

COURT FILE NUMBER

2401-01778

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PROCEEDING

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



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

APPLICANTS

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

DOCUMENT

BRIEF

ADDRESS FOR SERVICE AND
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I. INTRODUCTION

1. This Brief is submitted on behalf of the Applicants, Collision Kings Group Inc. (“**CKGI**”), CMD Holdings Inc. (“**CMD Holdings**”), East Lake Collision Ltd. (“**East Lake**”), Mayland Heights Collision Ltd. (“**Mayland Heights**”), Sunridge Collision Ltd. (“**Sunridge**”), Arrow Auto Body Ltd. (“**Arrow**”), CMD Glass Ltd. (“**CMD Glass**”), Royal Vista Collision Ltd. (“**Royal Vista**”), Stathko Investments Ltd. (“**Stathko Investments**”), 2199931 Alberta Ltd. (“**219 Alberta**”), Collision Kings 3 Ltd. (“**CK3L**”), Nick’s Repair Service Ltd. (“**Nick’s Repair**”), 10026923 Manitoba Ltd. (“**100 Manitoba**”) and Bunzy’s Auto Body Ltd. (“**Bunzy’s**”) (collectively, the “**Applicants**” or the “**Collision Kings Group**”), in support of their Application for, among other things:
 - (a) an extension of the Stay Period (as defined below) in these CCAA proceedings up to and including April 30, 2025;
 - (b) authorization and direction to the Monitor to issue payment to the persons referred to in the RIP (as defined below) from the available funds, up to the amounts set out in the Fifth Report of the Monitor, FTI Consulting Canada Inc. (the “**Monitor**”), dated December 10, 2024 (the “**Fifth Report**”);
 - (c) approval of the fees and disbursements of the Monitor, its legal counsel, Cassels Brock & Blackwell LLP, and the Applicants’ legal counsel, MLT Aikins LLP, for the period of October 1, 2024 to and including November 30, 2024 (collectively, the “**Professional Fees**”);
 - (d) approval of the Final Allocation Percentages (as defined in the Fifth Report), pursuant to which the costs of these CCAA are allocated as against the individual Applicant entities;
 - (e) authorization and direction to the Monitor to make a final secured distribution from available funds, up to the amounts set out in the Fifth Report to The Toronto-Dominion Bank (“**TD**”);
 - (f) approval of the activities of the Monitor, as set out in the Fifth Report; and
 - (g) a Second Amended and Restated Initial Order, enhancing the Monitor’s powers to provide the Monitor with certain additional authority in these CCAA proceedings.

2. This Brief addresses the relief sought in paragraphs 1(a) to (c) above. It is anticipated that Monitor's Brief of Law will address the relief sought in paragraphs 1(d) through (g) and be submitted concurrently herewith.
3. Capitalized terms used herein that are not otherwise defined have the meaning ascribed to them in the Affidavit of Shane Daerden, sworn on January 30, 2024 (the "**Daerden Affidavit**") and the Fifth Report.

II. **BACKGROUND**

A. **Background on CCAA Proceedings**

4. On February 7, 2024, the Honourable Justice J.T. Neilson granted an initial order under the CCAA (the "**Initial Order**"), providing for, among other things, a 10-day stay of proceedings expiring on February 17, 2024 in favour of the Collision Kings Group (the "**Stay Period**") and approving a sales and investment solicitation process (the "**SISP**").¹
5. On February 14, 2024, the Honourable Justice M.J. Lema granted the amended and restated initial order (the "**ARIO**") extending the original Stay Period to March 29, 2024.²
6. On February 14, 2024, the Honourable Justice M.J. Lema further granted a sale approval and vesting order approving a stalking horse bid pursuant to the asset purchase and sale agreement between the purchaser, Lift Auto Group Operating Corporation ("**Lift**"), and the vendors, CMD Holdings, East Lake, Sunridge, 219 Alberta, CK3L, Arrow, Stathko Investments, Nick's Repair, 100 Manitoba and Bunzy's (the "**Stalking Horse Bid**").³
7. The Stalking Horse Bid did not include the businesses and assets owned by Mayland, Royal Vista and CMD Glass and also excluded certain assets of Nick's Repair, 100 Manitoba, Bunzy's and CMD Holdings, among other things.
8. On March 13, 2024, Lift and one other Qualified Bidder (as defined in the SISP) attended the auction contemplated by the SISP (the "**Auction**").
9. At the conclusion of the Auction, Lift submitted a more competitive bid than the initial Stalking Horse Bid (the "**Enhanced Lift APA**"), which was ultimately selected as the

¹ [Initial Order, granted by Justice Neilson, dated February 7, 2024.](#)

² [Amended and Restated Initial Order, granted by Justice Lema, dated February 14, 2024.](#)

³ [Sale Approval and Vesting Order, granted by Justice Lema, dated February 14, 2024.](#)

Winning Bid. Pursuant to the Enhanced Lift APA, Lift Auto did not purchase certain assets of Royal Vista, CMD Glass and Mayland Heights (the “**Remaining Assets**”).

10. On March 14, 2024, the Monitor filed the Bid Selection Certificate confirming the Enhanced Lift APA was the Successful Bid.⁴ On March 15, 2024, the Monitor filed its Closing Certificate confirming all conditions of the Enhanced Lift APA were satisfied.⁵
11. Following the filing of the Monitor’s Closing Certificate, the Monitor proceeded to market the Remaining Assets.
12. On March 26, 2024, 5807698 Manitoba Ltd. (“**580 Manitoba**”) and 10191777 Manitoba Ltd. (“**101 Manitoba**”, and together with 580 Manitoba, the “**Royal Vista Purchasers**”) entered into an asset purchase agreement with Royal Vista and CMD Holdings (the “**Royal Vista APA**”) with respect to certain Remaining Assets of Royal Vista and CMD Holdings.
13. On March 27, 2024, the Honourable Justice J.J. Gill granted a Sale Approval and Vesting Order approving the Royal Vista APA and vesting the applicable assets in the Royal Vista Purchasers.⁶
14. On March 27, 2024, the Honourable Justice J.J. Gill granted a further Order to, among other things, extend the Stay Period up to and including July 25, 2024 (the “**March 2024 Stay Extension**”).⁷
15. On July 18, 2024, the Monitor submitted a Closing Certificate for filing with the Court in respect of the Royal Vista APA confirming all conditions to closing have been satisfied.⁸
16. On July 25, 2024, the Honourable Justice B.E.C. Romaine granted an Order to, among other things, extend the Stay Period up to and including October 31, 2024 (the “**July 2024 Stay Extension**”).⁹

⁴ [Monitor’s Bid Selection Certificate, dated March 14, 2024.](#)

⁵ [Monitor’s Closing Certificate, dated March 15, 2024.](#)

⁶ [Sale Approval and Vesting Order, granted by Justice Gill, dated March 27, 2024.](#)

⁷ [Stay Extension Order, granted by Justice Gill, dated March 27, 2024.](#)

⁸ [Monitor’s Closing Certificate, dated July 18, 2024.](#)

⁹ [Stay Extension Order, granted by Justice Romaine, dated July 25, 2024.](#)

17. On October 17, 2024, the Honourable Justice R.W. Armstrong granted an Order to, among other things, extend the Stay Period up to and including December 17, 2024 (the “**Oct 2024 Stay Extension**”).¹⁰
18. On October 17, 2024, the Honourable Justice R.W. Armstrong further granted an Order approving: (i) a final distribution to the Royal Bank of Canada, Access Credit Union, Gail and Garth White, and Canada Revenue Agency (in respect of its priority claim); and (ii) an interim distribution to TD in an amount up to \$5,500,000.¹¹

B. Working Capital Calculation

19. The Applicants disputed the appropriate working capital calculation (the “**Working Capital Calculation**”) pursuant to section 3.7(b) of the Enhanced Lift APA. The parties had a period of 30 days to resolve the dispute, however, attempts at reaching a resolution were unsuccessful by the 30-day deadline.¹²
20. On October 2, 2024, the dispute was submitted to the Monitor for determination, which the parties agreed is final and binding.¹³
21. On December 2, 2024, after receiving and reviewing submissions from the Applicants and Lift, the Monitor issued its final decision that the value of the Working Capital Calculation is in the amount of \$1,591,815.58 and to be paid by Lift to the Applicants (the “**Working Capital Amount**”).¹⁴
22. As of the date of filing this Application, the Working Capital Amount has not yet been paid by Lift to the Monitor.¹⁵

III. ISSUES

23. The issues to be determined by this Honourable Court at the Application are:
 - (a) whether the Stay Period (defined below) should be extended;

¹⁰ [Stay Extension Order, granted by Justice Armstrong, dated October 17, 2024.](#)

¹¹ [Distribution Order, granted by Justice Armstrong, dated October 17, 2024.](#)

¹² Fifth Report of the Monitor, dated December 10, 2024 (the “**Fifth Report**”) at paras 16 and 17.

¹³ Fifth Report at para 18.

¹⁴ Fifth Report at para 19.

¹⁵ Fifth Report at para 20.

- (b) whether the Monitor should be authorized to issue the proposed payment to the persons referred to in the RIP (defined below); and
- (c) whether the Court should approve the fees of the Monitor, its legal counsel, and the legal fees of the Applicants' counsel.

IV. LAW AND ARGUMENT

A. The Stay Extension is Appropriate

- 24. The stay of proceedings in these CCAA Proceedings pursuant to the ARIO and subsequently extended pursuant to the March 2024 Stay Extension Order, the July 2024 Stay Extension Order and the October 2024 Stay Extension Order is currently set to expire on December 17, 2024 (the "**Stay Period**").
- 25. The Applicants, with the support of the Monitor, seek an extension of the Stay Period up to and including April 30, 2025.
- 26. Pursuant to section 11.02(3) of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"), the Court may grant an extension of a stay of proceedings where: (a) the applicant satisfies the Court that circumstances exist that make the order appropriate; and (b) the applicant satisfies the Court that the applicant has acted, and is acting, in good faith and with due diligence.¹⁶
- 27. The requested extension of the Stay Period is necessary, and appropriate, to provide additional time to the Monitor to:
 - (a) collect the CARSTAR accounts receivables (as outlined in the Fifth Report);
 - (b) collect the amount owing under the Working Capital Calculation;
 - (c) bring an Application to this Court for approval of a claims process with respect to 100 Manitoba and Bunzy's and, thereafter, to seek approval to distribute the MB Unsecured Holdback net of administrative costs in accordance with the results of said claims process;

¹⁶ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), at section [11.02\(3\)](#).

(d) bring an Application to this Court to seek the Monitor's discharge and the termination of these CCAA proceedings.¹⁷

28. Since the granting of the Initial Order, the Applicants and the Monitor have acted, and are acting, in good faith and with due diligence to advance these CCAA Proceedings.¹⁸

29. The Applicants have sufficient liquidity to fund their operations and the costs of these CCAA proceedings during the proposed stay extension, as outlined in the Fifth Report.

B. Payment of the RIP

30. The ARIO approved the key employee retention and incentive plan (the "RIP") comprised of a base incentive of \$425,000 plus 4% of the Final Sale Proceeds in excess of \$10 million and granted to critical management personnel a charge on the Property in an amount up to \$425,000 (the "RIP Charge") as security for payments under the RIP.

31. Pursuant to the RIP, payment of any amounts realized under the RIP became due on the earlier of: (i) the implementation of a Plan of Arrangement or Compromise; (ii) the conversion of the CCAA proceedings to a different restructuring process; or (iii) the completion of any realization process through the CCAA.¹⁹

32. The critical personnel continued with the Applicants throughout these CCAA proceedings to create stability in order to maximize the value of the Applicants as a going concern.²⁰

33. The RIP Payment is calculated to be up to \$525,318.18, which is comprised as follows:²¹

RIP Payment

	Proceeds			Timing of Payment
	Collected	Terms	RIP Payment	
Sale Proceeds	\$ 10,000,000	\$425,000.00	425,000	Upon Court Approval
Sale Proceeds in excess of \$10 million	258,768	4.0%	10,351	Upon Court Approval
Final Working Capital Amount	1,591,816	4.0%	63,673	On Collection
CARSTAR AR	657,370	4.0%	26,295	On Collection
Total RIP Payment	\$ 12,507,954		\$ 525,318	

¹⁷ Fifth Report at para 56.

¹⁸ Fifth Report at para 69.

¹⁹ First Affidavit, at paras 208 to 214.

²⁰ First Affidavit at paras 208 to 214.

²¹ Fifth Report at para 46(b).

34. Pursuant to the RIP, payment is due as the realization process under the CCAA has been completed.
35. As outlined in further detail in the Fifth Report, the Monitor proposes to make an initial instalment towards the RIP Payment in the amount of \$435,351 following the granting of the Final Allocation and Distribution Order, which will satisfy the RIP Charge, and then to make subsequent payments equal to 4% of the Final Working Capital Amount and the CARSTAR AR upon receipt of same (as shown in the above table at paragraph 33).
36. In light of the foregoing, the Applicants, with the support of the Monitor, submit that the staged RIP Payments should be approved by this Court.

C. Approval of the Professional Fees

37. The Court's jurisdiction to approve the accounts of the Monitor, its legal counsel, and counsel for the Applicants is confirmed in paragraphs 28 to 30 of the ARIO, which provides that the parties shall pass their accounts from time to time before the Court.
38. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness".²² The overall value contributed by the Professionals is the predominate consideration in assessing the reasonableness of the accounts.²³
39. To aid in the determination of whether the Professional Fees are fair and reasonable, the Ontario Court of Appeal recognized the following list of non-exhaustive factors that the Court may consider:
 - (a) the nature, extent and value of the assets being handled;
 - (b) the complications and difficulties encountered;
 - (c) the degree of assistance provided by the company, its officers or its employees;
 - (d) the time spent;
 - (e) the Monitor's knowledge, experience and skill;

²² [Re Nortel Networks Inc.](#), 2022 ONSC 6680 ("**Nortel 2022**") at [para 10](#).

²³ [Re Nortel Networks Corporation et al.](#), 2017 ONSC 673 at paras [15](#) and [21](#).

- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.²⁴

40. The Monitor's accounts and those of its legal counsel, as well as the accounts of the Applicants' legal counsel, are summarized in the Fifth Report.

41. The Professional Fees are fair and reasonable and commensurate with the work required and performed during the applicable period.

42. Accordingly, the Applicants respectfully request this Honourable Court approve the Professional Fees outlined in the Fifth Report.

V. RELIEF REQUESTED

43. The Applicants respectfully request this Honourable Court grant the Order substantially in the form attached as **Schedule "A"** to the within Application granting the requested relief.

²⁴ *Nortel 2022* at [para 11](#).

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

MLT AIKINS LLP



JJ Burnell/Molly McIntosh

Counsel for Collision Kings Group Inc., CMD Holdings Inc., East Lake Collision Ltd., Mayland Heights Collision Ltd., Sunridge Collision Ltd., Arrow Auto Body Ltd., CMD Glass Ltd., Royal Vista Collision Ltd., Stathko Investments Ltd., 2199931 Alberta Ltd., Collision Kings 3 Ltd., Nick's Repair Service Ltd., 10026923 Manitoba Ltd. and Bunzy's Auto Body Ltd.

VI. LIST OF AUTHORITIES

A. Court Orders

[Initial Order, granted by Justice Neilson, dated February 7, 2024.](#)

[Amended and Restated Initial Order, granted by Justice Lema, dated February 14, 2024.](#)

[Sale Approval and Vesting Order, granted by Justice Lema, dated February 14, 2024.](#)¹

[Monitor's Bid Selection Certificate, dated March 14, 2024.](#)

[Monitor's Closing Certificate, dated March 15, 2024.](#)

[Sale Approval and Vesting Order, granted by Justice Gill, dated March 27, 2024.](#)

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[Monitor's Closing Certificate, dated July 18, 2024.](#)

[Stay Extension Order, granted by Justice Romaine, dated July 25, 2024.](#)

[Stay Extension Order, granted by Justice Armstrong, dated October 17, 2024.](#)

[Distribution Order, granted by Justice Armstrong, dated October 17, 2024.](#)

B. Legislation

[*Companies' Creditors Arrangement Act*, RSC 1985, c C-36](#)

C. Case Law

[*Re Nortel Networks Inc*, 2022 ONSC 6680](#)

[*Re Nortel Networks Corporation et al*, 2017 ONSC 673](#)