
	)	
<b>CV-14-10773-00CL</b>	)	
	)	
1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.)	)	<i>John Finnigan and Megan Keenberg, for the Plaintiff</i>
	)	
	)	
Plaintiff	)	
	)	
<b>- and -</b>	)	
	)	
Canaccord Genuity Corp.	)	<i>Patrick Flaherty and Bryan McLeese, for the Defendant Canaccord Genuity Corp.</i>
	)	
	)	
Defendant	)	
	)	
<b>- AND -</b>	)	
	)	
<b>CV-14-10774-00CL</b>	)	
	)	
1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.)	)	<i>John Finnigan and Megan Keenberg, for the Plaintiff</i>
	)	
	)	
Plaintiff	)	
	)	
<b>- and -</b>	)	
	)	
Cassels Brock & Blackwell LLP	)	<i>David Byers, Daniel S. Murdoch and Michael A. Currie, for the Defendant Cassels Brock &amp; Blackwell LLP</i>
	)	
	)	
Defendant	)	
	)	
	)	<b>HEARD:</b> October 4, 5, 2018. Further written submissions received by December 14, 2018

## REASONS FOR DECISION

### MCEWEN J.

[1] The defendants in all three actions, KPMG LLP (“KPMG”), Canaccord Genuity Corp. (“Canaccord”), and Cassels Brock & Blackwell LLP (“Cassels”), (collectively “the Defendants”) bring motions for summary judgment to dismiss the actions based on the expiry of the two year limitation period contained in the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, ss. 4 and 5.

[2] The plaintiff 1511419 Ontario Inc. (formerly known as the Cash Store Financial Services Inc.) (“Cash Store”) has sued KPMG, who was Cash Store’s long-standing auditor; Canaccord, who acted as Cash Store’s financial advisor; and Cassels, who provided legal services to Cash Store. The lawsuits all relate to professional services provided to Cash Store by the Defendants with respect to a loan purchase and note offering (the “January 2012 Transaction”).

[3] The Defendants submit that, since the January 2012 Transaction closed on January 31, 2012, and that the actions were not commenced until November 27, 2014, they are statute barred pursuant to the provisions of the *Limitations Act*. The actions were commenced almost ten months outside the mandated two year period.

### **SHORT ANSWER**

[4] For the reasons below, I dismiss the motions for summary judgment. In my view, there are genuine issues requiring a trial concerning the issue as to whether the three actions are statute barred.

[5] The three actions involve a complex fact pattern, which includes:

- A scheme orchestrated and acknowledged by Cash Store wherein its management sought to maximize profits with its third party lenders (the “TPLs”) by circumventing payday lending laws. The scheme was concealed from payday borrowers and regulators.
- The complicated January 2012 Transaction, where Cash Store completed a note offering issuing \$132.5 million in senior secured notes and used approximately \$116 million of the proceeds to acquire the loan portfolio held by the TPLs.
- The professional assistance provided by the Defendants with respect to the January 2012 Transaction.
- Ongoing professional services provided by KPMG and Cassels subsequent to the closing of the January 2012 Transaction.
- Subsequent allegations of professional negligence against the Defendants.
- The subsequent CCAA proceeding in which Cash Store was granted CCAA protection pursuant to the Amended and Restated Initial Order of Morawetz R.S.J. dated April 15, 2014.

- A subsequent decision by Morawetz R.S.J. released on August 5, 2014 wherein he held that the practice that had been developed between Cash Store and its TPLs differed substantially from that which was documented and represented to the public: *Cash Store Financial Services (Re)*, 2014 ONSC 4326, 31 B.L.R. (5th) 313.
- The subsequent appointment of the Chief Restructuring Officer and Litigation Trustee by Morawetz R.S.J. as well as Litigation Counsel to pursue claims on Cash Store's behalf.

[6] Based on the limited, yet voluminous, record (as described below) presented at the motion and the complexity of the subject matter, I have come to the conclusion that the summary judgment process does not allow for the necessary fulsome analysis required to determine the limitation period issue. It would, therefore, be inappropriate to do so in circumstances that would not lead to a fair process and just adjudication.

## OVERVIEW

[7] Between 2002 and 2014, Cash Store was a publicly incorporated company in Ontario. It was listed on the Toronto Stock Exchange and the New York Stock Exchange. Cash Store operated a payday lending business across Canada. Cash Store purported to arrange payday loans for its customers funded, ostensibly, by the TPLs.

[8] KPMG was Cash Store's auditor from 2002 to December 2014. Cassels acted as Cash Store's counsel from 2002 until May 2014. Canaccord was Cash Store's financial advisor from 2009 to 2012.

[9] With the assistance of the Defendants, acting in their professional capacities, Cash Store entered into the January 2012 Transaction with its TPLs wherein it acquired their loan portfolio in exchange for \$116 million. The fair market value of the loan portfolio, it was ultimately discovered, was far less than the amount paid.

[10] Internal Cash Store documentation demonstrates that Cash Store knew within a few months of the January 2012 Transaction that its valuation of the purchased loan portfolio had dropped significantly. Cash Store's interim financial statements for Q1, Q2, and Q3 also reflect that the initial valuation of the loan portfolio was inflated and the value of the loan portfolio had to be adjusted downward.

[11] After the January 2012 Transaction closed, Cash Store also received three letters that, generally speaking, alleged that Cash Store was conducting its business in violation of the applicable lending laws and that Cash Store was inappropriately conducting its financial reporting and public disclosures. The first two letters were sent by VWK Management Inc. ("VWK") on January 17, 2012 (the "January 2012 VWK Letter") and August 27, 2012 (the "August 2012 VWK Letter").<sup>1</sup> The August 2012 VWK Letter challenged the sufficiency of Cash Store's disclosure concerning the acquisition of the loan portfolio from its TPLs, the valuation of the loan portfolio,

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<sup>1</sup> Michael Woollcombe, President of VWK, wrote both of these letters.



and the relationship between Cash Store and its TPLs. It further alleged that Cash Store had been masking the true extent of its loan losses. The third letter was sent by Clearwater Management Inc. (“Clearwater”) on November 6, 2012 (the “Clearwater Letter”).<sup>2</sup>

[12] With respect to the January 2012 VWK Letter, Cash Store provided it to Cassels and Canaccord for review. Those Defendants advised Cash Store to dismiss VWK’s complaints. Cash Store did so by way of letter.

[13] Thereafter, it appears Canaccord had little or no involvement with Cash Store. However, KMPG and Cassels continued to act as Cash Store’s professional advisors until it filed for CCAA protection in April 2014. KPMG also received copies of the August 2012 VWK Letter and the Clearwater Letter.<sup>3</sup> Cassels reviewed the August 2012 VWK Letter with the Board.

[14] During this time period Cash Store also released its interim financial statements for Q1, Q2, and Q3 of 2012 which, in each iteration, reduced the fair value of the loan portfolio.

[15] In July 2012, Craig Warnock joined Cash Store as its CFO and began to review the problems with the value of the loan portfolio. Cash Store met with KPMG to discuss the aforementioned three letters. In the November 15, 2012 meeting, Al Mondor, a director of Cash Store’s Audit Committee, advised KPMG that Cash Store would be conducting an internal investigation of the circumstances surrounding the January 2012 Transaction.

[16] In November 2012, Cash Store realized that it would likely have to restate its 2012 Q2 and Q3 financial statements.

[17] KPMG assisted with the Audit Committee’s investigation up until November 2012.

[18] In December 2012, a Special Committee was formed, which was made up of independent directors on the Audit Committee, to conduct a special investigation into the allegations that had been made surrounding the January 2012 Transaction. Torys LLP and Deloitte & Touche (“Deloitte”) were retained to assist in the investigation. As noted, Cassels and KPMG continued to act on behalf of Cash Store.

[19] In May 2013, Deloitte delivered a report to Cash Store’s Special Committee identifying problems with the January 2012 Transaction, particularly with respect to one of the TPLs.

[20] On April 15, 2014, Cash Store was granted CCAA protection by way of order granted by Morawetz R.S.J.

[21] On the same day BlueTree Advisors Inc. was appointed as Chief Restructuring Officer of Cash Store (the “CRO”). Later, by way of order dated November 19, 2015, BlueTree Advisors III

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<sup>2</sup> Roland Keiper, President of Clearwater, wrote the Clearwater Letter.

<sup>3</sup> For further analysis, see the section titled “The Correspondence and Assistance Rendered by the Defendants”.

Inc. was appointed as Cash Store's Litigation Trustee. William Aziz is the President of both BlueTree entities (collectively "BlueTree").

[22] Subsequent to the CCAA proceedings, certain TPLs brought a motion on the Commercial List for a declaration that any loans made by them were brokered by Cash Store and, in fact, owned by the TPLs, therefore making them free of any claims against Cash Store by its creditors.

[23] Morawetz R.S.J. released his decision on August 5, 2014. He held that the TPLs were not lending the money directly to the customers but were rather advancing funds to Cash Store, which was lending the money to the ultimate consumer. Morawetz R.S.J. then noted that the practice differed substantially from what was documented between the TPLs and Cash Store.

[24] On November 27, 2014, Cash Store commenced its four separate actions, each claiming damages of \$300 million against its former directors and officers (the "Ds&Os"), KPMG, Canaccord, and Cassels.

[25] The Ds&Os' action was settled in September 2015.

## **THE BASIS FOR CASH STORE'S CLAIMS AGAINST THE DEFENDANTS**

### **Claim against KPMG**

[26] Cash Store's Fresh as Amended Statement of Claim is a lengthy document. Cash Store concedes (at para. 55) that its management's goal was to maximize profits by circumventing the payday lending laws with the view to generating revenue in excess of the regulatory caps and to conceal the circumvention from its borrowers and the regulators.

[27] Cash Store, thereafter, does not blame KPMG for this admittedly improper business model. In brief, Cash Store claims that KPMG was negligent and breached its contract with Cash Store for failing to take reasonable steps to understand Cash Store's business practices and its arrangements with the TPLs to ensure that Cash Store's financial statements were accurate. It takes particular issue with the 2011 and 2012 audits.

### **Claim against Canaccord**

[28] In a nutshell, Cash Store's claim against Canaccord arises out of claims of breach of contract, gross negligence, and breach of duty. Generally speaking, Cash Store alleges that Canaccord, as Cash Store's financial advisor concerning the January 2012 Transaction, failed to take all reasonable steps to properly understand Cash Store's business arrangements with the lenders and erroneously concluded that the January 2012 Transaction was fair from a financial point of view for Cash Store's shareholders. In this regard, Cash Store claims that it reasonably relied upon Canaccord's fairness opinion.

### **Claim against Cassels**

[29] In this action, in brief, Cash Store alleges that Cassels negligently permitted Cash Store to misdescribe its business affairs in its public disclosure and that it breached its fiduciary duty to Cash Store. Cash Store claims that Cassels provided negligent or improper advice about:

- Its compliance with applicable payday loan legislation and public disclosures.
- Its arrangements with TPLs and public disclosures relating to those arrangements.
- Its issuance of \$132.5 million in senior secured notes with respect to the January 2012 Transaction.

Layered into allegations against Cassels is the fact that one of its partners, Paul Stein, was the principal of one of the TPLs and had actual knowledge of the way Cash Store dealt with the lenders.

### **POSITION OF THE DEFENDANTS ON THIS MOTION**

[30] The Defendants, as a group, take certain common positions. Each of the Defendants also has their own unique facts that they rely upon in support of the motion to dismiss.

#### **The Common Defences**

[31] The actions were commenced approximately two years and ten months after the completion of the January 2012 Transaction.

[32] The Defendants collectively submit that the claims are out of time for the following reasons:

- Cash Store admits that all of the Defendants' impugned conduct occurred prior to November 27, 2012 (more than two years before the Notice of Actions were issued).
- Internal Cash Store documentation confirms that Cash Store knew, or ought to have known, within a few months of the January 2012 Transaction that its valuation of the loan portfolio was grossly inflated and had dropped significantly.
- Cash Store's own interim financial statements for Q1, Q2, and Q3 reflect the fact that the initial valuation of the loan portfolio was grossly inflated and the fair value of the loan portfolio had to be adjusted downward. The Q2 and Q3 financial statements were revised within two years of the January 2012 Transaction.
- Cash Store's Board received the aforementioned letters from VWK and Clearwater, which raised allegations similar to those being raised in the litigation against the Defendants, on January 17, 2012, August 27, 2012, and November 6, 2012, respectively. All of these were received within two years of the January 2012 Transaction.
- The Defendants also take significant issue with the fact that Cash Store has not adduced any evidence on behalf of the Ds&Os who were involved in the January 2012 Transaction and thereafter during the time the limitation period ran prior to the commencement of the actions. Instead, Cash Store relies upon the affidavit of Mr. Aziz which is largely comprised of a paper review and the affidavit of Susan Mendoza, an executive assistant to the CFO of Cash Store from September 2010 to May 2013. Ms. Mendoza also acted as the secretary for the meetings of the Board of Directors and the Audit Committee of Cash Store. Her

evidence concerns her attendance at Board and Audit Committee meetings and her preparation of the Minutes, which were relied upon by Mr. Aziz in his document review.

[33] The Defendants, therefore, submit that Cash Store knew from the outset, in part due to its own business model, that the loan portfolio was overvalued. Further, they submit that by the time Cash Store released its Q1, Q2, and Q3 statements, respectively, on February 8, May 10, and August 13, 2012, it publicly recognized that it had paid far too much for the loan portfolio. Alternatively, at the very latest, it knew or should have known at the latest by the time the August 2012 VWK Letter was sent to the Board from VWK. They further submit that Cash Store, in failing to adduce evidence from former Ds&Os, has failed to put its best foot forward on this motion and rebut the presumption in s. 5(2) of the *Limitations Act*.

[34] As a result, the Defendants submit that Cash Store (or alternatively a reasonable person with the abilities of Cash Store and in the circumstances of Cash Store) ought to have known of its claim against them within the two limitation period.

#### **Additional Individual Defences of Canaccord and Cassels**

[35] Canaccord submits that subsequent to the January 2012 Transaction closing it had no further involvement of any kind with Cash Store. Cassels submits that its partner, Mr. Stein, who was also a principal of one of Cash Store's TPLs, FSC Abel Financial Inc., had no dealings with Cash Store subsequent to the January 2012 Transaction closing and/or Cash Store's directing minds knew at the time of the loan and thereafter that Mr. Stein was a principal of FSC Abel, which provided a loan to Cash Store, and that Mr. Stein also provided advice in respect of the January 2012 Transaction. Cassels, like Canaccord, therefore, submits there is no evidence to point to an act or omission after the January 2012 Transaction closed, which is outside the two year limitation period.

#### **POSITION OF CASH STORE ON THIS MOTION**

[36] Cash Store raises a number of defences to the motion, primarily as set out below.

[37] First, Cash Store submits that the Defendants have advanced their motions on a very narrow record essentially relying upon the aforementioned correspondence from VWK and Clearwater as well as Cash Store's interim financial statements for Q1, Q2, and Q3, 2012. Cash Store points to the fact that neither Cassels nor Canaccord have produced any affidavit evidence with respect to the circumstances surrounding their involvement with Cash Store that led to the actions being commenced against them. In essence, Cash Store submits that none of the Defendants have met their onus to demonstrate that there is no genuine issue requiring a trial, since they rely upon the single affidavit filed by KPMG, which does not tender any firsthand evidence. Cash Store further submits that KPMG's affiant, Natalie Feldman, actually supports the evidence of Mr. Aziz and Ms. Mendoza.

[38] Second, Cash Store also points to the fact that Canaccord and Cassels assisted Cash Store in responding to the January 2012 VWK Letter. Further, KPMG and Cassels, as noted, continued to provide assistance to Cash Store and acted as their professional advisors throughout the relevant limitation period timeframe.

[39] Third, Cash Store further relies upon Mr. Aziz's review of the Minutes of the Board and Audit Committee meetings, prepared by Ms. Mendoza. Cash Store submits that Mr. Aziz's review of the Minutes demonstrates that Cash Store was not aware of potential claims against the Defendants prior to the Board being replaced by the CRO. Cash Store also relies upon the fact that the Board, prior to it being replaced, acted in a fashion that was consistent with it not having knowledge of the claims against the Defendants, particularly in circumstances where it continued on with the retainers of KPMG and Cassels.

## THE LAW

[40] Section 5 of the *Limitations Act* deals with the discovery of claims and provides, in part, as follows:

### Discovery

5(1) A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

(i) that the injury, loss or damage had occurred,

(ii) that the injury, loss or damage was caused by or contributed to by an act or omission,

(iii) that the act or omission was that of the person against whom the claim is made, and

(iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

### Presumption

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1) (a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

[41] The parties agree that the two year limitation period set out in the *Limitations Act* applies.

## The Process on a Summary Judgment Motion Concerning a Limitation Period

[42] On a summary judgment motion under Rule 20, the court is only to grant summary judgment if it satisfied that there is no genuine issue requiring a trial: Rule 20.04(2)(a).

[43] In deciding this matter I am mindful of the fact that Rule 20 was amended to broaden the court's jurisdiction to grant summary judgment.

[44] This change, which was endorsed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, provides this court with enhanced fact-finding powers and the discretion and flexibility in deciding the appropriate course of action.

[45] The court, however, went on to state at para. 68:

While summary judgment must be granted if there is no genuine issue requiring a trial, the decision to use either the expanded fact-finding powers or to call oral evidence is discretionary. The discretionary nature of this power gives the judge some flexibility in deciding the appropriate course of action. This discretion can act as a safety valve in cases where the use of such powers would clearly be inappropriate. There is always the risk that clearly unmeritorious motions for summary judgment could be abused and used tactically to add time and expense. In such cases, the motion judge may choose to decline to exercise her discretion to use those powers and dismiss the motion for summary judgment, without engaging in the full inquiry delineated above.

[46] Following the decision in *Hryniak*, not surprisingly, there has been a great deal of comment and opinion as to how far the courts should go in utilizing the discretionary nature of the powers set out in Rule 20.04.

[47] The proper course for a motions judge where a limitations issue is raised was discussed by the Court of Appeal in *Collins v. Cortez*, 2014 ONCA 685, 39 C.C.L.I. (5th) 1:

11 The proper course for a summary judgment court in determining a motion based on a limitations defence is set out in *Huang*, following the approach mandated by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7. The court must consider the evidence in the motion record to determine whether there is a genuine issue requiring a trial, and, if so, determine whether it is in the interest of justice to use the enhanced powers under rules 20.04(2.1) and (2.2) to determine the issue without a trial.

...

13 The respondent asserts that, even if the evidence on the motion were considered, it is insufficient to meet the requirements of s. 5(1) of the *Limitations Act, 2002*. However, at this stage the question is whether there is a genuine issue respecting discoverability requiring a trial, and not whether the limitations defence is sure to fail. In my view, the evidence of the appellant, which was not contradicted, reveals such an issue. Indeed, the motion judge observed that the date when the appellant's claim was discovered was "less than clear".

[48] "A full trial will still be required where a summary record cannot fairly be used to decide legal issues that are unsettled, complex, or intertwined with the facts": Mew J., Debra Rolph & Daniel Zacks, *The Law of Limitations*, 3d ed. (Markham: LexisNexis Canada, 2016), at s. 5.36.

[49] As the Court of Appeal has recently noted, discoverability cases tend to be contentious and complex. This can affect their suitability for summary judgment, particularly so in claims brought by clients against their professional advisors: *Mega International Commercial Bank (Canada) v.*

*Yung*, 2018 ONCA 429, 141 O.R. (3d) 81, at paras. 80, 88-89; *Presidential MSH Corp. v. Marr, Foster & Co. LLP*, 2017 ONCA 325, 135 O.R. (3d) 321, at para. 26.

[50] Recently, in the Court of Appeal’s decision in *Mason v. Perras Mongenais*, 2018 ONCA 978, Nordheimer J.A. noted that “nothing in *Hryniak* detracts from the overriding principle that summary judgment is only appropriate where it leads to a ‘fair process and just adjudication’”: *Mason*, at para. 44; *Hryniak*, at para. 33.

[51] Nordheimer J.A. concluded by stating that there is nothing in *Hryniak* that suggested trials be viewed as the resolution option of last resort.

[52] The process that a motion judge is required to follow on a summary judgment motion concerning a limitation period is described in *Nasr Hospitality Services Inc. v. Intact Insurance*, 2018 ONCA 725, 142 O.R. (3d) 561:

34 In order for a motion judge to grant summary judgment dismissing a plaintiff’s action or, as occurred in the present case, to grant a declaration about when the limitation period began to run, the judge is required make certain necessary findings of fact. Those necessary findings of fact concern one presumption and two dates, as set out in ss. 5(1)(a), 5(1)(b) and 5(2) of the *Act*...

35 Accordingly, a typical summary judgment motion involving the basic limitation period requires the judge to determine whether the record enables making a series of findings of fact, with the certainty required by *Hryniak*, on the following matters: (i) the date the plaintiff is presumed to know the matters listed in ss. 5(1)(a)(i)-(iv) — namely, the day on which the act or omission on which the claim is based occurred; (ii) the date of actual knowledge under s. 5(1)(a), in the event the evidence proves the contrary of the presumptive date; (iii) the s. 5(1)(b) objective knowledge date, based on the reasonable person with similar abilities and circumstances analysis; and (iv) finally, which of the actual knowledge and objective knowledge dates is earlier, for that will be [the] day on which the plaintiff discovered the claim for purposes of applying the basic limitation period of two years.

...

39 I would simply reiterate that granting summary judgment dismissing an action as statute-barred, or declaring when a claim was discovered, requires making specific findings of fact. Assumptions about the matters in ss. 5(1) and (2) of the *Act* are not analytical substitutes for findings of fact. If the record does not enable the summary judgment motion judge to make those findings with the certainty required by *Hryniak*, then a genuine issue requiring a trial may exist.

[53] According to *Nasr*, the motion judge must initially consider whether the evidence proves the contrary of the presumptive date of the plaintiff’s knowledge. To rebut this presumption contained in s. 5(2) on a summary judgment motion, the plaintiff must lead evidence to displace the statutory presumption of the date on which he discovered his claim: *Bergen v. Fast Estate*, 2018 ONCA 484, 30 M.V.R. (7th) 49, at para. 10; *Galota v. Festival Hall Developments Ltd.*, 2016

ONCA 585, 133 O.R. (3d) 35, at para. 15; *Hawthorne v. Markham Stouffville Hospital*, 2016 ONCA 10, at para. 8.

[54] To rebut this presumption, the plaintiff is not required to show due diligence. Rather, the plaintiff only needs to prove that he did that he did not know about one of the matters in s. 5(1)(a)(i) through (iv) *on the date* that the injury, loss, or damage occurred: *Fennell v. Deol*, 2016 ONCA 249, 97 M.V.R. (6th) 1, at para. 26.

[55] The next step in a summary judgment motion involves an inquiry into whether the record enables making a finding of fact on the date of the plaintiff's actual knowledge under s. 5(1)(a): *Nasr*, at para. 35.

[56] A motion judge may not make an assumption as to when a plaintiff first knew of the matters in ss. 5(1)(a)(i) through (iv). If the record does not enable the motion judge to make findings of fact "with the certainty required by *Hryniak*, then a genuine issue requiring a trial may exist": *Nasr*, at para. 39.

[57] If both parties agree on the subjective date that the plaintiff first knew about the matters in ss. 5(1)(a)(i) through (iv), that agreement can constitute an admission of fact that enables a motion judge to make a finding of fact: *Nasr*, at para. 40.

[58] The next step in *Nasr* requires the motion judge to consider whether the record enables a finding on the s. 5(1)(b) objective knowledge date. Due diligence forms part of the evaluation in s. 5(1)(b). In deciding when a person in the plaintiff's circumstances and with his abilities ought reasonably to have discovered the elements of the claim, it is relevant to consider what reasonable steps the plaintiff ought to have taken: *Fennell*, at para. 24.

[59] Based on the above case law, due diligence forms a part of the analysis under s. 5(1)(b). It does not impact the s. 5(1)(a) analysis, which only considers actual knowledge. Cash Store is not required to demonstrate due diligence to rebut the s. 5(2) presumption.

[60] I have accordingly focused my analysis for s. 5(1)(a) on the evidence regarding Cash Store's actual knowledge about the matters contained in ss. 5(1)(a)(i) through (iv). For the s. 5(1)(b) analysis, I have focused on the evidence regarding the day on which a reasonable person with the abilities and in the circumstances of Cash Store, exercising due diligence, first ought to have known of the matters in ss. 5(1)(a)(i) through (iv).

[61] I accept the Defendants' argument that given the obvious presumption contained in s. 5(2) of the *Limitations Act*, Cash Store has an obligation to put its "best foot forward" in response to a motion for summary judgment based on the provisions of s. 5 of the *Limitations Act*.

### **Positions of the Parties on the Interpretation of the *Limitations Act***

[62] The parties have very different views as to how the provisions of s. 5 of the *Limitations Act* should be interpreted.



[63] The Defendants generally submit that Cash Store had a requirement to act with due diligence to investigate and acquire facts to determine if it had a claim against the Defendants.

[64] The Defendants further submit that the presumption contained in s. 5(2) of the *Limitations Act* is of fundamental importance in this case.

[65] The Defendants cited numerous cases where there was an ample evidentiary record that permitted the motion judge to grant summary judgment, and the Court of Appeal upheld those decisions: *Chernet v. RBC General Insurance Co.*, 2017 ONCA 337, 11 M.V.R. (7th) 1; *Tim Ludwig Professional Corp. v. BDO Canada LLP*, 2017 ONCA 292, 137 O.R. (3d) 570; *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, 62 B.L.R. (5th) 211; *Northern Industrial Services Group Inc. v. Duguay*, 2016 ONCA 539.

[66] Cash Store, on the other hand, submits that it must only establish that its Board did not have actual knowledge of the claims against the Defendants and that the Defendants' focus on Cash Store's lack of due diligence is misplaced. Cash Store further argues that its Board would not have approved and publicly released its 2012 audited financial statements on December 28, 2012 if it had known that the statements were materially misstated, that the defendants had been negligent, and that commencing a claim against the defendants was appropriate. Cash Store stresses that it could not have reasonably known about these matters, in part at least, due to the assistance rendered by the Defendants after the January 2012 Transaction.

## ANALYSIS

[67] The motion for summary judgment was very capably argued by counsel. I appreciate the Defendants' collective desire to deal with the limitation period issues summarily and end the prospect of protracted and expensive litigation. In my view, however, for the reasons that follow, the evidence in the record satisfies me that there is a genuine issue respecting discoverability that requires a trial in all three of the actions. The case is too complicated to be dealt with summarily based on the limited record that was put before me and likely on any written record.

[68] Before I deal with certain discrete issues it bears noting that the parties filed approximately 13 separate briefs with the court (not including facta, case briefs, and subsequent written argument). The record exceeded 1,500 pages containing dozens of exhibits. KPMG filed a 13 page chronology that included 67 significant events that it wished to bring to my attention. There are also obvious underlining contentious issues that have to be considered. These include the nature of Cash Store's business model, the appropriateness of the January 2012 Transaction, the knowledge of the various Board members and officers of Cash Store during the relevant timeframe, and the professional roles played by the Defendants before, during, and after the January 2012 Transaction.

[69] Despite the above, as noted, limited affidavit evidence was filed:

- Cash Store filed an affidavit on behalf of Mr. Aziz, who is directing the litigation, as well as an affidavit of Ms. Mendoza. As noted, Ms. Mendoza served as the executive assistant to the Chief Financial Officer of Cash Store during the relevant time period. Ms. Mendoza has deposed that she attended all of the relevant corporate meetings for the purposes of

taking notes and preparing the Minutes. As set out in Mr. Aziz's affidavit, the Minutes do not contain any information to suggest that the Cash Store Board knew about the matters referred to in s. 5(1)(a) of the *Limitations Act* prior to November 27, 2012. None of the Defendants examined any of the Board members.

- KPMG filed an affidavit prepared by Ms. Feldman, a Senior Manager, Audit at KPMG. Ms. Feldman also attended the Cash Store meetings. Her affidavit largely consists of a review of documentation with little firsthand information. Neither Canaccord nor Cassels filed any affidavit evidence touching upon the issues in dispute other than filing certain limited documentation without comment.

[70] No party filed affidavit evidence from anyone directly involved in the January 2012 Transaction. As I will describe below this has led to my having difficulty understanding the context of the relationships between Cash Store and the Defendants.

[71] According to *Nasr*, at para. 35, I must determine whether the record enables making a series of findings of fact, with the certainty required by *Hryniak*, on the following matters:

- (i) the date the plaintiff is presumed to know the matters listed in ss. 5(1)(a)(i)-(iv) — namely, the day on which the act or omission on which the claim is based occurred;
- (ii) the date of actual knowledge under s. 5(1)(a), in the event the evidence proves the contrary of the presumptive date;
- (iii) the s. 5(1)(b) objective knowledge date, based on the reasonable person with similar abilities and circumstances analysis; and
- (iv) which of the actual knowledge and objective knowledge dates is earlier, for that will be day on which the plaintiff discovered the claim for purposes of applying the basic limitation period of two years.

[72] The record enables me to find that the day on which the act or omission on which the claim is based is January 31, 2012, the day of the closing of the January 2012 Transaction. If I am mistaken, and the record does not permit this finding, I can nevertheless make such a finding through the agreement of all parties that the claim is based on the January 2012 Transaction. This agreement constitutes an admission of fact that enables me to make a finding of fact: *Nasr*, at para. 40.

[73] Thus, the presumption holds that Cash Store knew about the matters in ss. 5(1)(a)(i) through (iv) regarding its claim against the Defendants on January 31, 2012, which is the date of closing of the January 2012 Transaction. It is presumed that Cash Store knew that the damage had occurred, that the Defendants caused or contributed to the damage, and that a proceeding would be the appropriate means to remedy the damage on January 31, 2012.

[74] *Nasr* requires me to next consider whether the evidence in the record *proves* the contrary of the presumptive date of January 31, 2012. As previously noted, this requires Cash Store to prove that it did not know about one of the matters in ss. 5(1)(a)(i) through (iv) on January 31, 2012:

*Fennell*, at para. 26. It does not need to demonstrate due diligence. Cash Store must lead evidence to displace this statutory presumption: *Bergen*, at para. 10; *Hawthorne*, at para. 8.

[75] After conducting the analysis under s. 5(1)(a), *Nasr* requires me to do a similar analysis under s. 5(1)(b).

[76] As noted, the Defendants proceeded with this motion on a limited record. Cash Store responded with a similarly limited record. Cash Store's record discloses, however, based on the Board Minutes, that there is no indication that Cash Store had knowledge of a claim against the Defendants. The limited record further discloses, as mentioned above, that the Defendants continued to provide professional services to Cash Store. In these circumstances, I am not prepared to find that Cash Store has failed to put its best foot forward or that it has failed to discharge the presumption under s. 5(2) or any presumption with respect to s. 5(1)(b).

[77] As was the case in *Mega*, this is a complex case involving allegations of professional negligence.

[78] In attempting to complete the required analysis set out in *Nasr*, it is the limited nature of the record that precludes me from doing so. To paraphrase from the Court of Appeal decisions in *Mason* and *Mega*, discoverability cases tend to be contentious and complex and not necessarily suitable for summary judgment – particularly in cases involving professional negligence. Summary judgment should only be granted if the process was fair and just.

[79] The complicated fact pattern involving allegations of professional negligence in this case precludes me from concluding that it would be fair and just, on a limited record, to determine the issue of the limitation period in a case brought against professional advisors.

[80] In coming to this conclusion, there are specific issues raised at the motion that bear further discussion. I will now deal with each of those in turn.

#### **Evidence Adduced by Cash Store**

[81] The Defendants take significant issue with what they describe as the dearth of evidence put forth by Cash Store on the motion. They argue that Cash Store has failed to put its best foot forward.

[82] In particular, the Defendants take issue with the evidence adduced by Mr. Aziz, who has authorized this litigation.

[83] Primarily, the Defendants are critical of the fact that Mr. Aziz and BlueTree have no firsthand knowledge of the underlying facts, including Cash Store's long-standing relationships with the Defendants, and that Mr. Aziz now seeks to maximize recoveries in the CCAA process.

[84] Mr. Aziz completed a review of the corporate records and concluded that no responsible fiduciary of Cash Store had discovered Cash Store's claim against the Defendants.

[85] The Defendants are critical of this hindsight review by Mr. Aziz, particularly in the context in which he is the directing mind in these actions. They are also critical of the fact that he has

chosen not to tender any firsthand evidence of the 13 former Cash Store managers, directors, and officers, all of whom he has interviewed.

[86] The Defendants submit that this was done since Mr. Aziz knew that they would not support his *ex post facto* re-characterization of events that were completely contrary to Cash Store's long-standing business practices, which are admitted by Cash Store. On this basis alone the Defendants submit that Cash Store has failed to rebut the presumption.

[87] Such evidence in and of itself could ultimately prove to be insufficient at trial. In the context of this summary judgment motion, however, where the only opposing evidence I have is from Ms. Feldman, I simply do not have a suitable contextualized basis to analyze this issue.

[88] Further, I do not accept the Defendants' submission that the "inescapable conclusion" is that Cash Store deliberately chose not to secure firsthand information knowing that the former Ds&Os would not support Cash Store's position in the litigation. I accept Cash Store's submission that the former Ds&Os who were involved in litigation may well be less than willing to participate in this litigation given active or potential securities commission investigations and that, in any event, the information provided may be tainted by self-interest. In this regard, it cannot be ignored that the Ds&Os have settled their litigation with Cash Store. Further, what if Cash Store tendered evidence from only two or three Board members? It would likely be criticized for not calling more. Last, the Defendants' argument is also somewhat undermined by the limited record they filed.

[89] Myers J. granted KPMG the ability to interview Cash Store's former directors without the court's permission: *1511419 Ontario Inc. v. KPMG LLP*, 2017 ONSC 2472, 47 C.B.R. (6th) 325. Even though Cash Store does bear the onus, none of the Defendants sought to examine or introduce evidence from any of the Ds&Os. As noted, the only affidavit evidence that the Defendants have put forth is that of Ms. Feldman, which is very limited in scope insofar as firsthand information is concerned.

[90] Without an understanding of the events surrounding and following the January 2012 Transaction from any of the involved persons, I am not prepared to determine the limitations issue.

### **The Board Minutes and Knowledge of the Board**

[91] The Defendants dispute that the Minutes of the Board are in fact the "best evidence" of what the Board knew in or around the time of the January 2012 Transaction.

[92] They submit that a full meeting of the Board is not required for a corporation to acquire knowledge that it would otherwise obtain through its directing minds such as officers or directors: *DBDC Spadina Ltd. v. Walton*, 2018 ONCA 60, 419 D.L.R. (4th) 409, at paras. 59-60, leave to appeal to S.C.C. allowed, 2018 CarswellOnt 19181; *Canadian Dredge and Dock Company Limited v. R.*, [1985] 1 S.C.R. 662, at pp. 679-685, 707-709, 713-714, and 717-718.

[93] They further go on to submit that it is also not clear what was recorded in the Board or Audit Committee Minutes, and overall the Minutes are not reliable.

[94] Cash Store responds by submitting that, as a matter of law, the directing mind of a public corporation is its board of directors, acting as a collective: *Stern v. Imasco Ltd.* (1999), 1 B.L.R. (3d) 198 (Ont. S.C.), at paras. 98-113.

[95] I do not propose to determine this dispute on this motion. I am prepared to accept that the Board Minutes are, at the very least, some evidence of what Cash Store knew at the relevant time periods.

[96] The problem faced by this court is exemplified by the Defendants' submissions that the fact that the Litigation Trustee found no records analyzing claims against them does not mean that Cash Store did not have the material facts at its disposal to assess potential claims. The Defendants submit that the absence of documents could also be evidence of the fact that Cash Store did not assert claims because it knew that it had been responsible for its own difficulties and never thought that the Defendants were negligent. While this may be true, it demonstrates the conundrum that I have been placed in in trying to determine these alternative arguments on the record placed in front of me. This is an issue that is best determined at trial on a full record.

### **Cash Store's Financial Statements**

[97] One of Cash Store's defences to this motion is that it could not have discovered its losses until its Board formally approved the restatement of its interim financial statements in December 2012.

[98] The Defendants take great exception to this submission, arguing that the public disclosure of Cash Store's financial statements in Q1, Q2, and Q3 all showed significant losses.

[99] This dispute further evidences the difficulty faced by this court. Without context, by way of further information with respect to Cash Store's knowledge *and* the role the Defendants played, particularly KPMG and Cassels, in advising Cash Store after the January 2012 Transaction, it is not possible to meaningfully analyze and resolve this dispute on this motion.

[100] The same goes with respect to the dispute between Cash Store and the Defendants concerning Cash Store's allegations that it could not have discovered its claim until Deloitte and the Special Committee released their reports or until Morawetz R.S.J. released his decision in August 2014. The decision, amongst other things, re-characterized the legal relationship between Cash Store and the TPLs from one of broker-agent to debtor-creditor.

### **The Correspondence and the Assistance Rendered by the Defendants**

[101] I am also not satisfied that the aforementioned letters that Cash Store received from VWK and Clearwater provide the necessary clarity that would permit me to make a finding of summary judgment.

[102] With respect to the aforementioned correspondence, upon which the Defendants put great emphasis, it cannot be ignored that these letters were received over a period of time, beginning in January 2012 up until November 6, 2012. All of these letters were obtained by Cash Store within the two year limitation period but it is very much a moving target on this motion as to which letter, if any, may have or should have engaged the limitation period. For example, if I focused on the

Clearwater Letter of November 6, 2012, this letter was received mere weeks before the expiration of the two year limitation period. I would then have to engage a hypothetical exercise as to when the Board had the opportunity to meet and consider the letter. I am not prepared to engage in such a speculative exercise with respect to any of the correspondence based on the filed record. The documentations relied upon by the Defendants raise nuanced arguments as to what Cash Store should have taken from the aforementioned financial statements, public disclosures, and the correspondence. It is not possible to do this in a fair and just fashion based on the record placed before me.

[103] With respect to the ongoing roles of the Defendants, the January 2012 VWK Letter was provided to Cassels and Canaccord for their input. Mr. Stein circulated a draft response letter to Cash Store's management and Canaccord on January 19, 2012. On the same day Daniel Daviau of Canaccord replied, stating that "do you say we understand you [Mr. Woollcombe] have been distributing the letter (CIBC has a copy somehow) and threaten to sue him for damage caused."

[104] There are further emails from Canaccord to Gordon Reykdal, the chairman and CEO of Cash Store, offering advice on how to proceed against Mr. Woollcombe. These emails contain disparaging comments about Mr. Woollcombe. Canaccord suggests that threatening to sue Mr. Woollcombe or issuing him stocks might induce him to give up his short position.

[105] Mr. Stein attended the meeting of Cash Store's Board on January 22, 2012, which was called to discuss the January 2012 VWK Letter. The Minutes of this meeting indicate that Mr. Stein was invited (along with US Legal Counsel) to provide legal advice on a response to the allegations contained in the January 2012 VWK Letter. The Minutes also indicate that after discussion with legal counsel, the Board made changes to the draft news release and approved it.

[106] According to the Special Committee's Report of May 13, 2013, after the Board received the August 2012 VWK Letter, it reviewed the letter with Cassels. The report also notes that on receipt of the August 2012 VWK Letter, the Audit Committee discussed the matters referenced in the letter with management and with KPMG.

[107] On November 6, 2012, Mr. Keiper sent the Clearwater Letter to Don Matthew of KPMG. Mr. Matthew replied to Mr. Keiper acknowledging receipt of the Clearwater Letter on November 12, 2012, and stated that KPMG would be making Cash Store management aware of the contents of the letter without disclosing Mr. Keiper's name.

[108] Mr. Matthew, Ms. Feldman, and James McAuley (also of KPMG) attended a meeting on November 15, 2012 with Mr. Mondor and Werner Pietrzyk, the Vice President of Cash Store's Internal Audit group, to review the allegations raised in the Clearwater Letter. Mr. McAuley requested that KPMG be allowed to shadow the internal investigation, and Mr. Mondor agreed.

[109] Ms. Feldman and Mr. Matthew, along with Cassels lawyers Mr. Stein and Michael Brown attended the special meeting of the Audit Committee on November 27, 2012. Mr. Matthew provided a verbal report indicating that KPMG had not yet completed its audit work, but believed that there was support for the recommendation of management. Mr. Brown summarized securities law considerations regarding potential restatement or current period change of estimates.

[110] Also on November 27, 2012, Mr. Matthew sent an email to Ms. Feldman and Brad Owen (also of KPMG), stating that he had spoken with Mr. Mondor and that “the directors are going to engage another [chartered accounting] firm to assist [management] in putting together the position paper analyzing the accounting for the loan purchase”.

[111] According to the Special Committee’s Report of May 13, 2013, the recommendation to form the Special Committee was based on discussions with Cash Store’s legal advisor and KPMG. KPMG had strongly recommended that the Board consider forming the Special Committee to carry out the investigation to determine whether there were other undisclosed parties who may have been participants in the January 2012 Transaction. This report also indicates that the Special Committee consulted with KPMG on the terms of Deloitte’s engagement to conduct factual inquiries and prepare a report of its findings.

[112] All this brings me back to the issue of context. The Defendants have, as noted, brought their motion on the basis of a very limited record. No evidence has been filed from employees of the Defendants who were directly involved in the January 2012 Transaction. The only evidence is from Ms. Feldman. Cash Store has responded with the limited affidavit evidence of Mr. Aziz and Ms. Mendoza. It is not possible to meaningfully analyze the interplay between the correspondence and the ongoing assistance provided by the Defendants to determine the issues of discoverability.

## CONCLUSION

[113] I cannot determine this matter in a fair and just manner by way of summary judgment. A review of the aforementioned affidavits and voluminous yet limited record do not provide the adequate context to determine the limitation period dispute. Particularly, I have no meaningful understanding as to the interaction between the parties in and around the time of the January 2012 Transaction that would assist me in determining the limitation issue. I also have no meaningful understanding of the assistance, or lack thereof, the Defendants rendered to Cash Store before, during, or after the January 2012 Transaction closed. The actions involve a complicated factual matrix involving professional negligence and a significant damages claim. In my view, the usual rule enunciated by Nordheimer J.A. in *Mason* should be followed. A full evidentiary record including *viva voce* evidence of the parties is required to achieve a fair and just result.

[114] I find that there is a genuine issue requiring a trial with respect to the issue of discoverability in each action.

## DISPOSITION

[115] The motions for summary judgment are therefore dismissed. If the parties cannot resolve the issue of costs they can arrange a 9:30 am appointment before me to discuss further steps. I am also prepared to discuss case management with the parties at a further 9:30 am appointment.



McEwen J.

**CITATION:** 1511419 Ontario Inc. v. KPMG, 2019 ONSC 228  
**COURT FILE NOS.:** CV-14-10771-00CL, CV-14-10773-00CL, and CV-14-10774-00CL  
**DATE:** 20190405

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CV-14-10771-00CL**

1511419 Ontario Inc. (formerly known as The Cash  
Store Financial Services Inc.)

Plaintiff

**- and -**

KPMG

Defendant

**- AND -**

**CV-14-10773-00CL**

1511419 Ontario Inc. (formerly known as The Cash  
Store Financial Services Inc.)

Plaintiff

**- and -**

Canaccord Genuity Corp.

Defendant

**- AND -**

---



**CV-14-10774-00CL**

1511419 Ontario Inc. (formerly known as The Cash  
Store Financial Services Inc.)

Plaintiff

**- and -**

Cassels Brock & Blackwell LLP

Defendant

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**REASONS FOR DECISION**

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**McEwen J.**

**Released: April 5, 2019**

This is Exhibit "D" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



---

A Commissioner for taking affidavits

**JAMES P. E. HARDY**

Court File Number: CU-14-10771-00CL<sup>59</sup>

Superior Court of Justice CU-14-10773-00CL  
Commercial List CU-14-10774-00CL

**FILE/DIRECTION/ORDER**

1511419 Ontario, Inc  
Plaintiff(s)

AND

KRMG LLP / Canaccord / CBR LLP  
Defendant(s)

Case Management  Yes  No by Judge: McEwon J.

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows): \_\_\_\_\_

This endorsement deals with the request of the Defendants to order a mini-trial to deal with the limitation period defenses raised by the Defendants.

As I recently advised all counsel at a case conference, I am not prepared to order such a trial.

17 Dec 2019  
Date

McEwon  
Judge's Signature

Additional Pages 3

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

I previously dismissed such a motion after two days of argument - primarily on the basis that the actions involve a complicated factual matrix requiring a full evidentiary record, including viva voce evidence.

The Defendants now wish to do this solely on the limitation issue.

In my view a mini-trial is not appropriate in these cases for the following reasons:

- The Defendants chose a path - the two day motion - and I am reluctant to allow them another opportunity pursuing a different method.
- That said, my estimate is that the trial would take 2-3 weeks which is not proportionate to the length of the entire trial, which would include these defences.<sup>1</sup>

Page 2 of 4

Judges Initials TM

1. I concede the trial date has not been set but it is difficult to see it being later than approx 8-9 weeks.

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

- There are several overlapping aspects to the evidence that will be given by the witnesses on liability and the limitation defence.
- If the Defendants do not succeed at the mini-trial, the judge (who will also be conducting the subsequent trial) will be left with an unwieldy<sup>th</sup> process with either witnesses reattending and for their transcripts being used.
- The direction of the Court Appeal, referred to in my previous decision, militates against this type of process: see Masen and Mega International decisions.
- Overall, I am concerned that the Defendants' proposal will cause delay and very well increase costs. In cases involving significant

Court File Number: \_\_\_\_\_

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

Judges Endorsment Continued

damages being claimed, complicated  
liability analyses and overlap between  
the issues of negligence and  
discoverability a trial on all  
issues is preferable

*McE...*

This is Exhibit "E" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



---

A Commissioner for taking affidavits

**JAMES P. E. HARDY**

Court File Number: CV-14-10771-00CL

Superior Court of Justice  
Commercial List CV-14-10773-00CL  
CV-14-10774-00CL

**FILE/DIRECTION/ORDER**

1511419 Ontario Inc Plaintiff(s)

AND

KPMG / Canaccord / Cassels Brock Defendant(s)

Case Management  Yes  No by Judge: McGEWON

Counsel	Telephone No:	Facsimile No:
<u>(see attached)</u>		

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

I held a case conference today via Zoom in accordance with the Notice to the Profession as a result of the COVID-19 crisis. A copy of this endorsement will be provided to the parties by the C.L. office. I approved the timetable as per Schedule A attached. Parties may schedule a further R.C. vs a vs trial timing in the fall.

23 June 20  
Date

McE  
Judge's Signature

Additional Pages \_\_\_\_\_





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John L. Finnigan  
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File No. 1688-001

June 22, 2020

**VIA EMAIL**

The Honourable Justice McEwen  
Ontario Superior Court of Justice  
Commercial List Office  
330 University Avenue  
Toronto, ON M5G 1R8

Dear Justice McEwen:

**Re: 1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.) v. KPMG LLP – Court File No. CV-14-10771-00CL**

**1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.) v. Canaccord Genuity Corp. – Court File No. CV-14-10773-00CL**

**1511419 Ontario Inc. (formerly known as The Cash Store Financial Services Inc.) v. Cassels Brock & Blackwell LLP – Court File No. CV-14-10774-00CL**

Counsel on these matters have a case conference via Zoom scheduled before you tomorrow at 11 AM. The purpose of the case conference is to set a timetable for these actions cases through to trial.

We are pleased to report that the parties have agreed on the timetable below with the exception of the commencement date and length of the trial. We can address submissions on those points to Your Honour tomorrow.

<b>Original Date</b>	<b>Revised Date</b>	<b>Litigation Phase</b>
May 30, 2020	<b>February 2021</b>	Parties to complete exchange of documentary productions
	<b>March 31 2021</b>	Deadline for delivery of documents from D&Os in accordance with the Non-Party Protocol

June/ July 2020	<b>May 2021</b>	Security for Costs Motions
December 31 2020	<b>October 31 2021</b>	Parties to complete examinations for discovery and third-party examinations in the following order: (i) examinations of Defendants by CSF,  (ii) examination of D&Os by all parties,  (iii) examination by way of written interrogatory (or by way of examination, if necessary) of William Aziz, LT of CSF, by Defendants
April 2021	<b>December 2021</b>	Estimated motion date for Refusals Motions
July 31 2021	<b>March 31 2022</b>	Parties to complete any re-attendances for examination, or deadline to deliver answers to written interrogatories
August 31 2021	<b>May 30 2022</b>	Deadline for delivery of CSF's Expert Reports
October 31 2021	<b>August 31 2022</b>	Deadline for delivery of Defendants' Responding Expert Reports
	<b>October 31 2022</b>	Deadline for delivery of CSF's Reply Expert Reports



Thornton Grout Finnigan LLP

3.

December 2021	<b>November 2022</b>	Estimated date for Pre-Trial Conference
June 2022	<del>December 2022</del> February 2023 TM	6-Week Trial to commence in December 2022, subject to court availability

Yours truly,

**Thornton Grout Finnigan LLP**

John L. Finnigan  
JLF\*bjb

cc: Gerald Ranking and Dylan Chochla, Fasken Martineau (via email)  
Patrick Flaherty and Bryan McLeese, Chernos Flaherty Svonkin LLP (via email)  
David Byers and Dan Murdoch, Stikeman Elliott LLP (via email)

**COUNSEL SLIP**

Court File No.: CV-14-10771-00CL

Court File No.: CV-14-10773-00CL

Court File No.: CV-14-10774-00CL

**DATE:** June 23, 2020**TITLE OF PROCEEDING:**

**1511419 ONTARIO INC.**  
 (formerly known as **THE CASH STORE FINANCIAL SERVICES INC.**)

Plaintiff

-and-

**KPMG LLP**

Defendant

-and-

**CANACCORD GENUITY CORP.**

Defendant

-and-

**CASSELS BROCK & BLACKWELL LLP**

Defendant

---

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Email: dmurdoch@stikeman.com

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**JUDICIAL NOTES:**

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**Honourable Justice McEwen**

This is Exhibit "F" referred to in the  
Affidavit of William E. Aziz sworn by William E. Aziz of the  
City of Naples, State of Florida before me at the City of  
Toronto, in the Province of Ontario,  
this 23rd day of March, 2023 in accordance with  
*O. Reg. 432/20, Administering Oath or Declaration Remotely.*



---

A Commissioner for taking affidavits

**JAMES P. E. HARDY**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )

THURSDAY THE 28<sup>TH</sup>

CHIEF JUSTICE MORAWETZ )

DAY OF OCTOBER, 2021

**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

**ORDER**

**THIS MOTION**, made on notice by the Applicant, 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc., ("**Cash Store**"), for an Order approving the terms of the Litigation Funding Agreement between Cash Store and Augusta Pool 4 Canada Limited, was heard this day via Zoom videoconference.

**ON READING** the Motion Record of Cash Store, the Supplementary Motion Record of Cash Store, and the Twenty-Eighth Report of the FTI Consulting Inc. in its capacity as Monitor (the "**Monitor**"), and on hearing the submissions of counsel for Cash Store, the Monitor, the



**Defendants** (as defined in the Notice of Motion) in the three ongoing professional negligence actions by Cash Store and for the Augusta Funder.

**AND ON BEING ADVISED** that counsel to Cash Store and the Defendants have agreed this Order does not affect Cash Store's obligations under the Initial Security for Costs Orders of Justice Myers dated June 5, 2017 and is without prejudice to Cash Store's or the Defendant's rights on any motion to vary or amend those Orders.

1. **THIS COURT ORDERS** that the terms of the Litigation Funding Agreement ("**LFA**") between Cash Store and Augusta Pool 4 Canada Limited, dated September 8, 2021 attached as **Exhibit "E"** to the affidavit of William Aziz sworn October 8, 2021, are approved.

2. **THIS COURT ORDERS** that the Augusta Funder will be granted a first ranking charge and security interest in accordance with the "**Security Agreement**" defined in Part 1 of **Exhibit "A"** to the LFA.

3. **THIS COURT ORDERS** that the amendments to the Contingency Fee Retainer Agreement, the Litigation Trustee Retainer Agreement and the Litigation Funding and Indemnity Reserve Agreement set out in **Exhibit "B"** of the Litigation Funding Agreement are approved.

4. **THIS COURT ORDERS** that the Monitor is authorized and directed to distribute the funds currently held in Cash Store's restricted bank account (in the amount of \$3,787,653.49) in accordance with the terms and conditions of the Plan of Compromise or Arrangement concerning, affecting and involving the Applicants (the "**Plan**"), and the Sanction Order of the Court dated November 16, 2015 sanctioning the Plan and authorizing the Applicants and the Monitor to implement the Plan as follows:



- (a) The sum of \$250,000.00 shall be paid to Goodmans LLP, counsel for the Ad Hoc Committee of Noteholders, to pay outstanding invoices for services rendered in connection with litigation trust matters and to fund a go-forward retainer.
- (b) The sum of \$56,006.12 shall be paid to the Monitor, to pay outstanding invoices for services rendered.
- (c) The sum of \$9,660.37 shall be paid to McCarthy Tétrault LLP, counsel to the Monitor, to pay outstanding invoices for services rendered.
- (d) The sum of \$3,471,987.00, being the balance of the funds in Cash Store's restricted bank account, shall be paid, to the estate's creditors.

5. **THIS COURT ORDERS** that the unredacted copy of the Litigation Funding Agreement filed with the Court will be sealed.



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Chief Justice G.B. Morawetz

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

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

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

**Proceedings commenced at Toronto, Ontario**

**ORDER**

**THORNTON GROUT FINNIGAN LLP**

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Lawyers for 1511419 Ontario Inc.,  
f/k/a The Cash Store Financial Services Inc.

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., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., AND 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

Applicants

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

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

Proceedings commenced at Toronto, Ontario

**AFFIDAVIT OF WILLIAM E. AZIZ  
(SWORN MARCH 23, 2023)**

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# Tab 3

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

**1511419 ONTARIO INC., FORMERLY KNOWN AS THE  
CASH STORE FINANCIAL SERVICES INC.  
AND RELATED APPLICANTS**

**THIRTY-FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**March 23, 2023**

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

APPLICANTS

**THIRTY-FIRST REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION AND BACKGROUND**

1. On April 14, 2014, Regional Senior Justice Morawetz (as he then was) granted an Initial Order (as amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**") with respect to 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" (collectively, the "**Applicants**" or "**Cash Store**") providing protections to Cash

- Store under the CCAA, including a stay of proceedings (as extended from time to time, the “**Stay**”), appointing Blue Tree Advisors Inc. as Chief Restructuring Officer of the Applicants (the “**CRO**”) and appointing FTI Consulting Canada Inc. as CCAA monitor (the “**Monitor**”). A copy of the Initial Order is attached hereto as **Schedule “A”**.
2. The Stay currently extends up to and including April 3, 2023.
  3. During the course of the CCAA Proceedings, Cash Store conducted various investigations with the assistance of its employees, counsel and the CRO, which revealed potential litigation claims against:
    - (a) its former auditor, KPMG LLP;
    - (b) its former counsel, Cassels Brock & Blackwell LLP;
    - (c) its former financial advisor, Canaccord Genuity Inc.;
    - (d) certain of its former directors and officers (the “**D&Os**”); and
    - (e) the lenders who advanced funds to Cash Store to finance the payday loans that Cash Store provided to its customers (the “**Third Party Lenders**”).
  4. On December 1, 2014, the Court approved the Litigation Counsel Retainer and the Applicants retained Thornton Grout Finnigan LLP and Voorheis & Co. LLP (collectively, “**Litigation Counsel**”) to pursue the litigation claims.
  5. Cash Store completed three Court-approved asset purchase transactions during the CCAA Proceedings. Substantially all of Cash Store’s assets were sold pursuant to the aforementioned transactions, including a significant portion of its books and records.
  6. Pursuant to an Order of this Court granted on September 30, 2015 (the “**Meetings Order**”), meetings of affected creditors were held on November 10, 2015 to vote on the Plan of Compromise or Arrangement concerning, affecting and involving

- the Applicants (the “**Plan**”). As reported by the Monitor in its Twenty-First Report dated November 16, 2015, the Plan was voted on and approved by the required majority of Affected Creditors pursuant to the terms of the Meetings Order, the Plan and the CCAA.
7. On November 19, 2015, the Court granted an Order (the “**Sanction Order**”), among other things, sanctioning the Plan and authorizing the Applicants and the Monitor to implement the Plan. On December 31, 2015, the Monitor issued a certificate in the prescribed form certifying that the Plan Implementation Date (as defined in the Plan) had occurred and that the Plan and the Sanction Order were effective in accordance with their respective terms.
  8. The Sanction Order granted the Monitor certain enhanced powers and authorization to, among other things, facilitate the completion and administration of the estates of the Applicants in the CCAA Proceeding and apply to the Court for any orders necessary or advisable to carry out its powers and obligations.
  9. As part of the Plan, the litigation claims against the D&Os and certain Third Party Lenders were settled under a global settlement (the “**Global Settlement**”). The Sanction Order, among other things:
    - (a) Approved the Global Settlement;
    - (b) Discharged the CRO as of the Plan Implementation Date; and
    - (c) Appointed BlueTree Advisors III Inc. as the Litigation Trustee (the “**Litigation Trustee**”) to advance the remaining litigation claims as assets of the estate.
  10. Pursuant to the Plan, Cash Store’s assets were liquidated and the net proceeds, along with the proceeds of the Global Settlement with Cash Store’s former D&Os and certain Lenders, were distributed to Cash Store’s creditors, subject to:



- (a) the Litigation Funding and Indemnity Reserve (as defined in the Plan) established to provide initial financing for the Remaining Estate Actions against the Defendants; and
  - (b) the Monitor's Post-Implementation Reserve (as defined in the Plan) established pursuant to the terms of the Plan to ensure that sufficient funds remain available to the Monitor to pay the costs and expenses of the Applicants and administer the Applicants and the Plan from and after the Plan Implementation Date.
- 11. Certain litigation remains outstanding in respect of the Applicants:
  - (a) **Remaining Estate Actions.** The Litigation Trustee and Litigation Counsel (each as defined in the Plan) continue to pursue claims against KPMG LLP, Cassels Brock & Blackwell LLP and Canaccord Genuity Corp. (the "**Remaining Estate Actions**"), which were not settled or compromised pursuant to the Settlement Agreements (as defined in the Plan) or the Plan.
  - (b) **TPL Action and the Consumer Borrower Class Action.** The Estate of Cash Store has filed an action against certain defendants known as third party lenders (the "**TPL Action**"). A class proceeding has also been filed by certain consumer borrower class action plaintiffs against the same parties (the "**Consumer Borrower Class Action**").
- 12. The Remaining Estate Actions are a potential material remaining asset to be realized on.
- 13. The Stay has been extended up to and including April 3, 2023 pursuant to the Order of Justice Morawetz granted on November 4, 2022.
- 14. The Monitor now brings a motion to extend the Stay up to and including September 15, 2023.

### **Purpose of Report**

15. The purpose of this thirty-first report (the “**Thirty-First Report**”) is to provide the Court with information regarding:
- (a) the activities of the Monitor since its Thirtieth Report was filed with the Court on October 26, 2022;
  - (b) the Monitor’s motion to extend the Stay up to and including September 15, 2023; and
  - (c) the Applicants’ updated cash flow forecast.

### **TERMS OF REFERENCE**

16. In preparing this Thirty-First Report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants’ books and records, certain financial information and forecasts prepared by the Applicants, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, the Applicants (the “**Information**”).
17. Except as described in this Thirty-First Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (b) the Monitor has not examined or reviewed financial forecasts and projections referred to in this Thirty-First Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

18. Future-oriented financial information reported in, or relied on, in preparing this this Thirty-First Report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
19. The Monitor has prepared this Thirty-First Report in connection with its motion to extend the Stay up to and including September 15, 2023. This Thirty-First Report should not be relied on for any other purpose.
20. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
21. Capitalized terms not otherwise defined herein have the meanings defined in previous reports of the Monitor, the Plan and Orders of the Court issued in the CCAA Proceedings.

#### **STAY EXTENSION**

22. The Applicants, under the supervision of the Monitor, have been working with due diligence and in good faith throughout these CCAA proceedings. Since the Stay was last extended, the Monitor has taken the following steps which are described in more detail below:
  - (a) closely monitored the Remaining Estate Actions, the TPL Action and the Consumer Borrower Class Action;
  - (b) responded to inquiries from creditors, bondholders and other parties interested in the CCAA Proceeding; and
  - (c) conducted Cash Store's affairs in accordance with the Initial Order and other orders of the Court.

### **Status of the Remaining Estate Actions**

23. The Plan was implemented on December 31, 2015. Since that time, the Monitor and Litigation Trustee have been primarily focused on advancing the Remaining Estate Actions. At this point, the aforementioned are the only potential material remaining asset of the estate that may allow further distributions to be made to creditors.
24. The Remaining Estate Actions were commenced by notices of action dated November 27, 2014. Documentary productions are just being exchanged now. Obviously, the Remaining Estate Actions have not proceeded at the pace that one would have hoped when they were commenced. The delayed progress of the Remaining Estate Actions to date has primarily been a function of the various motions that were brought, the need for additional litigation funding, and the scope and complexity of the documentary production process.
25. As detailed further below, the Litigation Trustee appears to be past each of these hurdles now and expects that the Remaining Estate Actions will proceed apace going forward. Litigation funding is in place, a timetable has been imposed by Justice McEwen and trial dates have been set for April-June 2025.

### Timeline of the Remaining Estate Actions

26. The following is a summary of the timeline of the Remaining Estate Actions to date, which is set out in greater detail in the Affidavit William E. Aziz sworn March 23, 2023 (the “**Aziz Affidavit**”):
  - (a) Pleadings:
    - (i) November 27, 2014: Remaining Estate Actions commenced by notices of action.
    - (ii) January 2016: Unsuccessful mediation before Justice Winkler.

(iii) May 26, 2016: Defences delivered.

(b) Preliminary Motions:

(i) April 2017: Motion brought by the Defendants to relieve the former Directors and Officers of Cash Store of their confidentiality obligations to Cash Store.

(ii) June 2017: Each of the Defendants brought a motion for security for costs. Justice F. L. Myers issued a decision ordering Cash Store to post security for costs in the amount of \$533,333 for each action (\$1.6 million in aggregate) which would cover the steps in the action up to documentary review and production. The ordered security was deposited with the Court on July 31, 2017.

(c) Summary Judgment Motion:

(i) March 14, 2017: Defendants served notices of motion for summary judgment arguing that the Remaining Estate Actions were not commenced within the applicable limitations period.

(ii) October 4-5, 2018: Summary judgment motions heard.

(iii) December 5, 2018: Written submissions requested by Justice McEwen delivered.

(iv) April 5, 2019: Justice McEwen releases decision dismissing the summary judgment motions.

(v) September 19, 2019: Motions by Defendants for leave to appeal dismissed by the Divisional Court.

- (vi) October 2019: Defendants asked Justice McEwen to convene a mini-trial on the limitations issue. Written submissions on this request were exchanged.
  - (vii) December 17, 2019: Justice McEwen dismissed the request for a mini-trial.
- (d) Initial Litigation Funding Discussions:
- (i) 2017: Discussions with Bentham IMF (now Omni Bridgeway) and Burford Capital.
  - (ii) 2019-2020: Cash Store's approaches potential funders, including Augusta Ventures Limited ("**Augusta**"), Bench Walk Advisors LLC, LCM Capital Management Ltd., Orchard Global Asset Management, Therium Capital Management Limited, Thomas Miller Legal, Vannin Capital PCC and Woodsford Litigation Funding Limited, and After-The-Event ("**ATE**") insurance providers, including Marsh Specialty-Litigation Risk Solutions and Quantum Legal Costs Cover Ltd., through its litigation funding broker, The Judge.
- (e) June 23, 2020: Initial timetable set for the action by Justice McEwen, which included the following relevant dates:
- (i) February 8, 2021: Parties to complete exchange of documentary productions.
  - (ii) October 31, 2021: Parties to complete examinations for discovery.
  - (iii) October 31, 2022: Parties to complete exchange of all expert reports.

- (iv) November 2022: Pre-trial conference.
  - (v) February 2023: 6-8 week trial to commence.
- (f) Litigation Funding Obtained:
- (i) 2020-2021: Cash Store’s litigation funder declined to proceed. Litigation Counsel and the Litigation Trustee engaged in further discussions with numerous litigation funders.
  - (ii) April 2021: Augusta confirmed that it had funding and the internal approvals required to move forward with funding.
  - (iii) September 8, 2021: Following negotiations, litigation funding agreement (“**LFA**”) entered into with Augusta Pool 4 Canada Limited to finance the Remaining Estate Actions to trial and provide ATE adverse costs insurance.
  - (iv) October 28, 2021: LFA approved by order of Chief Justice Morawetz.
- (g) March 9, 2023: The Litigation Trustee was unable to meet the deadlines set out in the previous timetable due to the delays in securing litigation funding. After litigation funding was obtained and approved by the Court, a new timetable and trial dates were set by Justice McEwen at a case conference as follows:
- (i) March 31, 2023: Parties to complete exchange of documentary productions;
  - (ii) TBD upon agreement with the D&Os: Deadline for delivery of documents from D&Os in accordance with the Non-Party Protocol;

- (iii) June 2023: Security for costs motion (if any);
  - (iv) January 31, 2024: Examinations for discovery and third-party examinations to be completed;
  - (v) March 15, 2024: Parties to deliver answers to undertakings;
  - (vi) May 31, 2024: Refusals motion to be completed;
  - (vii) July 31, 2024: Any re-attendances for examination or answers to written interrogatories to be completed;
  - (viii) September 30, 2024: Delivery of Cash Store Expert Report;
  - (ix) January 31, 2025: Delivery of Defendants Expert Report;
  - (x) March 31, 2025: Delivery of Cash Store Reply Report;
  - (xi) April 8 and 9, 2025: Pre-trial conference;
  - (xii) April 28, 2025 to June 6, 2025: Six-week trial; and
  - (xiii) June 23 to June 25, 2025: Closing submissions.
- (h) Aside from the trial dates, which were subject to the Court's availability, this timetable was agreed upon between the parties in advance of the case conference and the timelines for the various steps are consistent with the timetable that was previously agreed upon and ordered by the Court in June 2020.

#### Documentary Production

27. The Litigation Trustee obtained mirror drives representing substantially all of the documents and information that remained in the possession of the Applicants relating to their business. These mirror drives included over 25 million



- documents, the vast majority of which have no relevance to the issues in dispute in the Remaining Estate Actions.
28. The Litigation Trustee was not in a position to incur the significant expense of having these documents extracted, processed and hosted on a document review platform until the Litigation Funding Agreement was approved in October 2021.
  29. Since that time, Litigation Counsel has undertaken exhaustive efforts with the assistance of documentary production technology and review teams to determine which of these documents may be relevant to the issues in dispute and should be produced in the Remaining Estate Actions, including the application of over 1 million logic rules to the document set. The age of the records and lack of key personnel from the Applicants to assist in identifying potentially relevant documents complicated this process.
  30. As a result of these efforts, Litigation Counsel was able to determine that only approximately 1.3 million of these documents are potentially responsive and ought to be reviewed. Litigation Counsel has been reviewing these documents with the assistance of artificial intelligence technology and has been providing the Monitor with regular updates on its progress.
  31. The Litigation Trustee expects to make its documentary productions by March 31, 2023, as contemplated in the timetable.

#### Delays in Remaining Estate Actions

32. As illustrated by the timeline above, there have been numerous delays in advancing the Remaining Estate Actions, some of which are attributable to motions brought by the Defendants (both successful and unsuccessful), some of which are attributable to the years-long effort to obtain litigation funding, and some of which are attributable to delays in Cash Store advancing the Remaining Estate Actions.

33. The June 2020 timetable provided that the Remaining Estate Actions would get to trial by February 2023. The March 2023 timetable provides that the trial will commence April 2025, a delay of 26 months. The delay is primarily attributable to:
- (a) the 16-month period between June 2020 and October 2021 during which the Applicants were seeking, negotiating and obtain court approval of litigation funding; and
  - (b) the 9-month difference between the amount of time that was contemplated in the June 2020 timetable for the completion of documentary productions (8 months between June 23, 2020 and February 28, 2021) and the time that Cash Store has actually taken due to the difficulties outlined above (17 months between the approval of the LFA in October 2021 and documentary productions being made in March 2023).
34. Each of these issues is now behind the Litigation Trustee and the Monitor expects that the Remaining Estate Actions will proceed on the timetable that has been agreed upon by the parties and ordered by Justice McEwen.

#### **The TPL Action and the Consumer Borrower Class Action**

35. The TPL Action and Consumer Borrower Class Action remain at the pleadings stage. The status of these actions was set out in the Thirtieth Report of the Monitor, a copy of which is attached as **Schedule “B”**. The Monitor is not aware of any steps having been taken since its Thirtieth Report with respect to the TPL Action or the Consumer Borrower Class Action. The focus of the Monitor and Litigation Trustee remains on the advancement of the Remaining Estate Actions.

### Stay Extension

36. Between November 2016 and November 2021, the Monitor sought and obtained six successive 12-month stay extensions. While the length of these stay extensions was atypical, in the Monitor's view they were reasonable given that:
- (a) the Plan had been implemented;
  - (b) the Applicants were no longer operating;
  - (c) aside from the sale of minor remnant assets and collection of certain receivables such as tax refunds, the activities of the Monitor and the Applicants were limited;
  - (d) 90-95% of any net proceeds realized from the Remaining Estate Actions are payable to the Secured Noteholders pursuant to the terms of the Plan,<sup>1</sup> and the Secured Noteholders are kept apprised of the progress of the Remaining Estate Actions through regular updates by Litigation Counsel and the Litigation Trustee; and
  - (e) there was a desire to limit the costs of administering the CCAA proceedings so that the post-implementation reserves could be directed towards the Remaining Estate Actions.
37. On November 4, 2022, the Monitor sought a further stay extension of 12 months on the same basis. Justice Morawetz expressed concern about the pace of the Remaining Estate Actions and granted a shorter stay extension of approximately five months to April 3, 2023 in order to ensure a degree of supervision.
38. His Honour indicated that, by that date, he expected that the parties to the Remaining Estate Litigation would (i) establish a new timetable, and (ii) be in a position to provide an update on the timing of documentary productions.

39. A copy of the order extending the stay to April 3, 2023 is attached hereto as **Schedule “C”**. A copy of the associated endorsement is attached hereto as **Schedule “D”**.
40. Given the Court’s expressed desire for a greater degree of supervision to be exercised over the Remaining Estate Actions, Monitor’s counsel has held bi-weekly meetings with Litigation Counsel since the last hearing to obtain updates on the progress of documentary productions being completed and the timetable being implemented.
41. It is anticipated that both of these items will be completed by the stay extension hearing. The Monitor understands from Litigation Counsel that documentary productions will be made by the end of March. A new timetable and trial dates were set by Justice McEwen at a case conference on March 9, 2023 that counsel for the Monitor attended.
42. The Monitor will continue to hold regular meetings with Litigation Counsel so that it can closely follow the progress of the Remaining Estate Actions and report to the Court as necessary.
43. The Monitor is seeking another five-month extension of the Stay to September 15, 2023. By that time, based on the timetable for the Remaining Estate Actions, the Monitor will be able to report to the Court on the delivery of documentary productions (due by March 31, 2023), the potential motion for security for costs (which will proceed in June 2023 if necessary) and the progress towards examinations for discovery and third-party examinations (which must be completed by January 31, 2023).
44. The Monitor believes that this length of Stay extension balances the need to ensure a degree of supervision over the Remaining Estate Actions and the need to

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<sup>1</sup> The Consumer Class Action Members (as defined in the Plan) are entitled to receive 10% of any net proceeds realized in respect of the Remaining Estate Actions against KPMG LLP and Canaccord Genuity Inc. up to an aggregate of \$3,000,000 and, thereafter, 5% of any such proceeds in excess of \$3,000,000.

preserve the resources of the estate. It is consistent with the length of stay extension that this Court most recently granted (also five months).

45. The proposed extension of the Stay would, among other things, extend CCAA protection while the Remaining Estate Actions, the TPL Action, and the Consumer Borrower Class Action proceed.
46. Extending the Stay will also enable the Monitor to continue to monetize the few remaining assets of the estate, which includes collecting certain miscellaneous receivables. The Applicants do not have any remaining assets that need to be sold.
47. The Monitor is not aware of any stakeholder that would be prejudiced by the extension of the Stay.

#### **Cash Flow Forecast**

48. The expenses of the Monitor administering the estate and the Litigation Trustee pursuing the Remaining Estate Actions are now funded through the Litigation Funding and Indemnity Reserve which is maintained and administered by the Monitor and funded pursuant to the Litigation Funding Agreement.
49. The estimated expenses to be funded during the period of March 26, 2023 to September 16, 2023 (the “**Forecast Period**”), attached hereto as **Schedule “E”** (the “**Cash Flow Forecast**”), demonstrates that the Applicants are projected to have sufficient liquidity to fund their activities to September 15, 2023.

50. As detailed in the Cash Flow Forecast, the \$119,000 in expenses to be funded during the Forecast Period include operating expenses (including record storage and destruction) in the amount of \$14,000 and professional fees in the amount of \$105,000.<sup>2</sup> During the Forecast Period the Monitor expects to collect \$119,000 in receipts consisting of transfers from the Litigation Funding and Indemnity Reserve that will be deposited into the Monitor's Trust account to pay its expenses.

### **Recommendation**

51. The Monitor believes that the length of the requested extension is reasonable and appropriate in the circumstances.
52. Accordingly, the Monitor recommends that this Court grant the Stay extension to September 15, 2023 as requested.
53. The Monitor respectfully submits to the Court this Thirty-First Report.

Dated this 23rd day of March, 2023.

FTI Consulting Canada Inc.  
The Monitor of 1511419 Ontario Inc.,  
formerly known as The Cash Store Financial Services Inc. and Related Applicants



Greg Watson  
Senior Managing Director

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<sup>2</sup> The estimate for professional fees includes the costs incurred by the Monitor and its counsel for the stay extension motion on April 3, 2023, the stay extension motion in September 2023, and the costs of monitoring the Remaining Estate Actions and attending to other estate administration matters over the Forecast Period.

**SCHEDULE "A"**  
**AMENDED AND RESTATED INITIAL ORDER**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE REGIONAL	)	TUESDAY, THE 15 <sup>TH</sup>
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF APRIL, 2014

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 THE CASH STORE FINANCIAL  
SERVICES INC., THE CASH STORE INC., TCS CASH STORE  
INC., INSTALOANS INC., 7252331 CANADA INC., 5515433  
MANITOBA INC., 1693926 ALBERTA LTD. DOING  
BUSINESS AS "THE TITLE STORE". (each one and all of the  
above, collectively, the "**Applicants**")

**AMENDED AND RESTATED INITIAL ORDER**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Steven Carlstrom sworn April 14, 2014 and the Exhibits thereto (the "**Carlstrom Affidavit**") and the affidavits of Patrick Riesterer and the Exhibits thereto, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Special Committee, the DIP Lenders (as defined in the Term Sheet (as defined herein)), the *ad hoc* committee of holders of the Applicants' 11 ½% senior secured notes (the "**Ad Hoc Committee**"), FTI Consulting Canada Inc. ("**FTI**") in its capacity as Monitor (the "**Monitor**") and such other counsel present, no other person appearing although duly served as appears from the affidavit of service of Karin Sachar sworn April 14, 2014 and on reading the Pre-Filing



Report of the Monitor dated April 14, 2014, the consent of FTI to act as the Monitor and the First Report of the Monitor dated April 15, 2014,

### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

### **APPLICATION**

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

### **PLAN OF ARRANGEMENT**

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

### **POSSESSION OF PROPERTY AND OPERATIONS**

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, and including for greater certainty all cash held in the Applicants’ accounts (the “**Property**”), subject to paragraphs 30 to 35. The Applicants shall continue to carry on business and use the Property, the Filing Date Cash (as defined below), and the TPL Funds (as defined in the Carlstrom Affidavit) in a manner consistent with the preservation of its business, including the making of brokered loans pursuant to the Applicants’ past practices as modified by paragraphs 30 to 35 (the “**Business**”), and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Carlstrom Affidavit or, with the consent of the Monitor and the DIP Lenders, replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay (excluding any change of control or similar termination payments without the consent of the DIP Lenders) and reasonable employee expenses (the reasonableness of which will be determined by the CRO (as defined herein)) payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
- (b) subject to the terms and conditions of the debtor-in-possession loan facility (the “**DIP Facility**”) as provided for in the Term Sheet, including the applicable terms therein that refer to the cash flow projections approved by the DIP Lenders pursuant to the terms and conditions of the DIP Facility (the “**Cash Flow Projections**”), the reasonable fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, subject to the terms and conditions of and availability under the DIP Facility and the Term Sheet, including the applicable terms therein that refer to the

Cash Flow Projections, and except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order; and
- (c) payments to critical vendors with the consent of the Monitor.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured

creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. THIS COURT ORDERS that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date, other than interest payments under the Credit Agreement (as defined in the Carlstrom Affidavit) and the retention payments to TPLs (as described below), both as set out in the Cash Flow Projections; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the term sheet governing the DIP Facility (the “**Term Sheet**”) and the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$75,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon

between the applicable employer and such employee or, failing such agreement, to deal with the consequences thereof in accordance with applicable law;

- (c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and
- (d) in consultation with the Monitor, solicit non-binding letters of intent for the sale of the Business by May 15, 2014 (or such later date as the Applicants, with the consent of the Monitor, shall determine) through Rothschild Inc. (“**Rothschild**”), in furtherance of the mergers and acquisitions process described in the Carlstrom Affidavit,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours’ prior written notice, and (b) at the

effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **FINANCIAL ADVISORS**

14. THIS COURT ORDERS that the engagement of (i) Rothschild as financial advisor pursuant to the engagement letter dated February 20, 2014 and (ii) Conway MacKenzie (“Conway”) as financial advisor pursuant to the engagement letter dated January 29, 2014 are hereby approved.

15. THIS COURT ORDERS that Rothschild is authorized to continue the mergers and acquisitions process as described in the Carlstrom Affidavit, in consultation with the Monitor.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

16. THIS COURT ORDERS that until and including May 14, 2014, or such later date as this Court may order (the “Stay Period”), no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the Applicants, the CRO, or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicants, the CRO, or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations,

actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

18. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

19. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

#### **NON-DEROGATION OF RIGHTS**

20. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA. For greater

certainty, nothing in this Order shall prejudice the rights of the TPLs under their broker agreements (the “**Broker Agreements**”) with the Applicants, or their right to assert any arguments in this proceeding in relation to the matters contemplated hereby.

### **PROCEEDINGS AGAINST CRO, DIRECTORS AND OFFICERS**

21. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

22. THIS COURT ORDERS that no member of the Special Committee nor the CRO shall have any liability with respect to any losses, claims, damages or liabilities, of any nature or kind, to any Person from and after the date of this Order except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct on the part of such member of the Special Committee or the CRO, as the case may be.

23. THIS COURT ORDERS that BlueTree Advisors Inc. be and is hereby appointed Chief Restructuring Officer of the Applicants (“**CRO**”). The CRO shall have the authority to direct the operations and management of the Applicants and the Restructuring, and the officers (including the executive management team of the Applicants) of the Applicants shall report to the CRO. For greater certainty, the CRO shall be entitled to exercise any powers of the Applicants set out herein, to the exclusion of any other Person (including any board member of the Applicants). The CRO shall provide timely updates to the Monitor in respect of its activities.

24. THIS COURT ORDERS that the CRO shall not be or be deemed to be a director, officer or employee of any of the Applicants.

25. THIS COURT ORDERS that (i) any indemnification obligations of the Applicants in favour of the CRO and (ii) the payment obligations of the Applicants to the CRO shall be entitled to the benefit of and shall form part of the Administration Charge set out herein.



26. THIS COURT ORDERS that any claims of the CRO shall be treated as unaffected in any plan of compromise and arrangement filed by the Applicants under the CCAA, any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”) or any other restructuring.

#### **DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND CHARGE**

27. THIS COURT ORDERS that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct.

28. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$2,500,000 as security for the indemnity provided in paragraph 27 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 53 and 55 herein.

29. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Applicants’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 27 of this Order.

#### **THE THIRD PARTY LENDERS**

30. THE COURT ORDERS that the TPLs (as defined in the Carlstrom Affidavit) shall be entitled to the benefit of and are hereby granted a charge (the “**TPL Charge**”) on the Property, which charge shall equal the amount of the Applicants’ cash-on-hand as of the effective time of the Initial Order granted in these proceedings (the “**Filing Date Cash**”). The TPLs shall only be entitled to the benefit of the TPL Charge in the event that this Court determines that the TPLs were entitled to the Filing Date Cash in priority to any other Person, or that the Filing Date Cash was not Property as of the effective time of the Initial Order granted in these proceedings.

Notwithstanding the granting of the TPL Charge, subject to the reservation of rights in paragraph 20, above, nothing in this order shall grant the TPLs any new, additional, or greater rights to the Filing Date Cash than the TPLs would have had immediately prior to the effective time of the Initial Order granted in these proceedings.

31. THIS COURT ORDERS and directs that the Applicants shall keep records of all receipts and disbursements in connection with the TPL brokered loans (the “**TPL Brokered Loans**”) and any amounts received by the Applicants in respect of same subsequent to the effective time of the Initial Order granted in these proceedings (the “**TPL Post-Filing Receipts**”), separate and apart from the Applicants’ direct loans, and shall report to the TPLs with respect to the TPL Post-Filing Receipts in a manner and on a basis as agreed upon by the relevant TPL, the Applicants and the Monitor, or as subsequently ordered by this Court. The Applicants shall provide information reasonably requested by a TPL in respect of its TPL Brokered Loans and funds paid to the Applicants by the TPLs, in each case whether before or after the effective time of the Initial Order granted in these proceedings and shall give the TPLs or their agents reasonable access to their records for the purpose of preparing an accounting of such TPL Brokered Loan and funds and monitoring the Applicants’ compliance with the Broker Agreements. In both cases the reasonableness of such requests shall be determined by the CRO and the Monitor.

32. THIS COURT ORDERS that the Applicants shall continue to receive amounts in connection with the repayment of TPL Brokered Loans and shall be entitled to use such TPL Post-Filing Receipts for the sole purpose of brokering new TPL Brokered Loans. The Applicants shall be entitled to continue their practice of depositing repayments of TPL Brokered Loans into the Applicants’ general bank accounts; however, no party (including the Applicants, TPLs and any lender, including a DIP lender), shall be entitled to rely on such treatment of TPL Post-Filing Receipts in connection with the determination of the relevant TPL’s entitlement to, or ownership of, any TPL Post-Filing Receipts, the TPL Net Receipt Minimum Balance (as defined below) or any TPL Brokered Loans advanced therefrom. Moreover, the treatment of the TPL Post-Filing Receipts set out in this Order shall be without prejudice to any argument by a TPL that but for the CCAA Proceedings such TPL would have required the Applicants to physically segregate such funds.

33. THIS COURT ORDERS that the Applicants shall maintain a minimum cash balance in an amount equal to the aggregate amount of any TPL Post-Filing Receipts less the aggregate amount of any Post-Filing TPL Receipts subsequently redeployed, from time to time, as new TPL Brokered Loans (the “**TPL Net Receipt Minimum Balance**”).

34. THIS COURT ORDERS that to the extent a TPL claims a priority entitlement to the TPL Brokered Loans in existence at or after the effective time of the Initial Order granted in these proceedings and/or to the Post-Filing TPL Receipts, the TPL’s entitlement thereto shall be determined based on the legal rights as they existed immediately prior to the effective time of the Initial Order granted in these proceedings, including that each TPL’s entitlement to any portion of the TPL Net Receipts Minimum Balance will be determined by reference to such TPL’s entitlement to and interest in the TPL Brokered Loans giving rise to such portion of Post-Filing TPL Receipts. To the extent a TPL is able to establish a trust, ownership or other proprietary interest in any Post-Filing TPL Receipts and/or any TPL Brokered Loans such that they do not form part of the Property of the Applicants then, for greater certainty, the Charges (defined below) shall not apply to such TPL’s portion of the TPL Net Receipt Minimum Balance or such TPL’s then-existing TPL Brokered Loans to the extent of such established entitlement. Notwithstanding the foregoing, nothing in this paragraph shall affect the rights of any TPL arising from or related to any registration to preserve or protect a security interest pursuant to paragraph 17.

35. THIS COURT ORDERS the Applicants shall continue to ensure that TPLs receive a return of approximately 17.5% per year (or such lesser amount as may be agreed to) with respect to TPL Brokered Loans that are repaid and available for redeployment from and after the Initial Order date and any capital protection (as described in the Carlstrom Affidavit).

#### **APPOINTMENT OF MONITOR**

36. THIS COURT ORDERS that FTI is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the

assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

37. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lenders and their counsel at the times required under the DIP Facility, of financial and other information as agreed to between the Applicants and the DIP Lenders which may be used in these proceedings, including reporting on a basis as agreed with the DIP Lenders under the DIP Facility;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lenders, which information shall be reviewed with the Monitor and delivered to the DIP Lenders and their counsel on a periodic basis, as provided under the DIP Facility;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (h) assist the Applicants, to the extent required by the Applicants, with any and all restructuring activities and/or any sale of the Property and the Business or any part thereof;
- (i) assist Rothschild with respect to the mergers and acquisitions process of the Applicants' Business;
- (j) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

38. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

39. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

40. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicants and the DIP Lenders with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

41. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

42. THIS COURT ORDERS that, subject to the terms and conditions of and availability under the DIP Facility and the Term Sheet, including the applicable terms therein that refer to the Cash Flow Projections, the CRO, the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Special Committee and the CRO, Rothschild, Conway, Michele McCarthy (the "CCRO") and counsel to the DIP Lenders and Coliseum Capital Management, LLC (in its capacity as Agent under the DIP Facility (the "Agent")) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the CRO, the Monitor, counsel to the Monitor, counsel to the Applicants, counsel to the Special Committee and the CRO, Rothschild, Conway, and counsel to the DIP Lenders and Agent on a weekly basis, or on such basis as otherwise agreed by the Applicants and the applicable payee. The Applicants shall also be entitled to pay the reasonable fees and disbursements of Goodmans LLP, Houlihan Capital LLC and McMillan LLP.

43. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

44. THIS COURT ORDERS that the CRO, the Monitor, counsel to the Monitor, the Applicants' counsel, the Special Committee's and CRO's counsel, Rothschild, Conway, the

CCRO, counsel to the DIP Lenders and Agent, Goodmans LLP and Houlihan Capital LLC shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 53 and 55 hereof.

## **DIP FINANCING**

45. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under the DIP Facility from the DIP Lenders in order to finance the Applicants’ working capital requirements, other general corporate purposes and capital expenditures and allow them to make such other payments as permitted under this Order and the Term Sheet, provided that borrowings under the DIP Facility shall not exceed the amounts prescribed in the Term Sheet.

46. THIS COURT ORDERS that the DIP Facility shall be on the terms and subject to the conditions set forth in the Term Sheet.

47. THIS COURT ORDERS that the DIP Facility and the Term Sheet be and are hereby approved and the Applicants are hereby authorized and directed to execute and deliver the Term Sheet.

48. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Term Sheet or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the Term Sheet and Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

49. THIS COURT ORDERS that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Priority Charge**”) on the Property as security for any and all obligations of the Applicants under the DIP Facility, the Term Sheet and the Definitive

Documents (including on account of principal, interest, fees, expenses and other liabilities) (the aggregate of all such obligations being the “**DIP Obligations**”), which DIP Priority Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time. The DIP Priority Charge shall not secure an obligation that exists before this Order is made. The DIP Priority Charge shall have the priority set out in paragraphs 53 and 55 hereof.

50. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Priority Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Term Sheet, the other Definitive Documents or the DIP Priority Charge, (A) the DIP Lenders may cease making advances to the Applicants, (B) the DIP Lenders may (i) set off and/or consolidate any amounts owing by the DIP Lenders to the Applicants against the obligations of the Applicants to the DIP Lenders under the Term Sheet, the Definitive Documents or the DIP Priority Charge, and make demand, accelerate payment, and (ii) following an Order of the Court, granted on at least two (2) days’ notice to the Applicants and the Monitor, exercise any and all of their respective rights and remedies against the Applicants or the Property under or pursuant to the Term Sheet, the other Definitive Documents, the DIP Priority Charge, or the *Personal Property Security Act* of Manitoba, *Personal Property Security Act* of Alberta, *Personal Property Security Act* of Ontario or any other legislation of similar effect applicable, including without limitation, to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

51. THIS COURT ORDERS AND DECLARES that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA,



or any proposal filed by the Applicants under the BIA (“**Proposal**”), with respect to any advances made under the DIP Facility, the Term Sheet and the Definitive Documents.

52. THIS COURT ORDERS that the obligations under the DIP Facility, Term Sheet and the Definitive Documents shall be treated as unaffected by any Plan or Proposal and the Applicants shall not file a Plan in these Proceedings or any Proposal that does not provide for the infeasible payment in full in cash of the obligations outstanding in respect of the DIP Facility, the Term Sheet and the Definitive Documents as a pre-condition to the implementation of any such Plan or Proposal.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

53. THIS COURT ORDERS that the priorities of the Directors’ Charge, the Administration Charge, the DIP Priority Charge, and the TPL Charge as among them, shall be as follows:

First – Administration Charge;

Second – Directors’ Charge (up to a maximum of \$1,250,000);

Third – DIP Priority Charge and the TPL Charge on a *pari passu* basis;

Fourth – the liens securing obligations under the Credit Agreement;

Fifth – Directors’ Charge (for the remaining amount of \$1,250,000) (the “**Directors’ Subordinated Charge**”).

54. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge, the DIP Priority Charge or the TPL Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

55. THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge, the DIP Priority Charge, and the TPL Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security

interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, except that the Directors’ Subordinated Charge shall rank behind the liens securing obligations under the Credit Agreement.

56. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge, the TPL Charge or the DIP Priority Charge, unless the Applicants also obtains the prior written consent of the Monitor, the DIP Lenders and the beneficiaries of the Directors’ Charge and the Administration Charge, or further Order of this Court.

57. THIS COURT ORDERS that the Directors’ Charge, the Administration Charge, the TPL Charge, the DIP Loan Agreement, the Definitive Documents and the DIP Priority Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants’ entering

into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

- (c) the payments made by the Applicants pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

58. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

### **SERVICE AND NOTICE**

59. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the *Edmonton Journal*, the *Calgary Sun* and the *Globe and Mail* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

60. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.cfcanda.fticonsulting.com/cashstorefinancial>.

61. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or

distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

### **GENERAL**

62. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

63. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

64. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

65. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

66. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided however, that the DIP Lenders shall be entitled to rely on this Order as issued for all advances made under the Term Sheet, the DIP Priority Charge and the Definitive Documents up to and including the date this Order may be varied or amended.

67. THIS COURT ORDERS that the come-back hearing is scheduled for April 28, 2014.

68. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



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ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO..

APR 17 2014



IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

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

AND IN THE MATTER OF a plan of compromise or arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instalogs Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., and 1693926 Alberta Ltd. Doing Business as "The Title Store"

*Ontario*  
**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

OSLER, HOSKIN & HARCOURT LLP  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8

Marc Wasserman LSUC#44066M  
Tel: (416) 862-4908

Jeremy Dacks LSUC# 41851R  
Tel: (416) 862-4923  
Fax: (416) 862-6666

Counsel to the Special Committee of the  
Board of Directors of Cash Store Financial  
Services Inc.

**SCHEDULE "B"  
THIRTIETH REPORT**

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

**1511419 ONTARIO INC., FORMERLY KNOWN AS THE  
CASH STORE FINANCIAL SERVICES INC.  
AND RELATED APPLICANTS**

**THIRTIETH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS MONITOR**

**October 26, 2022**



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

APPLICANTS

**THIRTIETH REPORT TO THE COURT  
SUBMITTED BY FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION AND BACKGROUND**

1. On April 14, 2014, Regional Senior Justice Morawetz (as he then was) granted an Initial Order (as amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**") with respect to 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" (collectively, the "**Applicants**" or "**Cash Store**") providing protections to Cash

- Store under the CCAA, including a stay of proceedings (as extended from time to time, the “**Stay**”), appointing Blue Tree Advisors Inc. as Chief Restructuring Officer of the Applicants (the “**CRO**”) and appointing FTI Consulting Canada Inc. as CCAA monitor (the “**Monitor**”). A copy of the Initial Order is attached hereto as **Schedule “A”**.
2. The Stay currently extends up to and including November 18, 2022.
  3. During the course of the CCAA Proceedings, Cash Store conducted various investigations with the assistance of its employees, counsel and the CRO, which revealed potential litigation claims against:
    - (a) its former auditor, KPMG LLP;
    - (b) its former counsel, Cassels Brock & Blackwell LLP;
    - (c) its former financial advisor, Canaccord Genuity Inc.;
    - (d) certain of its former directors and officers (the “**D&Os**”); and
    - (e) the lenders who advanced funds to Cash Store to finance the payday loans that Cash Store provided to its customers (the “**Third Party Lenders**”).
  4. On December 1, 2014, the Court approved the Litigation Counsel Retainer and the Applicants retained Thornton Grout Finnigan LLP and Voorheis & Co. LLP (collectively, “**Litigation Counsel**”) to pursue the litigation claims.
  5. Cash Store completed three Court-approved asset purchase transactions during the CCAA Proceedings. Substantially all of Cash Store’s assets were sold pursuant to the aforementioned transactions, including a significant portion of its books and records.
  6. Pursuant to an Order of this Court granted on September 30, 2015 (the “**Meetings Order**”), meetings of affected creditors were held on November 10, 2015 to vote on the Plan of Compromise or Arrangement concerning, affecting and involving

- the Applicants (the “**Plan**”). As reported by the Monitor in its Twenty-First Report dated November 16, 2015, the Plan was voted on and approved by the required majority of Affected Creditors pursuant to the terms of the Meetings Order, the Plan and the CCAA.
7. On November 19, 2015, the Court granted an Order (the “**Sanction Order**”), among other things, sanctioning the Plan and authorizing the Applicants and the Monitor to implement the Plan. On December 31, 2015, the Monitor issued a certificate in the prescribed form certifying that the Plan Implementation Date (as defined in the Plan) had occurred and that the Plan and the Sanction Order were effective in accordance with their respective terms.
  8. The Sanction Order granted the Monitor certain enhanced powers and authorization to, among other things, facilitate the completion and administration of the estates of the Applicants in the CCAA Proceeding and apply to the Court for any orders necessary or advisable to carry out its powers and obligations.
  9. As part of the Plan, the litigation claims against the D&Os and certain Third Party Lenders were settled under a global settlement (the “**Global Settlement**”). The Sanction Order, among other things:
    - (a) Approved the Global Settlement;
    - (b) Discharged the CRO as of the Plan Implementation Date; and
    - (c) Appointed BlueTree III as the Litigation Trustee (the “**Litigation Trustee**”) to advance the remaining litigation claims as assets of the estate.
  10. Pursuant to the Plan, Cash Store’s assets were liquidated and the net proceeds, along with the proceeds of the Global Settlement with Cash Store’s former D&Os and certain Lenders, were distributed to Cash Store’s creditors, subject to:

- (a) the Litigation Funding and Indemnity Reserve (as defined in the Plan) established to provide initial financing for the Remaining Estate Actions against the Defendants; and
  - (b) the Monitor's Post-Implementation Reserve (as defined in the Plan) established pursuant to the terms of the Plan to ensure that sufficient funds remain available to the Monitor to pay the costs and expenses of the Applicants and administer the Applicants and the Plan from and after the Plan Implementation Date.
- 11. Certain litigation remains outstanding in respect of the Applicants:
  - (a) **Remaining Estate Actions.** The Litigation Trustee and Litigation Counsel (each as defined in the Plan) continue to pursue claims against KPMG LLP, Cassels Brock & Blackwell LLP and Canaccord Genuity Corp. (the "**Remaining Estate Actions**"), which were not settled or compromised pursuant to the Settlement Agreements (as defined in the Plan) or the Plan.
  - (b) **TPL Action and the Consumer Borrower Class Action.** The Estate of Cash Store has filed an action against certain defendants known as third party lenders (the "**TPL Action**"). A class proceeding has also been filed by certain consumer borrower class action plaintiffs against the same parties (the "**Consumer Borrower Class Action**").
- 12. The Stay has been extended up to and including November 18, 2022 pursuant to the Order of Justice Conway granted on November 18, 2021. A copy of this Order is attached hereto as **Schedule "B"**.
- 13. The Remaining Estate Actions are a potential material remaining asset to be realized on.
- 14. The Monitor now brings a motion to extend the Stay up to and including November 18, 2023.

### **Purpose of Report**

15. The purpose of this thirtieth report (the “**Thirtieth Report**”) is to provide the Court with information regarding:
- (i) The activities of the Monitor since its Twenty-Ninth Report was filed with the Court on November 9, 2021;
  - (ii) the Monitor’s motion to extend the Stay up to and including November 18, 2023; and
  - (iii) the Applicants’ updated cash flow forecast.

### **TERMS OF REFERENCE**

16. In preparing this Thirtieth Report, the Monitor has relied upon unaudited financial information of the Applicants, the Applicants’ books and records, certain financial information and forecasts prepared by the Applicants, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, the Applicants (the “**Information**”).
17. Except as described in this Thirtieth Report:
- (i) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
  - (ii) the Monitor has not examined or reviewed financial forecasts and projections referred to in this Thirtieth Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

18. Future-oriented financial information reported in, or relied on, in preparing this this Thirtieth Report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
19. The Monitor has prepared this Thirtieth Report in connection with its motion to extend the Stay up to and including November 18, 2023. This Thirtieth Report should not be relied on for any other purpose.
20. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars.
21. Capitalized terms not otherwise defined herein have the meanings defined in previous reports of the Monitor, the Plan and Orders of the Court issued in the CCAA Proceedings.

#### **STAY EXTENSION**

22. The Applicants, under the supervision of the Monitor, have been working with due diligence and in good faith throughout these CCAA proceedings. Since the Stay was last extended, the Monitor has taken the following steps which are described in more detail below:
  - (i) monitored the Remaining Estate Actions, the TPL Action and the Consumer Borrower Class Action;
  - (ii) responded to inquiries from creditors, bondholders and other parties interested in the CCAA Proceeding; and
  - (iii) conducted Cash Store's affairs in accordance with the Initial Order and other orders of the Court.

### **Remaining Estate Actions**

23. The Remaining Estate Actions continued to progress in 2022. It is anticipated that documentary production will be completed in the next few months, following which a timetable for the completion of the remaining steps in the action to bring it to trial will be established with the assistance of Justice McEwen, who is case managing the Remaining Estate Actions.
24. The delayed progress of the Remaining Estate Actions to date has been a function of the unsuccessful summary judgment and other motions brought by the Defendants to the Remaining Estate Actions, the need for additional litigation funding which was successfully obtained and the scope and complexity of the documentary production process, each as detailed further below.

### Summary Judgment Motions Dismissed

25. The Defendants brought motions for summary judgment dismissing the actions arguing that the Remaining Estate Actions were not commenced within the applicable limitations period. The motions for summary judgment were heard on October 4-5, 2018.
26. Justice McEwen released his decision dismissing the summary judgment motions on April 5, 2019. Justice McEwen held that, given the very limited record put forward by the Defendants, he could not determine the matter in a fair and just manner by way of summary judgment. His Honour explained that the actions involve a complicated factual matrix relating to professional negligence and a significant damages claim and thus a full evidentiary record, including *viva voce* evidence of the parties, would be required to achieve a fair and just result. Justice McEwen held that there exists a genuine issue respecting discoverability that will require a trial on each of the three Remaining Estate Actions.
27. The Defendants each sought leave to appeal the decision of Justice McEwen to the Divisional Court. These motions were each dismissed on September 19, 2019.

28. The Defendants were ordered to pay costs of \$300,000 for the unsuccessful summary judgment motion, and costs of \$24,000 for the unsuccessful leave to appeal motion. These amounts were paid to counsel for the Litigation Trustee by the Defendants.

#### Request for Mini-Trial

29. During a case conference on October 1, 2019, the Defendants requested a mini-trial on the discrete issue of limitations, which was opposed by Cash Store. Justice McEwen requested brief written submissions, which were submitted by the parties on or before October 11, 2019.
30. On December 17, 2019, Justice McEwen issued his endorsement dismissing the request for a mini-trial. Justice McEwen noted, among other things, that the case involves complicated liability analyses and overlap between the issues of negligence and discoverability and, as such, a trial on all issues is preferable.

#### Litigation Funding Agreement Approval

31. On September 8, 2021, the Litigation Trustee entered into the Litigation Funding Agreement with Augusta Pool 4 Canada Limited (the “**Augusta Funder**”) to finance the anticipated disbursements necessary to progress the Remaining Estate Actions to trial.
32. On October 28, 2021, the Litigation Funding Agreement was approved by the Court pursuant to the order of Chief Justice Morawetz (the “**Litigation Funding Agreement Approval Order**”). A copy of the Litigation Funding Agreement Approval Order is attached hereto as **Schedule “C”**.



### Documentary Production

33. The Litigation Trustee obtained mirror drives representing substantially all of the documents and information that remained in the possession of the Applicants relating to their business. These mirror drives included over 25 million documents, the vast majority of which have no relevance to the issues in dispute in the Remaining Estate Actions.
34. The Litigation Trustee has undertaken exhaustive efforts with the assistance of documentary production technology and review teams to determine which of these documents may be relevant to the issues in dispute and should be produced in the Remaining Estate Actions, including the application of over 1 million logic rules to the document set. The age of the records and lack of key personnel from the Applicants to assist in identifying potentially relevant documents complicated this process.
35. The Litigation Trustee anticipates that these efforts will be completed in the next few months, and it will be able to make its documentary production to the Defendants in the Remaining Estate Actions at that time.

### Timetable

36. During a case conference on June 23, 2020, a timetable was set for the Remaining Estate Actions to bring the matters to trial by February 2023. The timetable contemplated that documentary productions would be exchanged by February 2021 and that 20-24 months would be necessary for the steps between the completion of documentary productions and the commencement of a 6-week trial. A copy of Justice McEwen's endorsement attaching the timetable is attached hereto as **Schedule "D"**.
37. Due to the delays in entering into the Litigation Funding Agreement and obtaining the Court's approval thereof, which occurred in October 2021, and the unexpected

scope and complexity of the documentary production process, the Litigation Trustee was unable to meet the deadlines set out in the timetable.

38. Once the Litigation Trustee is in a position to make its documentary productions, which it anticipates occurring in the next few months, it will engage with the Defendants to the Remaining Estate Actions to enter into a new timetable for bringing those actions to trial.

### **The TPL Action and the Consumer Borrower Class Action**

39. In order to avoid a dismissal of the Consumer Borrower Class Action under recent amendments to the *Class Proceedings Act, 1992*, which required a certification motion or a timetable to be filed with the Court by October 1, 2021, the Monitor and plaintiffs in the Consumer Borrower Class Action agreed on a timetable for certain scheduling steps designed to evaluate the advancement of both the TPL Action and the Consumer Borrower Class Action, and filed that timetable with the Court on September 28, 2021. The timetable contemplated that:

- (i) the Monitor and the Consumer Class Action Members would engage in a meet and confer session prior to the end of 2021. The principal objective was for the plaintiffs in both actions to ascertain a plan for coordinated advancement of the claims, having regard to all other continuing priorities within the CCAA Proceeding. The Defendants named in both actions were invited to participate; and
- (ii) a case conference would be scheduled before Chief Justice Morawetz on or before February 15, 2022 to report on the status of the Consumer Borrower Class Action.

40. A copy of counsel for the Monitor's email to the Chief Justice Morawetz dated September 28, 2021 is attached hereto as **Schedule "E"**.

41. The defendants to the TPL Action and the Consumer Borrower Class Action were invited to attend a meet and confer session on December 20, 2021 to discuss the claims. Counsel for the Consumer Class Action Members, the Monitor and Litigation Trustee attended the session, but none of the defendants attended.
42. On February 14, 2022, Litigation Counsel wrote to Chief Justice Morawetz requesting that the case conference be moved to August 15, 2022 so that the Litigation Trustee, the Monitor and the Consumer Class Action Members could focus on the advancement of the Litigation Trustee's Claims in the Remaining Estate Actions. Chief Justice Morawetz responded that a shorter extension would be granted. A copy of this e-mail exchange is attached hereto as **Schedule "F"**.
43. On April 29, 2022, counsel to the Consumer Class Action Members sent a letter to the defendants to the TPL Action and the Consumer Borrower Class Action requesting that they proceed to file defences. A copy of this letter is attached hereto as **Schedule "G"**.
44. The Monitor is not aware of any further steps having been taken with respect to the TPL Action or the Consumer Borrower Class Action. The focus of the Monitor and the Litigation Trustee remains on the advancement of the Remaining Estate Actions.

### **Stay Extension**

45. The proposed extension of the Stay would, among other things, extend CCAA protection while the Remaining Estate Actions, the TPL Action, and the Consumer Borrower Class Action proceed.
46. The Remaining Estate Actions continue to be a source of potential recovery for certain Cash Store creditors. Pursuant to the terms of the Plan, if applicable, the estate recoveries on the Remaining Estate Actions will benefit:
  - (i) the Consumer Class Action Members (as defined in the Plan) in the amount of 10% of any proceeds realized in

respect of the Remaining Estate Actions against KPMG LLP and Canaccord Genuity Inc. up to an aggregate of \$3,000,000 and, thereafter, 5% of any such proceeds in excess of \$3,000,000, after the payment of the fees and expenses of Litigation Counsel and the Litigation Trustee and the cost of any alternative litigation funding arrangements (which would include the agreements with the Augusta Funder) (the “**Net Subsequent Litigation Proceeds**”); and

- (ii) the Secured Noteholders, who will receive the remaining portion of the Net Subsequent Litigation Proceeds paid into Subsequent Cash on Hand to be distributed in accordance with the Plan up to the Secured Noteholder Maximum Claim Amount (as defined in the Plan).

- 47. A distribution of substantially all of the funds in the Subsequent Cash on Hand account in the amount of approximately \$3.74 million, as set out in the Twenty-Eighth Report of Monitor dated October 26, 2021, was previously made by the Monitor on November 12, 2021. Pursuant to the terms of the Plan and the Sanction Order, the Monitor will remain responsible for administering the Plan and distributing any further Subsequent Cash on Hand (as defined in the Plan) obtained in the interim period. The administration of the estate by the Monitor is now funded through the Litigation Funding and Indemnity Reserve.
- 48. Extending the Stay will also enable the Monitor to continue to monetize the few remaining assets of the estate, which includes collecting certain miscellaneous receivables. The Applicants do not have any remaining assets that need to be sold.
- 49. The Monitor is not aware of any stakeholder that would be prejudiced by the extension of the Stay.

### **Cash Flow Forecast**

50. The expenses of the Monitor administering the estate and the Litigation Trustee pursuing the Remaining Estate Actions are now funded through the Litigation Funding and Indemnity Reserve which is maintained and administered by the Monitor and funded pursuant to the Litigation Funding Agreement.
51. The estimated expenses to be funded during the period of November 5, 2022 to November 18, 2023 (the “**Forecast Period**”), attached hereto as **Schedule “H”** (the “**Cash Flow Forecast**”), demonstrates that the Applicants are projected to have sufficient liquidity to fund their activities to November 18, 2023.
52. As detailed in the Cash Flow Forecast, the \$118,000 in expenses to be funded during the Forecast Period include operating expenses (including record storage and destruction) in the amount of \$28,000 and professional fees in the amount of \$90,000. During the Forecast Period the Monitor expects to collect \$118,000 in receipts consisting of transfers from the Litigation Funding and Indemnity Reserve that will be deposited into the Monitor’s Trust account to pay its expenses.

### **Recommendation**

53. The Monitor believes that the length of the requested extension is reasonable and appropriate in the circumstances.
54. Accordingly, the Monitor recommends that this Court grant the Stay extension to November 18, 2023 as requested.

55. The Monitor respectfully submits to the Court this Thirtieth Report.

Dated this 26th day of October, 2022.

FTI Consulting Canada Inc.  
The Monitor of 1511419 Ontario Inc.,  
formerly known as The Cash Store Financial Services Inc. and Related Applicants



Greg Watson  
Senior Managing Director

**SCHEDULE "E"**  
**TIMETABLE – TPL ACTION AND CONSUMER BORROWER CLASS ACTION**

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**From:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>  
**Sent:** Tuesday, September 28, 2021 8:51 AM  
**To:** Hall, Geoff R.  
**Cc:** Jonathan Foreman; Annie Legate-Wolfe; John Finnigan  
**Subject:** [EXT] RE: The Cash Store - steps to preclude administrative dismissal of class action under section 29.1 of the Class Proceedings Act, 1992 [MT-MTDOCS.FID2478878]

Hello!  
Forwarded to attention of Chief Justice Morawetz.

Thank you

Alsou Anissimova

Superior Court of Justice  
Commercial & Estates Trial coordinator  
330 University Ave , 7<sup>th</sup> floor  
Civil Trial office , 7<sup>th</sup> floor  
Toronto, Ontario  
M5G 1R7  
Tel: (416) 327-5047  
Fax: (416) 327-5697  
Email: [toronto.commercialist@jus.gov.on.ca](mailto:toronto.commercialist@jus.gov.on.ca)

---

**From:** Hall, Geoff R. <GHALL@MCCARTHY.CA>  
**Sent:** September 28, 2021 8:23 AM  
**To:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>  
**Cc:** Jonathan Foreman <jforeman@foremancompany.com>; Annie Legate-Wolfe <alegatewolfe@foremancompany.com>; John Finnigan <JFinnigan@tgf.ca>  
**Subject:** The Cash Store - steps to preclude administrative dismissal of class action under section 29.1 of the Class Proceedings Act, 1992 [MT-MTDOCS.FID2478878]

**CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.**

Please forward this message to Chief Justice Morawetz. Thank you.

Chief Justice Morawetz:

As you will recall, you are supervising CCAA proceedings in respect of The Cash Store. I am counsel to the Monitor. You approved a CCAA plan in late 2015 which provides for ongoing litigation which is being pursued on behalf of the Estate of the Cash Store by John Finnigan of TGF (copied). I am also copying Jonathan Foreman and Annie Legate-Wolfe of



Foreman and Company, who are counsel to certain class action plaintiffs, referred to as the Consumer Borrower Class Action Plaintiffs.

The Estate of the Cash Store has filed an action against certain defendants known as “Third Party Lenders” (“TPL’s”) in the context of the Cash Store CCAA proceedings. A class proceeding has also been filed by the Consumer Borrower Class Action Plaintiffs against the same parties. Both actions have been stayed pursuant to the continuing CCAA stay order most recent renewed on November 18, 2020.

S. 29.1 of the Class Proceedings Act, 1992 is part of a recently enacted set of changes to the Ontario class proceedings statute. In essence, this section provides that a class action shall be dismissed on a motion by a defendant unless a certification motion has been filed by October 1, 2021, or unless a scheduling step has been agreed upon or ordered for the advancement of the proceeding on or before October 1, 2021 in the absence of a certification motion.

In this case, this court has already granted the attached CCAA representation order whereby the plaintiffs in the Consumer Borrower Class Action as against the TPL’s were appointed to represent the defined class of borrowers within the CCAA proceedings. The representation order serves the same essential purposes of a certification order in that the TPL Consumer Borrower Plaintiffs have been afforded capacity to represent the defined class of borrowers within the CCAA proceedings.

In addition, the TPL actions are subject to a CCAA stay order with the result that the TPL actions are ordered not to proceed. The Consumer Class Action Borrower Plaintiffs do not have unilateral capacity to take scheduling steps to move the matter forward.

S. 29.1 of the *Class Proceedings Act, 1992* does not appear to contemplate the circumstances of this case. However, in order to avoid even a hypothetical risk of a dismissal, we write to advise that the Monitor and the consumer borrower class action plaintiffs have agreed to certain scheduling steps designed to evaluate the advancement of both of the TPL actions. To that end, we have agreed to the following scheduling steps:

- The Monitor and the Consumer Class Action Borrower Plaintiffs will engage in a meet and confer session prior to the end of this calendar year. The principal objective is for the plaintiffs in both actions to ascertain a plan for coordinated advancement of the claims, having regard to all other continuing priorities within these CCAA proceedings. All TPL defendants named in both actions have been invited to participate, and;
- A case conference will be scheduled before Your Honour on or before February 15, 2022 to report on the status of the TPL claims.

We hereby file these agreed scheduling steps between the Estate and the Consumer Borrower Class Action Plaintiffs in writing with the court.



**Geoff R. Hall**  
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 Litigation | Litige  
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 Toronto ON M5K 1E6

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**SCHEDULE "F"**  
**E-MAILS REGARDING EXTENSION**

---

**From:** Morawetz, Geoffrey Chief Justice (SCJ) <Geoffrey.Morawetz@scj-csj.ca>  
**Sent:** Tuesday, February 15, 2022 10:42 AM  
**To:** John Finnigan  
**Cc:** Hall, Geoff R.; Jonathan Foreman; Annie Legate-Wolfe  
**Subject:** [EXT] RE: The Cash Store - steps to preclude administrative dismissal of class action under section 29.1 of the Class Proceedings Act, 1992 [IMAN-CLIENT.FID16851]

Counsel,

An extension will be granted – but not for 6 months.

Please suggest another date that demonstrates that there is meaningful activity on this file.

Thank you,

GBM

*Geoffrey B. Morawetz*

*Chief Justice*

*Ontario Superior Court of Justice*

---

**From:** John Finnigan <JFinnigan@tgf.ca>  
**Sent:** February 14, 2022 2:16 PM  
**To:** Morawetz, Geoffrey Chief Justice (SCJ) <Geoffrey.Morawetz@scj-csj.ca>  
**Cc:** Geoff Hall <ghall@mccarthy.ca>; Jonathan Foreman <jforeman@foremancompany.com>; Annie Legate-Wolfe <alegatewolfe@foremancompany.com>  
**Subject:** The Cash Store - steps to preclude administrative dismissal of class action under section 29.1 of the Class Proceedings Act, 1992 [IMAN-CLIENT.FID16851]

Dear Mr. Chief Justice,

You are the supervising Judge in the Cashstore CCAA proceedings. There are actions pending by the Litigation Trustee against Cashstore's former professional advisors and third party lenders ("TPLs") to Cashstore. My firm acts for the Litigation Trustee in those actions. There is a separate class proceeding against the TPLs on which Mr. Foreman's firm acts as counsel for the Consumer Class Action Borrower Plaintiffs. Mr. Hall acts for the Monitor FTI. I am writing on behalf of the counsel for these parties to seek and extension of time to hold a case conference from February 15, 2022 to August 15, 2022. The context of this request is as follows.

The class proceeding was at risk for administrative dismissal but subject to the ongoing CCAA stay of proceedings. Mr. Hall wrote to you on September 28, 2021 outlining the status and proposed as follows,

"The Monitor and the Consumer Class Action Borrower Plaintiffs will engage in a meet and confer session prior to the end of this calendar year. The principal objective is for the plaintiffs in both actions to ascertain a plan for coordinated advancement of the claims, having regard to all other continuing priorities within these CCAA proceedings. All TPL defendants named in both actions have been invited to participate, and;

- A case conference will be scheduled before Your Honour on or before February 15, 2022 to report on the status of the TPL claims" (highlighting added).

Your Honour wrote back to Mr. Hall on October 5, 2021 and acknowledged the scheduling steps. The exchange of emails is attached.

By way of update:

1. We invited the TPL defendants to attend a meet and confer session to discuss the claims before the end of 2021. Counsel for the Consumer Class Action Borrower Plaintiffs, Monitor and Litigation Trustte attended this session, but no defendants attended.
2. The Litigation Trustee, Monitor and Class Counsel would like to focus the advancement of the Litigation Trustee's claims which are in the documentary review stage. We jointly request that the requirement for the case conference be moved to August 15, 2022 and propose to report on the progress at that time.

We would be obliged if Your Honour would acknowledge this scheduling step. If Your Honour would like to speak to counsel we can arrange a short attendance.

Regards,

John Finnigan



John L. Finnigan | | JFinnigan@tgf.ca | Direct Line +1 416 304 0558 | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | www.tgf.ca

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**SCHEDULE "G"**  
**LETTER TO TPL DEFENDANTS**

**Jonathan Foreman****Partner**

Tel: 519.914.1175 ext. 102

Email: [jforeman@foremancompany.com](mailto:jforeman@foremancompany.com)**Kassandra Hallett****Senior Law Clerk**

Tel: 519.914.1175 ext. 106

Email: [khallett@foremancompany.com](mailto:khallett@foremancompany.com)

April 29, 2022

**VIA EMAIL****Vince Genova**Rochon Genova LLP  
900, 121 Richmond Street West  
Toronto, ON M5H 2K1E-Mail: [vgenova@rochongenova.com](mailto:vgenova@rochongenova.com)**William M. Gray (Bill)**Miles Davison LLP  
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[DDiPaolo@blg.com](mailto:DDiPaolo@blg.com)**Jack Donald**E-Mail: [Jays4@telusplanet.net](mailto:Jays4@telusplanet.net)

Dear Counsel:

**Re: Ronald Payne and Timothy Yeoman v. Trimor Annuity Focus Limited Partnership, et al.; Court File No. 4172/14 CP (the "TPL Class Action"); and In the Matter of the A Plan of Compromise or Arrangement of The Cash Store Financial Services Inc., The Cash Store Inc., TCS Cash Store Inc., Instalogs Inc., 7252331 Canada Inc., 5515433 Manitoba Inc., 1693926 Alberta Ltd. d.b.a. The Title Store (collectively, the "Estate"); Court File No. CV-14-10518-00CL (the "CCAA Proceedings")**

We write in respect of the TPL Class Action and the claims advanced against the same defendants by the Estate of the Cash Store (collectively, the "TPL Litigation"), and further to the timetable established in September, 2021.

As you will recall, the TPL Litigation is subject to a CCAA stay order with the result that the litigation cannot proceed without the direction of the case management judge in the CCAA Proceedings, Mr. Chief Justice Morawetz.

On February 15, 2022, the Chief Justice wrote to counsel for the plaintiffs in the TPL Litigation, obliging them to take meaningful steps to advance the actions. A copy of the February 15, 2022 email from the Chief Justice is enclosed.

The parties in the TPL Litigation are therefore directed by the Chief Justice to move forward. Accordingly, the Estate and the consumer plaintiffs in the TPL Litigation will jointly be requesting a case conference before Mr. Chief Justice Morawetz to propose a schedule to advance the TPL Litigation. At that time, the plaintiffs will propose that the defendants deliver their respective Defences within sixty (60) days of the Court's direction at the case conference, and the delivery of any Reply by the plaintiffs within the timelines set out by the *Rules* thereafter.

We intend to request a case conference from the Court the week of May 16, 2022 and request your availability for same. We remain available to discuss the remaining aspects of a proposed timetable to advance the litigation in advance of the case conference.

Yours very truly,

**Foreman & Company**



Jonathan Foreman  
JJF/ale

Encl.

c.c. Counsel for the Monitor  
Counsel for the Estate



**SCHEDULE "C"**  
**STAY EXTENSION ORDER**

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	FRIDAY, THE 4TH
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF NOVEMBER, 2022

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

AND IN THE MATTER OF A PROPOSED 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., 152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD., DOING BUSINESS AS "THE TITLE STORE"

Applicants

**ORDER  
(Stay Extension)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the monitor of the Applicants (the "**Monitor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the stay of proceedings up to and including November 18, 2023 was heard this day was heard this day by way of Zoom judicial video conference.

**ON READING** the Notice of Motion, the Thirtieth Report of the Monitor (the "**Thirtieth Report**"), and on hearing the submissions of counsel for the Monitor and such other counsel present, and on being advised that all parties on the service list maintained in these proceedings were served with the motion record of the Monitor:

**SERVICE**

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Record of the Monitor in support of this motion and the Thirtieth Report is hereby abridged and validated such that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF STAY PERIOD**

2. **THIS COURT ORDERS** that the Stay Period provided in the Amended and Restated Initial Order dated April 14, 2014, as amended, be and is hereby extended until and including April 3, 2023, or such later date as this Court may order.

**GENERAL**

3. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

4. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

  
\_\_\_\_\_

N THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, AND IN THE  
MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC.,  
FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ORDER  
(Stay Extension)**

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**Trevor Courtis** LSO#: 67715A  
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Email: [tcourtis@mccarthy.ca](mailto:tcourtis@mccarthy.ca)

Lawyers for the Monitor,  
FTI Consulting Canada Inc.

**SCHEDULE "D"**  
**STAY EXTENSION ENDORSEMENT**

**CITATION:** Cash Store Financial Services Inc., 2022 ONSC 6262  
**COURT FILE NO.:** CV-14-00010518-00CL  
**DATE:** 2022-11-04

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:           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

**BEFORE:** Chief Justice G.B. Morawetz

**COUNSEL:** *Bryan McLeese*, for Canaccord Genuity Inc.

*Trevor Courtis*, for FTI Consulting Canada Inc., Monitor

*Dylan Chochla*, for KPMG LLP

*James Hardy*, for 1511419 Ontario Inc., formerly known as The Cash Store Inc.

**HEARD:** November 4, 2022

**ENDORSEMENT**

[1] FTI Consulting Canada Inc. in its capacity as Monitor of the Applicants (the "Monitor") brings this motion for an order extending the Stay Period to November 18, 2023.

[2] The facts in support of the motion, which was not opposed, are set out in the Thirtieth Report of the Monitor dated October 26, 2022 (the "Thirtieth Report").

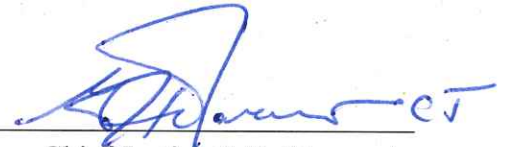
[3] I am satisfied that the Thirtieth Report establishes that the parties have been and continue to work in good faith and with due diligence such that the extension should be granted. The required Cash Flow Forecast has been filed which indicates that the Applicants have sufficient liquidity to conduct their affairs during the extension of the Stay Period.

- Page 2 -

[4] The litigation as between the Litigation Trustee and the professional firms has been ongoing for several years and is currently being case managed by Justice McEwen. The parties have indicated that they are making progress with respect to documentary production and they will be in a position to provide an update with respect to such production by the end of March 2023. I encourage the parties to cooperate in establishing a timetable which will ensure that the trial of this matter can be scheduled.

[5] In order to ensure a degree of supervision on this file, in my view it is more appropriate to extend the Stay Period to April 3, 2023 as opposed to the requested date of November 18, 2023.

[6] The Stay Extension is therefore granted to April 3, 2023 and a hearing is to be scheduled before me on that date at 9:00 a.m.



---

Chief Justice G.B. Morawetz

**Date:** November 4, 2022

**SCHEDULE "E"**  
**CASH FLOW FORECAST**



**1511419 Ontario Inc. formerly known as the Cash Store Financial Services Inc. and related Applicants**  
**Weekly Cash Forecast**  
**(CAD 000's)**

Week Ended	4/1/2023	4/8/2023	4/15/2023	4/22/2023	4/29/2023	5/6/2023	5/13/2023	5/20/2023	5/27/2023	6/3/2023	6/10/2023
<b>RECEIPTS:</b>											
From Litigation Trust Account	119	-	-	-	-	-	-	-	-	-	-
<b>TOTAL RECEIPTS</b>	<b>119</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>OPERATING DISBURSEMENTS:</b>											
Operating Expenses	-	-	2	-	-	-	2	-	-	2	-
<b>TOTAL OPERATING DISBURSEMENTS</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>2</b>	<b>-</b>
<b>OPERATING CASH FLOW</b>	<b>\$ 119</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>
<b>NON-OPERATING DISBURSEMENTS:</b>											
Professional Fees	50	-	5	-	-	-	5	-	-	-	-
Other	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL NON-OPERATING DISBURSEMENTS</b>	<b>50</b>	<b>-</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>BoP Cash</b>	<b>\$ -</b>	<b>\$ 69</b>	<b>\$ 69</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 55</b>	<b>\$ 55</b>	<b>\$ 55</b>	<b>\$ 53</b>
Total Cash Flow	69	-	(7)	-	-	-	(7)	-	-	(2)	-
<b>EoP Cash</b>	<b>\$ 69</b>	<b>\$ 69</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 62</b>	<b>\$ 55</b>	<b>\$ 55</b>	<b>\$ 55</b>	<b>\$ 53</b>	<b>\$ 53</b>

**Notes**

- (1) The purpose of this cash flow is to determine the liquidity requirements of the Applicants during the forecast period.
- (2) Operating expenses are technology and other related costs required for the administration of the estate.
- (3) Professional fees are based on expected work load of the estate administration and may vary depending on actual time spent.
- (4) EOP cash will be used to fund the CCAA administration.

**1511419 Ontario Inc. formerly known as the Cash !**  
**Weekly Cash Forecast**  
**(CAD 000's)**

Week Ended	6/17/2023	6/24/2023	7/1/2023	7/8/2023	7/15/2023	7/22/2023	7/29/2023	8/5/2023	8/12/2023	8/19/2023	8/26/2023	9/2/2023	9/9/2023	9/16/2023	Total
<b>RECEIPTS:</b>															
From Litigation Trust Account	-	-	-	-	-	-	-	-	-	-	-	-	-	-	119
<b>TOTAL RECEIPTS</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	<b>119</b>
<b>OPERATING DISBURSEMENTS:</b>															
Operating Expenses	-	2	-	-	2	-	-	-	2	-	-	-	-	2	14
<b>TOTAL OPERATING DISBURSEMENTS</b>	-	<b>2</b>	-	-	<b>2</b>	-	-	-	<b>2</b>	-	-	-	-	<b>2</b>	<b>14</b>
<b>OPERATING CASH FLOW</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ (2)</b>	<b>\$ 105</b>
<b>NON-OPERATING DISBURSEMENTS:</b>															
Professional Fees	5	-	-	-	5	-	-	-	30	-	-	-	-	5	105
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL NON-OPERATING DISBURSEMENTS</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>30</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5</b>	<b>105</b>
<b>BoP Cash</b>	<b>\$ 53</b>	<b>\$ 48</b>	<b>\$ 46</b>	<b>\$ 46</b>	<b>\$ 46</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 119</b>
Total Cash Flow	(5)	(2)	-	-	(7)	-	-	-	(32)	-	-	-	-	(7)	(119)
<b>EoP Cash</b>	<b>\$ 48</b>	<b>\$ 46</b>	<b>\$ 46</b>	<b>\$ 46</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 39</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ 7</b>	<b>\$ -</b>	<b>\$ -</b>

# Tab 4

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	MONDAY, THE 3RD
	)	
CHIEF JUSTICE MORAWETZ	)	DAY OF APRIL, 2023

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

AND IN THE MATTER OF A PROPOSED 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., 152919 ALBERTA INC., FORMERLY KNOWN AS INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD., DOING BUSINESS AS "THE TITLE STORE"

Applicants

**ORDER  
(Stay Extension)**

**THIS MOTION**, made by FTI Consulting Canada Inc. in its capacity as the monitor of the Applicants (the "**Monitor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order extending the stay of proceedings up to and including September 15, 2023 was heard this day was heard this day by way of Zoom judicial video conference.

**ON READING** the Notice of Motion, the affidavit of William E. Aziz sworn March 23, 2023, the Thirty-First Report of the Monitor (the "**Thirty-First Report**"), and on hearing the submissions of counsel for the Monitor, counsel for 1511419 Ontario Inc., f/k/a The Cash Store Financial Services Inc. and such other counsel present, and on being advised that all parties on the service list maintained in these proceedings were served with the motion record of the Monitor:

**EXTENSION OF STAY PERIOD**

1. **THIS COURT ORDERS** that the Stay Period provided in the Amended and Restated Initial Order dated April 14, 2014, as amended, be and is hereby extended until and including September 15, 2023, or such later date as this Court may order.

**GENERAL**

2. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all persons against whom it may be enforceable.

3. **THIS COURT ORDERS** that this Order is effective from the date that it is made, and is enforceable without any need for entry and filing.

---

N THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, AND IN THE  
MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1511419 ONTARIO INC.,  
FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC., et al.

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ORDER  
(Stay Extension)**

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Lawyers for the Monitor,  
FTI Consulting Canada Inc.

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 INCL, FORMERLY KNOWN AS THE CASH STORE FINANCIAL SERVICES INC. ET AL. Court File No. CV-14-10518-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**MOTION RECORD OF THE MONITOR  
(Stay Extension)  
(Returnable April 3, 2023)**

---

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Toronto, ON M5K 1E6

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Lawyers for the Monitor,  
FTI Consulting Canada Inc.