



**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:** CV-22-00691990-00CL **DATE:** 8 May 2023

**NO. ON LIST:** 3

**TITLE OF PROCEEDING:** **DCL CORPORATION**  
**BEFORE JUSTICE OSBORNE**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
MILLY CHOW	APPLICANT	<a href="mailto:Milly.chow@blakes.com">Milly.chow@blakes.com</a>
LINC ROGERS	APPLICANT	<a href="mailto:Linc.rogers@blakes.com">Linc.rogers@blakes.com</a>

**For Defendant, Respondent, Responding Party, Defence:**

Name of Person Appearing	Name of Party	Contact Info
SHAWN IRVING	For the monitor	<a href="mailto:sirving@osler.com">sirving@osler.com</a>
STEVE FERGUSON	A&M court appointed monitor	<a href="mailto:sferguson@alvarezandmarsal.com">sferguson@alvarezandmarsal.com</a>
JOSH NEVSKY	A&M court appointed monitor	<a href="mailto:jnevsky@alvarezandmarsal.com">jnevsky@alvarezandmarsal.com</a>
MARTINO CALVARUSO	For the monitor	<a href="mailto:mcalvaruso@osler.com">mcalvaruso@osler.com</a>

**ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Monitor moves today for an order granting to it Expanded Powers and additional related protections, declaring that the Canadian Designated Amount Portion is to be held by the Monitor to conduct an orderly wind-down of the Applicant and administer the CCAA Proceedings until completion, declaring that the CCAA Cash Pool shall be held by the Monitor for the benefit of the estate of the Applicant, including administration costs, amending the style of cause and the CCAA Proceedings and discharging the CRO.

2. The Monitor also seeks a declaration that the Applicant meets the criteria prescribed by section 3.2 of the WEPP Regulations and that the former employees of the Applicant are eligible to receive payments under and in accordance with the *WEPP Act*.
3. Defined terms in this Endorsement have the meaning given to them in previous Endorsements made by me in this proceeding, in the motion materials, the Fifth Report of the Monitor dated May 3, 2023 and/or in the Second Amended and Restated Sale Agreement, unless otherwise indicated.
4. The Service List has been served, and the relief sought today is unopposed.
5. I previously approved a sale process pursuant to which substantially all of the business and assets of the Applicant and the Chapter 11 Debtors were sold on a going concern basis. The result is that the Applicant now has no employees nor operations.
6. The relief sought today effectively relates to cleanup matters following on the close of that sale transaction.
7. The expanded powers sought by the Monitor are necessary to conduct an orderly wind-down of the Applicant and administer the CCAA Proceedings. They are consistent with expanded powers granted by this Court in similar circumstances, particularly where there is no management of the Applicant. Those are appropriate and are approved here.
8. The sale transaction was anticipated to close on April 14, 2023. Not all wire transfers necessary for closing were received until the next business day, the following Monday, April 17, with the result that the Monitor delivered its Certificate on that date. The Monitor submits, and I agree, that it is appropriate to give effect to the intention of the parties and the terms of the Effect of Time Agreement by amending the date and time in the Monitor's Certificate to 11:59 PM, April 14, 2023.
9. The Purchaser, Pigments, did not assume any of the Canadian Pension Plans. FSRA appointed Canada Life as the Administrator of the two defined contribution Plans. Actuarial Services Inc. was appointed as Administrator of the two defined benefit Plans.
10. The Monitor seeks the authority pursuant to the draft order sought today to apply any surplus assets that may remain after the liabilities of the two defined benefit plans are settled, to be allocated in accordance with the governing documents of each Plan, or as may otherwise be agreed with the Plan members or as ordered by the Court.
11. I am satisfied that pursuant to my discretion under section 11 of the CCAA that the expanded powers relief is appropriate.
12. The Monitor is of the view that the requirements of the WEPP Regulations have been met and that the former employees of the Applicants are entitled to receive WEPP Payments.
13. The Wage Earner Protection Program provides that eligible former employees may be entitled to payments in respect of outstanding eligible wages, including termination and severance pay, if certain criteria are met. The amendments to the legislation, and particularly to subsection 5(1) of the *WEPP Act*, provide that an individual is eligible if their employment is with an employer that is subject to CCAA proceedings and, among other things, a court determines that the criteria prescribed by regulation are met, pursuant to section 5(5) of the *WEPP Act*. Section 3.2 sets out those criteria.
14. I am satisfied that the declaration sought should be granted such that the Applicant's former employees who did not commence employment with Pigments, are able to access benefits. Such is appropriate

here, and I observe is also consistent with similar relief granted by this Court in other proceedings such as *Bed, Bath & Beyond, (BBB Canada Ltd. (Re))*, CV-23-00694493-00CL, unreported, and *Inscape, (Inscape Corporation (Re))* CV-23-00692784-00CL, unreported), among others.

15. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.

Olson, J.