

YOU COURT FILE NO.: 2401-01778

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY



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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF COLLISION KINGS GROUP INC., CMD HOLDINGS INC., EAST LAKE COLLISION LTD., MAYLAND HEIGHTS COLLISION LTD., SUNRIDGE COLLISION LTD., 2199931 ALBERTA LTD., COLLISION KINGS 3 LTD., ARROW AUTO BODY LTD., CMD GLASS LTD., ROYAL VISTA COLLISION LTD., STATHKO INVESTMENTS LTD., NICK'S REPAIR SERVICE LTD., 10026923 MANITOBA LTD. and BUNZY'S AUTO BODY LTD.

APPLICANT **FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of COLLISION KINGS GROUP INC., CMD HOLDINGS INC., EAST LAKE COLLISION LTD., MAYLAND HEIGHTS COLLISION LTD., SUNRIDGE COLLISION LTD., 2199931 ALBERTA LTD., COLLISION KINGS 3 LTD., ARROW AUTO BODY LTD., CMD GLASS LTD., ROYAL VISTA COLLISION LTD., STATHKO INVESTMENTS LTD., NICK'S REPAIR SERVICE LTD., 10026923 MANITOBA LTD. and BUNZY'S AUTO BODY LTD.

DOCUMENT **BENCH BRIEF OF THE MONITOR**

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I. INTRODUCTION

1. This bench brief is submitted on behalf of FTI Canada Consulting Inc. (“**FTI**” or the “**Monitor**”) in support of the application of the Monitor and Collision Kings Group Inc., CMD Holdings Inc., East Lake Collision Ltd., Mayland Heights Collision Ltd., Sunridge Collision Ltd., 2199931 Alberta Ltd., Collision Kings 3 Ltd., Arrow Auto Body Ltd., CMD Glass Ltd., Royal Vista Collision Ltd., Stathko Investments Ltd., Nick’s Repair Service Ltd., 10026923 Manitoba Ltd. and Bunzy’s Auto Body Ltd. (the “**Debtors**”), returnable on December 16, 2024 (the “**Application**”) seeking:
 - (a) a second amended and restated initial order (“**SARIO**”) appointing FTI as Monitor with enhanced powers and extending the Stay of Proceedings (as defined below) up to and including April 30, 2025; and
 - (b) an order granting the following relief, among other things:
 - (i) authorizing and directing the Monitor to pay, from the proceeds being held by the Monitor, the RIP of up to \$525,318.18 (as defined below);
 - (ii) approving the activities of the Monitor as described in the Fifth Report of the Monitor dated December 10, 2024 (the “**Fifth Report**”);
 - (iii) approving the Monitor’s fees and disbursements and those of Monitor’s legal counsel and the Debtors’ legal counsel (collectively, the “**Professional Fees**”);
 - (iv) approving the Monitor’s final allocation of all of the costs of the CCAA Proceedings, including those costs, fees and disbursements covered by the Charges (as defined in the ARIIO) (collectively, the “**CCAA Costs**”) as against the Property (as defined in the ARIIO) of the individual Applicant entities as described in paragraphs 51 and 52 of the Fifth Report (the “**Final Allocation**”);
 - (v) authorizing and directing the Monitor to complete a final distribution to TD Bank (“**Final TD Distribution**”) of all available funds that are allocated to the TD Secured Debtors (as defined in the Fifth Report) pursuant to the Final Allocation;

(the “**Ancillary Relief Order**”).
2. Terms not otherwise defined herein shall have the meaning ascribed to them in the Fifth Report.

II. BACKGROUND

3. On February 7, 2024, the Debtors were granted an initial order (the “**Initial Order**”) to commence proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

4. The Initial Order, granted, among other things, the following relief:
 - (a) a stay of proceedings (the “**Stay of Proceedings**”) in favour of the Debtors until February 17, 2024;
 - (b) appointed FTI as Monitor in these CCAA Proceedings;
 - (c) approved the procedures for a sales and investment solicitation process (the “**SISP**”) and stalking horse purchase agreement (the “**Stalking Horse APA**”) dated January 31, 2024, between some of the Debtors and Lift Auto Group Operating Corporation (“**Lift**”);
 - (d) granted certain priority charges for individuals identified as critical to the operations and success of these CCAA Proceedings (collectively, the “**Charges**”). The Charges included:
 - (i) first, an Administration Charge (as defined in the ARIO) of \$500,000;
 - (ii) second, a charge (the “**Interim Lender’s Charge**”) in favour of The Toronto Dominion Bank (“**TD Bank**”) which authorized the Debtors to obtain and borrowing funds up to \$600,000 under a credit facility (the “**Interim Facility**”) in order to finance the Debtors’ operations and restructuring efforts within these CCAA Proceedings; and
 - (iii) third, a Directors Charge (as defined in the ARIO) of \$400,000.
5. At the comeback hearing held on February 14, 2024, this Court granted the following relief:
 - (a) an amended and restated Initial Order (the “**ARIO**”) which provided for among other things:
 - (i) an increase to the Interim Facility and the Interim Lender’s Charge from \$600,000 to \$1,125,000;
 - (ii) the granting of a fourth-ranking charge against the Debtors’ property for a retention and incentive plan (“**RIP**”) in the amount of \$425,000;
 - (iii) an extension of the Stay of Proceedings until and including March 29, 2024; and
 - (b) a conditional sale approval and vesting order approving the Stalking Horse APA (including any amendments resulting from the Stalking Horse Bidder’s (as defined in the ARIO) participation in the Auction (as defined below)) and authorizing the Debtors to enter into the transaction contemplated therein, in the event the Stalking Horse APA was determined to be the Successful Bidder (as defined below).
6. The SISP resulted in a bid from a new purchaser that was superior to the Stalking Horse APA, which triggered an auction (“**Auction**”) pursuant to the terms of the SISP, which was held on March

13, 2024. After several rounds of bidding, Lift was determined to be the Successful Bidder, and certain of the Debtors and Lift entered into a revised asset purchase agreement (“**Enhanced Stalking Horse APA**”), which substantially enhanced the economic recovery for the Collision Kings Group’s creditors as compared to the initial Stalking Horse APA.

7. On March 15, 2024, the transaction contemplated under the Enhanced Stalking Horse APA between the Debtors and Lift closed, which included the purchase of the Debtors’ working capital.
8. On March 27, 2024, this Court granted the following relief:
 - (a) an order (the “**March Stay Extension Order**”) which among other things:
 - (i) extended the Stay of Proceedings until and including July 25, 2024;
 - (ii) directed the receipts from the Enhanced Stalking Horse APA to be held in trust by the Monitor;
 - (iii) authorized and empowered (but did not oblige) the Monitor to apply any part of the receipts from the Enhanced Stalking Horse APA to: (i) repay any amounts owing under the Interim Facility; (ii) pay the professional fees of the Monitor, counsel to the Monitor, and counsel to the Debtors, in each case at their standard rates and charges; and/or (iii) pay any operating costs and wind down costs relating the business of the Debtors, as necessary; and
 - (iv) expanded the Monitor’s powers to allow the Monitor to execute, assign, issue and endorse documents in respect of the Property and/or Business (as defined in the ARIO); and
 - (v) an order vesting the assets included in the asset purchase agreement (the “**Royal Vista APA**”) between Royal Vista Collision Ltd. and CMD Holdings Inc. and 5807698 Manitoba Ltd and 10191777 Manitoba Ltd. (collectively, the “**Royal Vista Purchaser**”) in the name of the Royal Vista Purchaser.
9. In accordance with the March Stay Extension Order, the Monitor has made the following distributions:
 - (a) approximately \$1.7 million to the Debtors to fund operations and for the payment of professional fees; and
 - (b) repayment of the Interim Facility in the amount of approximately \$1.2 million. The amounts repaid under the Interim Facility include the principal borrowings, accrued interest and fees and disbursements owed to the TD Bank as lender of the Interim Facility.

10. On July 18, 2024, this Court granted an order extending the Stay of Proceedings until and including October 31, 2024.
11. On October 17, 2024, this Court granted the following relief:
 - (a) an order extending the Stay of Proceedings until and including December 17, 2024; and
 - (b) an interim distribution order (the “**Interim Distribution Order**”) authorizing and directing the Monitor to distribute certain receipts of the Debtors’ estate to the Debtors’ secured creditors. The Interim Distributions consisted of final distributions to certain secured creditors and an interim distribution to TD Bank.
12. In accordance with the Interim Distribution Order, the Monitor has made the following distributions:
 - (a) to TD Bank, as an interim distribution, in the amount of \$5.5 million;
 - (b) final distributions to the secured creditors of Nick’s Repair Service Ltd. (“**Nick’s Repair**”), 10026923 Manitoba Ltd. (“**100 Manitoba**”), and Bunzy’s Auto Body Ltd. (“**Bunzy’s**”) totaling approximately \$825,000 in full satisfaction of their debt; and
 - (c) to the Receiver General of Canada in full satisfaction of each of the deemed trust claims and unpaid source deductions owed individually by the Debtors which totaled \$246,080.
13. As of November 30, 2024, The Monitor is holding approximately \$1.1 million of funds for the estate of the Debtors. Once the receipts expected to be received from the Final Working Capital Amount and CARSTAR AR are collected, the Monitor will be holding approximately \$3,352,816 for the estate of the Debtors.

III. ISSUES

14. The Monitor submits that the principal issues to be determined by this Honourable Court are whether:
 - (a) the SARIO appointing FTI as Monitor with enhanced powers should be approved;
 - (b) the Final Allocation should be approved;
 - (c) the activities of the Monitor should be approved; and
 - (d) the Final TD Distribution should be approved.

IV. LAW & ANALYSIS

A The Monitor should be appointed with enhanced powers

15. The jurisdiction to enhance the Monitor's powers is derived from Section 11 of the CCAA, which grants the Court the power to make any order that it considers appropriate in the circumstances,¹ and Section 23(1)(k) of the CCAA, which permits the Court to grant monitors the power to "carry out any other functions in relation to the company that the court may direct".² The Court has utilized these subsections to grant monitors enhanced or "super monitor" powers to manage debtor companies in a variety of cases.³
16. There are a number of scenarios in which courts have allowed a secured creditor to rely upon the CCAA while extending the powers of the monitor. These scenarios include: (i) where management has resigned, leaving no directors and officers in place; (ii) where management has no plan or their plan is doomed to fail, (iii) where enhancing the Monitor's powers is necessary to assist with the maximization of value and return to creditors, and (iv) where management is conflicted.⁴
17. As described in the Fifth Report, the operations of the Debtors have been wound down except for the collection of the Final Working Capital Amount and the CARTSAR AR. Additionally, as part of the Application, the Debtors are seeking an order authorizing and directing the Monitor to pay, from the proceeds being held by the Monitor, the RIP.
18. Without continued financial incentive, the RIP Beneficiaries, who include key members of the Debtors' management, may not be available or willing to assist the Monitor in completing the remaining matters in these CCAA Proceedings. Additionally, it is anticipated that Shane Daerden will resign on or about December 16, 2024, leaving no directors or officers in place for the Debtors.⁵
19. Given the anticipated payment of the RIP, the resignation of the sole director and the limited remaining matters to be completed in respect of these CCAA Proceedings, the Monitor is of the view that enhancing the powers of the Monitor to allow the Monitor to complete the remaining matters left in these CCAA Proceedings without the continued involvement of the Debtors and their counsel will assist with the maximization of value and return to the creditors of the Debtors' estate.⁶

¹ [Companies' Creditors Arrangement Act, RSC 1985, c C-36](#), ["CCAA"], s 23(1)(k).

² *Ibid.*

³ Luc Morin & Arad Mojtahedi, "In Search of a Purpose: the Rise of Super Monitors & Creditor-Driven CCAAs" in Jill Corraini & the Honourable D Blair Nixon eds, *Annual Review of Insolvency Law 2019* (Toronto: Thomson Reuters, 2020).

⁴ *Ibid.*

⁵ Fifth Report of the Monitor dated December 9, 2024, ["Fifth Report"] at para 58.

⁶ *Ibid* at para 60.

20. TD Bank, the Debtors' primary secured creditor, and the Debtors are supportive of the enhancement of the Monitor's powers in accordance with the proposed form of SARIO.⁷
21. Accordingly, the Monitor respectfully submits that the Monitor should be granted the enhanced powers described in the proposed form of SARIO.

B The Final Allocation should be approved

22. The Monitor is seeking approval of the Final Allocation as further particularized at paragraphs 51 to 52 of the Fifth Report, pursuant to which the CCAA Costs will be allocated among the creditors of the Debtors.
23. The allocation of Court ordered charges under the CCAA is a matter of discretion for the court. The allocation of Court ordered charged is done on a case-by-case basis, but fundamentally any allocation must be fair and equitable.⁸
24. In determining whether to approve the Final Allocation, the Court should consider the following governing principles:
 - (a) the allocation of costs should be done on a case-by-case basis;
 - (b) costs should be allocated in a fair and equitable manner, one which does not readjust the priorities between creditors, and one which does not ignore the benefit or detriment to any creditor;
 - (c) a strict accounting is neither necessary nor desirable in all cases;
 - (d) a creditor need not benefit "directly" before costs can be allocated to that creditor, an indirect benefit is enough; and
 - (e) an allocation does not require a strict cost-benefit analysis or that the costs be borne equally.⁹
25. Additionally, courts have noted that the "the fairest basis of allocation would be a uniform percentage of the sale price received for the asset over which the paying creditor had a realizable security interest" and that "[e]xceptions to the rule of uniform cost allocation should only be made where the requirement for such variation is reasonably articulable".¹⁰

⁷ *Ibid* at para 61.

⁸ [Winnipeg Motor Express Inc. et al, 2009 MBQB 204](#) at para 41;

⁹ [Royal Bank of Canada v. Atlas Block Co., 2014 ONSC 1531](#), ["**Atlas Block**"] at para 43.

¹⁰ [Winnipeg Motor Express Inc. et al, 2009 MBQB 204](#) at para 42 (citing [In Re Hickman Equipment \(1985\) Ltd. \(In Receivership\), 2004 NLSCTD 164](#) at para 17).

26. As described in paragraphs 37 to 52 of the Fifth Report, the allocation of CCAA Costs up to December 16, 2024 is based on the following:
- (a) The proceeds of realization of the Applicants assets were allocated to either Nick's Repair, 100 Manitoba, Bunzy's or the TD Secured Debtors based on the methodology described in paragraph 39 of the Fifth Report;
 - (b) The percentage of the proceeds of realization received for the assets of each of the four Debtor groups was determined (*i.e.*, the Final Allocation Percentages);
 - (c) With the exception of a single disproportionate expense, the Manitoba Security Review, which was allocated pro rata to Nick's Repair Service Ltd., 10026923 Manitoba Ltd. and Bunzy's Auto Body Ltd., the CCAA Costs were allocated to each of the four Debtor groups using the Final Allocation Percentages.¹¹
27. Given that all of the secured creditors, including TD Bank, are anticipated to be paid in full by December 16, 2024 (with the exception of the CARSTAR warranty holdback), all of the remaining CCAA Costs incurred from and after December 16, 2024, will be allocated to 100 Manitoba and Bunzy's at 27.4% and 72.6% respectively.¹²
28. The change in allocation method after December 16, 2024 is fair and equitable because essentially all steps taken after December 16, 2024, other than CCAA termination and discharge, will be solely for the benefit of the unsecured creditors of the Manitoba Entities.
29. In summary, each creditor that can generally expect a further distribution in these CCAA proceedings will obtain sums that are:
- (a) the actual realization values of its collateral;
 - (b) less its pro rata of any of any specific charges or costs incurred that were applicable to such specific Applicant holding the collateral; and
 - (c) less a proposed percentage of the general costs of the CCAA Proceedings which is equivalent to the percentage of sale proceeds allocated to each Applicant.
30. The Monitor submits that the Final Allocation is fair and appropriate for the following reasons:
- (a) the Final Allocation is just and equitable and does not adjust the priorities between creditors;

¹¹ Fifth Report, *supra* note 5 at para 43.

¹² *Ibid* at para 47.

- (b) consideration is given to who benefited from any costs and disbursements;
- (c) all affected creditors are allocated a portion of general and corporate costs consistent with their respective standing, involvement in the CCAA Proceedings, and potential and actual benefits received; and
- (d) where the Monitor identified that a cost provided a disproportionate benefit to certain creditors, the Final Allocation was adjusted accordingly so that such cost was not borne by others.

C The activities of the Monitor should be approved

31. The Monitor is seeking approval of its activities as described in the Fifth Report.
32. There are a number of policy and practical reasons for the Court to approve the Monitor's activities. Specially, Court approval:
- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
 - (b) brings the Monitor's activities before the Court;
 - (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
 - (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
 - (e) provides protection for the Monitor not otherwise provided by the CCAA; and
 - (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.¹³
33. Furthermore, the Court has advised that the benefit of any approval in respect of the Monitor's reports and its activities should be limited to the Monitor itself and should not extend to the Debtor or other third parties.¹⁴
34. Since its appointment, the Monitor has worked diligently to, without limitation, ensure the Debtors were able to continue their business operations and retain their existing employees, to implement and administer the SISF, coordinate and oversee the Auction, facilitate all closing and post-closing

¹³ [Target Canada Co. \(Re\), 2015 ONSC 7574](#) ["*Target*"] at para 23.

¹⁴ *Ibid* at para 21.

requirements for the Enhanced Stalking Horse APA, market the assets, enter into the Royal Vista APA and attend all closing requirements for the Royal Vista APA.

35. The approval sought is limited to the Monitor's activities, as described in the Fifth Report, and does not extend to other third parties or the Debtors. As such, the Monitor submits it is appropriate for this Court to Approve the Fifth Report and the activities of the Monitor referred to therein.

D The Final TD Distribution should be approved

36. The Monitor is seeking authority to distribute all available funds that are allocated to the TD Secured Debtors in one or more subsequent distributions as the receipts from Lift and CARSTAR are collected.

37. It is well established that the Court has the authority to approve distributions to creditors in these CCAA Proceedings.¹⁵ In determining whether to approve an interim distribution of funds this Court should consider, among other factors, whether:

- (a) the security of the distribution recipient is valid and enforceable;
- (b) the amounts owed to the distribution recipient exceeds the proposed distribution; and
- (c) the proposed distribution would lead to interest savings in favour of the CCAA debtor.¹⁶

38. In *Nortel 2014*, the Ontario Superior Court of Justice held that it makes no difference with respect to the Court's discretion to approve a distribution whether such distribution is an interim distribution or a final distribution, or a distribution to an unsecured creditor or secured creditor.¹⁷

39. The Monitor submits that it is reasonable and appropriate in the circumstances for the court to authorize the Final TD Distribution given that:

- (a) Monitor's counsel has reviewed the security documents and opined that TD Bank holds a valid and enforceable security interest (the "**TD Security Interest**") in and to all present and after acquired property of the TD Secured Debtors;¹⁸
- (b) TD Bank holds a first in time registration in each of the Alberta and Manitoba personal property registries against the TD Secured Debtors in relation to the TD Security Interest;¹⁹
- (c) The Monitor will holdback funds to pay Professional Fees through December 16, 2024; and

¹⁵ [Nortel Networks Corp \(Re\), 2014 ONSC 4777](#), ["*Nortel 2014*"] at paras 53 to 55; [AbitibiBowater \(Re\), 2009 QCCS 6471](#), ["*Abitibi*"] at para 71.

¹⁶ *Abitibi*, *supra* note 15 at para 75.

¹⁷ *Nortel 2014*, *supra* note 15 at para 58.

¹⁸ Fifth Report, *supra* note 5 at paras 23-24.

¹⁹ *Ibid* at para 24.

(d) TD Bank will suffer a shortfall on its secured debt.²⁰

V. CONCLUSION

40. Based on the foregoing, the Monitor requests that this Honourable Court grant the SARIO and the Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of December 2024.

Cassels Brock & Blackwell LLP

Per: *Danielle Marechal*
Danielle Marechal
Counsel for the Monitor

²⁰ *Ibid* at para 54.

VI. LIST OF AUTHORITIES

STATUTES

Tab	Authority
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| 1. | <i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36 |
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JURISPRUDENCE

Tab	Authority
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| 2. | <i>AbitibiBowater Inc. (Arrangement relatif à)</i> , 2009 QCCS 6471 , 2009 CarswellQue 14224 |
| 3. | <i>In Re Hickman Equipment (1985) Ltd. (In Receivership)</i> , 2004 NLSCTD 164 , 2004 CarswellNfld 263 |
| 4. | <i>Re Nortel Networks Corporation et al</i> , 2014 ONSC 4777 , 2014 CarswellOnt 17193 |
| 5. | <i>Royal Bank of Canada v. Atlas Block Co. Limited</i> , 2014 ONSC 1531 , 2014 CarswellOnt 2780 |
| 6. | <i>Target Canada Co. (Re)</i> , 2015 ONSC 7574 , 2015 CarswellOnt 19174 |
| 7. | <i>Winnipeg Motor Express Inc. et al</i> , 2009 MBQB 204 , 2009 CarswellMan 383 |

SECONDARY SOURCES

Tab	Authority
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| 8. | Luc Morin & Arad Mojtahedi, "In Search of a Purpose: the Rise of Super Monitors & Creditor-Driven CCAAs" in Jill Corraini & the Honourable D Blair Nixon eds, <i>Annual Review of Insolvency Law 2019</i> (Toronto: Thomson Reuters, 2020) |
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