Court File No. CV-22-00691990-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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 1000156489 ONTARIO INC.

Applicant

FACTUM OF THE MONITOR

August 22, 2025

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.5960
Email: mcalvaruso@osler.com

Fax: 416.862.6666

Counsel for Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of 1000156489 Ontario Inc. (f/k/a DCL Corporation) and not in its personal or corporate capacity

TO: THE SERVICE LIST

PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the monitor (in such capacity, the "**Monitor**") of 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the "**Applicant**") in the within proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**" and the proceedings, the "**CCAA Proceedings**"), which were commenced on December 20, 2022, by the issuance of an initial order by this Court (the "**Court**").

2. The CCAA Proceedings have nearly run their course. The Monitor brings this motion in order to seek the approval of a settlement agreement that will resolve the issue of entitlement to surplus funds associated with two registered pension plans sponsored by the Applicant (the "**Settlement Agreement**"). Approval of the Settlement Agreement, which represents the culmination of extensive negotiations between the Monitor on behalf of the Applicant, and Representative Counsel (as defined below) on behalf of plan members, is the final substantive step which needs to be taken before a distribution can be made to the Applicant's creditors and the orderly wind-down of the Applicant's business can be completed.

3. In order to implement the Settlement Agreement and provide the time needed to continue the orderly wind-down of the Applicant, the Monitor seeks the following orders:

(a) an Order (the "**Settlement Approval Order**") which will, among other things: (i) declare that the Applicant is entitled to the surplus in the Plans (as defined below) for the purposes of paragraph 79(3)(b) of the *Pension Benefits Act*, RSO 1990, c P.8 (the "**PBA**"); and (ii) approve the Settlement Agreement, including the distributions contemplated therein; and

(b) an Order (the "**Stay Extension Order**") which will, among other things, extend the Stay Period (as defined below) to January 31, 2026.

4. The Settlement Agreement is fair and reasonable in the circumstances and should be approved by the Court. The resolution of the Plan surplus issues is in the interests of all of the Applicant's creditors and stakeholders (including those creditors not party to the Settlement Agreement), as it will permit the CCAA Proceedings to move forward to their completion and maximize the return obtained on the Applicant's assets, to the benefit of creditors and stakeholders generally.

PART II - SUMMARY OF FACTS

5. The facts regarding this motion are more fully set out in the Tenth Report of the Monitor.[1]

A. The CCAA Proceedings and Chapter 11 Proceedings

6. On December 20, 2022 (the "**Petition Date**"), the Court granted the Initial Order, which, among other things, appointed A&M as the Monitor and granted a stay of proceedings for an initial 10-day period (the "**Stay Period**"). On December 29, 2022, the Court granted the Amended and Restated Initial Order (the "**ARIO**"), which, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the ARIO) and extended the Stay Period.[2]

---

[1] Report of the Monitor dated August 18, 2025 ("**Tenth Report**"). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Tenth Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars

[2] Tenth Report at paras. 1.1, 1.5.

7. The Applicant is part of the broader DCL Group,[3] and the CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group. In connection with this broader restructuring, on the Petition Date, HIG Color Holdings and certain of its subsidiaries ("**DCL US**") filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Chapter 11 Proceedings**," and together with the CCAA Proceedings, the "**Restructuring Proceedings**").[4]

8. As part of the Restructuring Proceedings, DCL Group conducted a sales process that culminated in a transaction (the "**Transaction**") with Pigments Services, Inc. ("**Pigments**"), an affiliate of the pre-petition term loan lenders to the Applicant and DCL US. The Transaction was approved by the Court on March 29, 2023, and closed on April 14, 2023.[5]

9. On May 8, 2023, the Court granted the "**Expanded Powers Order**," which, among other things, granted the Monitor expanded powers to oversee the wind-down activities of the Applicant, including the authority to instruct and engage with any person regarding the Plans (as discussed in more detail below).[6]

10. On June 20, 2023, the Court granted the "**Claims Procedure Order**," which among other things, established the procedure (the "**Claims Procedure**") pursuant to which creditors were able to file claims against the Applicant or against the Applicant's Directors or Officers, as applicable.[7]

---

[3] The Applicant is a subsidiary of its U.S. parent, H.I.G. Colors Inc. ("**Holdings**"), a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. ("**HIG Colors Holdings**" and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the "**DCL Group**").

[4] Tenth Report at para. 1.4.

[5] Tenth Report at para. 1.6.

[6] Tenth Report at paras. 1.7, 3.6.

[7] Tenth Report at para. 1.8.

As of the date of the Tenth Report, the Claims Procedure has been completed and all claims have been resolved.[8]

B. The Settlement Agreement

(a) The Plans

11. The Applicant is the sponsor of the following registered pension plans, none of which were assumed by Pigments as part of the Transaction: (i) the Salaried DC Plan; (ii) the Hourly DC Plan; (iii) the Hourly DB Plan; (iv) the Salaried DB Plan; and (v) The Pension Plan for the Employees of Monteith Inc. registered under the PBA and the Income Tax Act (Canada) with registration number 1046994.[9]

12. On October 18, 2023, the Financial Services Regulatory Authority of Ontario ("**FSRA**") issued Wind-Up Orders in respect of the Hourly DB Plan and the Salaried DB Plan (collectively, the "**Plans**"), effective April 14, 2023. On February 11, 2024, FSRA approved Wind-Up Reports for both Plans, which provided that the allocation of any surplus funds would be dealt with in a subsequent report, and that once the liabilities of the Plans were settled, any surplus assets would be allocated in accordance with each Plan's governing documents, or as otherwise agreed with the Applicant's plan members or ordered by the Court. Absent an agreement or a court order determining surplus ownership, entitlement to any surplus would be adjudicated by FSRA, and any distribution of a surplus would in any case be subject to the oversight and consent of FSRA.[10]

---

8 Tenth Report at para. 5.4.

9 Tenth Report at para. 3.1.

10 Tenth Report at paras. 3.2-3.3, 3.5.

13. As of November 2024, the liabilities of the Plans had either been paid out to beneficiaries or secured via the purchase of annuities. As of April 30, 2025, the administrator of the Plans, Actuarial Solutions Inc., estimated the surplus before expenses of the Plans to be $1,893,144 in respect of the Hourly DB Plan and $2,886,020 in respect of the Salaried DB Plan.[11]

(b) Appointment of Representative Counsel

14. Pursuant to the Expanded Powers Order, the Court granted the Monitor the authority to instruct and engage with any person regarding the Plans, and to apply for any surplus assets to be allocated in accordance with the applicable governing documents, or as may otherwise be agreed with applicable Plan members or ordered by the Court.[12]

15. In light of the Monitor's stated intention to bring a motion regarding surplus entitlement, on January 28, 2025, the Monitor sought and was granted the "**Representative Counsel Order**" by the Court. The Representative Counsel Order, among other things, appointed Ursel Phillips Fellows Hopkinson LLP ("**Ursel Phillips**") as representative counsel (the "**Representative Counsel**") for the purpose of representing the interests of all members of the Salaried DB Plan and the Hourly DB Plan (collectively, the "**Represented Parties**"), with respect to such motion and in any negotiations regarding surplus entitlement in order to achieve the members' consent. Notice of the Representative Counsel Order was provided to all Represented Parties, none of whom opted out of representation by Representative Counsel.[13]

---

[11] Tenth Report at paras. 3.3-3.4.

[12] Tenth Report at para. 3.6.

[13] Tenth Report at paras. 1.9, 3.7, 3.9.

16. Pursuant to the Representative Counsel Order, Representative Counsel was entitled to form a committee, consisting of no more than three members of the Salaried DB plan to advise Representative Counsel with respect to the Salaried DB Plan surplus, and no more than one representative of Teamsters Chemical, Energy and Allied Workers (Local Union NO. 1979) (the "**Union**") in order to advise Representative Counsel with respect to the Hourly DB Plan Surplus (collectively, the "**Representatives**"). Representative Counsel subsequently appointed one member of the Salaried DB Plan and one Union representative to serve as Representatives.[14]

(c) The Settlement Agreement

17. Following the appointment of Representative Counsel, the Monitor and Representative Counsel conducted negotiations regarding entitlement to the Plan surpluses. On August 18, 2025, the Monitor and Representative Counsel reached the Settlement Agreement, setting out the conditions that would govern the terms of the allocation and distribution of the Net Surplus (as defined below) from the Plans to the Applicant and the Represented Parties.[15]

18. Pursuant to the Settlement Agreement, the Net Surplus of each Plan will be divided between the Represented Parties and the Applicant, with 45% of the Net Surplus being paid to the Represented Parties (the "**Represented Parties Share**") and 55% being paid to the Monitor on behalf of the Applicant (the "**Company Share**"). The Net Surplus is composed of the Gross

---

[14] Tenth Report at para. 3.8.

[15] Tenth Report at para. 4.1.

Surplus less Administrator Expenses and Agreed Expenses,[16] determined as of the date of the first distribution of Net Surplus shares to the Represented Parties (the "**Distribution Date**").[17]

19. The Settlement Agreement provides that the Monitor, on behalf of the Applicant and supported by Representative Counsel, will bring a motion before the Court seeking: (i) a declaration that the Applicant is entitled to the surplus of the Plans for purposes of s. 79(3)(b) of the PBA; and (ii) approval of the Settlement Agreement. Thereafter, the Monitor, on behalf of the Applicant, shall seek regulatory approval from FSRA for the payment of the Company Share to the Monitor on behalf of the Applicant, and for the payment of the Represented Parties Share to the Represented Parties.[18]

PART III - THE ISSUES AND THE LAW

20. This factum addresses the following issues:

(a) the Court should grant a declaration that the Applicant is entitled to the surpluses for purposes of the PBA and approve the Settlement Agreement; and

(b) the Court should extend the Stay of Proceedings until and including July 4, 2025.

---

[16] The "**Administrator Expenses**" are the fees and expenses incurred by the Administrator and approved by FSRA, estimated to be $220,000. The "**Agreed Expenses**" are composed of the responsible fees and expenses incurred by the Representative Counsel in connection with matters contemplated in the Settlement Agreement, estimated to be $120,000 plus HST, and the reasonable fees and expenses of the Monitor and Counsel in connection with assessing and managing the Applicant's entitlement to surplus from the Plans, negotiating with Representative Counsel, and bringing the court and regulatory proceedings contemplated in the Settlement Agreement, which are estimated to be $200,000 plus HST.

[17] Tenth Report at para. 4.3(i)-(iii).

[18] Tenth Report at para. 4.3(iv).

A. The Court has Jurisdiction to Grant the Settlement Approval Order

(a) The Court has the Jurisdiction to Approve the Settlement Agreement

21. It is undisputed that CCAA courts have the jurisdiction to approve settlement agreements entered into by debtors during the course of CCAA proceedings.[19] This authority derives from the general discretion granted to the court by s. 11 of the CCAA,[20] and reflects the court's authority to act in the greater good in a manner consistent with the purpose and spirit of the CCAA.[21]

22. In determining whether to approve a proposed settlement, CCAA courts consider the following three factors:[22]

(a) whether the settlement is fair and reasonable in the circumstances;

(b) whether the settlement will benefit the debtor and its stakeholders generally; and

(c) whether the settlement is consistent with the purpose and spirit of the CCAA.

23. In determining whether a settlement is fair and reasonable, the court must consider whether the proposed settlement properly balances the interests of all parties and treats all parties equitably.[23] As part of this process, the court is required to consider the benefits that the settlement

---

19 *Robertson v. ProQuest Information & Learning Co*., 2011 ONSC 1647 at para. 22 [*Robertson*].

20 *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd*., 2010 ONSC 1759 at para. 11; *Nortel Networks Corp. (Re)*, 2010 ONSC 1708 at paras. 68-71 [*Nortel*]; *1057863 B.C. Ltd. (Re),* 2024 BCSC 1111 at para. 13 [*Northern Pulp*].

21 *Calpine Canada Energy Ltd. (Re)*, 2007 ABQB 504 at para. 75 [*Calpine*].

22 *Robertson*, at para. 22; see also *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp*., 2013 ONSC 1078 at para. 49; *The Cash Store Financial Services Inc. (Re),* 2015 ONSC 7538 at para. 14.

23 *Nortel*, at para. 73.

offers to creditors as a whole, while at the same ensuring that objecting creditors (if any) are not suffering excessive prejudice or having their rights unjustly confiscated.[24]

(b) The Requested Declaration is a Required Element of the Settlement

24. The Settlement Approval Order also includes a declaration that the Applicant is entitled to the surplus remaining in the Plans, which is a technical requirement under the PBA in order to effect the surplus distribution pursuant to the Settlement Agreement.

25. The Court's authority to grant the requested declaration derives both from its jurisdiction to approve and facilitate the implementation of settlement agreements under the CCAA,[25] and from its inherent authority to interpret and grant declarations with respect to plan documents.[26] This authority is recognized – and its exercise expressly contemplated – by s. 79(3) of the PBA, which provides that the Chief Executive Officer of FSRA may only consent to payment of surplus funds to an employer where the payment is authorized by either a court or under s. 77.11 of the PBA:

> **Payment of surplus**
>
> **Continuing pension plan, payment to employer**
>
> **79**
>
> […]
>
> **Wind up, payment to employer**

---

[24] *Calpine*, at para. 62.

[25] See, for example, *Montreal Trust Co. of Canada v. Ontario (Superintendent of Financial Services)*, 2009 ONFST 1, at paras. 41-42 in which the Financial Services Tribunal found that this court's jurisdiction to approve settlement agreements under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 meant that the court was authorized to grant orders entitling employers to payments out of pension plan surpluses.

[26] This court has granted declarations with respect to plan documents on numerous occasions. See, for example, *Burleton v. Royal Trust Corp. of Canada*, 2003 CanLII 23638 (ONSC) at paras. 33-35; *Reichhold Ltd. v. Wong*, 2000 CanLII 22338 (ONSC) at para. 36.

> **(3)** Subject to section 89, the Chief Executive Officer shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in whole unless,
>
> (a) the Chief Executive Officer is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;
>
> (b) the payment of surplus to the employer on the wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;
>
> (c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of the termination of the pension plan; and
>
> (d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus.

26. As s. 78(1) of the PBA provides that no surplus may be paid to an employer without the consent of the Chief Executive Officer, authorization either by court order or under s. 77.11 of the PBA is, effectively, a pre-requisite to the implementation of the Settlement Agreement.

27. Section 77.11 of the PBA contemplates either that FSRA will make a determination regarding surplus entitlement based on plan documents,[27] or that an agreement regarding surplus entitlement will be reached by, among other parties, at least two-thirds of the members of the pension plan.[28] Given that it could take several months for FSRA to make any determinations under s. 77.11 of the PBA – and given that any such determination would require extensive consideration of the governing documents of the Plans, which as discussed below may no longer exist, and that a vote among plan members would require considerable time and expense – the Monitor determined that proceeding on the basis of a negotiated solution with Representative

---

[27] PBA, s. 77.11(1)-(5).

[28] PBA, s. 77.11(7)-(8).

Counsel, subject to the subsequent approval of the Court and FSRA, represented the most efficient path forward for the Applicant and its stakeholders, including the Represented Parties.[29]

28. On this basis, the Monitor sought and obtained the Representative Counsel Order, which was expressly sought in contemplation of the Monitor subsequently seeking a declaration from the Court regarding surplus entitlement following the negotiation of a settlement agreement with Representative Counsel.[30] The Court approved this approach on the basis that it would, among other things, streamline negotiations and simplify the surplus distribution process.[31] Court approval for similar agreements regarding surplus distribution have frequently been granted in the past, including where the settlement agreement is an element in moving forward broader legal proceedings, such as in class proceedings.[32]

B. The Settlement Agreement Should be Approved

29. The Settlement Agreement is fair and reasonable in the circumstances and should be approved by the Court. The Settlement Agreement provides certainty by avoiding the spectre of uncertain and lengthy alternative processes, while simultaneously facilitating the conclusion of the CCAA Proceedings in a manner which maximizes creditor recoveries. Further, the Settlement Agreement, which is the product of good faith negotiations, is supported by the Monitor and

---

29 Report of the Monitor dated January 21, 2025, at para. 3.7 [Ninth Report].

30 *1000156489 Ontario Inc. (Re),* (January 28, 2025), Ont S.C.J. [Commercial List], Court File No. CV-22-00691990-00CL (Endorsement of Justice Dietrich) at para. 10 [*Representative Counsel Order Endorsement*]; Ninth Report at para. 3.6.

31 *Representative Counsel Order Endorsement*, at paras. 13, 16.

32 See, i.e., *Kidd v. Canada Life Assurance Co*., 2014 ONSC 457; *Montreal Trust Co. of Canada v. Armstrong*, 2006 CarswellOnt 5994 (ONSC).

Representative Counsel, and the Monitor is not aware of any of the Applicant's creditors which object to its approval.

(a) The Settlement Agreement Avoids Uncertain and Lengthy Alternatives

30. The Settlement Agreement provides the Applicant and the Represented Parties with certainty regarding the distribution of the surplus balance in the Plans, thereby avoiding both the alternative process for determination set out in the PBA, and any contested litigation.[33]

31. The avoidance of unnecessary and costly alternatives is an especially important benefit in the context of CCAA proceedings, and courts have approved settlement agreements where processes for resolving the settled claims could have required significant costs and effort, and where the settlement would provide certainty in a difficult and complex restructuring.[34] In this case, determining entitlement to the surplus under the Plans would be an especially complex exercise, as in many cases the relevant documents for the Salaried DB Plan and the Hourly DB Plan – which were established in 1977 and 1978, respectively – may no longer exist. In such circumstances, resolving the issue of surplus entitlement by way of contested litigation or under s. 77.11 of the PBA would have been a lengthy and costly exercise, which would have exposed both Applicant and the Represented Parties to significant risk.[35]

32. By fully and finally resolving the issue of surplus entitlement, the Settlement Agreement eliminates this risk, thereby providing essential certainty and finality to the Applicant moving

---

[33] Tenth Report at para. 4.6.

[34] *Northern Pulp*, at para. 17(a)-(b); *Maple Bank GmbH (Re),* 2016 ONSC 7218 at para. 10 [*Maple Bank*].

[35] Tenth Report at para. 4.6.

forward, to the benefit of creditors and stakeholders generally.[36] In particular, the Settlement Agreement provides the Applicant and other parties with the benefit of the releases contained therein,[37] which release the Released Parties from all demands, actions, causes of action, proceedings and claims whatsoever arising out of the wind ups or the division and distribution of surplus assets pursuant to the Settlement Agreement.[38]

33. The settlement of outstanding disputes in this manner has been found to be consistent with the spirit and purpose of the CCAA,[39] and courts have held that settlement of claims within the CCAA should therefore be encouraged:

> […] the chances of achieving a successful restructuring proceeding increase where the parties can agree on certain issues. Settlement agreements between the parties in these types of proceedings are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight.[40]

34. By protecting the Applicant from costly and time-consuming alternatives – in the process removing a pressing distraction during the ongoing restructuring – the Settlement Agreement provide a significant benefit to creditors and stakeholders generally, in a manner consistent with the spirit and purpose of the CCAA.

---

[36] Courts have held that where a settlement agreement avoids the risk of an adverse outcome, this supports the approval of the settlement: *Walter Energy Canada Holdings, Inc. (Re)*, 2017 BCSC 1968 at para. 34(c).

[37] Pursuant to the Settlement Agreement, the Represented Parties will release and discharge the Plans, the Monitor, the Applicant, Representative Counsel, and each of their respective affiliates, subsidiaries, predecessors and successors, and their respective directors, officers, employees and agents, and the Representatives (the "**Released Parties**").

[38] Tenth Report at para. 4.3(v).

[39] *Nortel*, at para. 74

[40] *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773 at para. 15.

(b) The Settlement Agreement Permits the CCAA Proceedings to Move Forward in a Manner Which Maximizes Recovery for Creditors

35. The issue of surplus entitlement is a key outstanding matter in the CCAA Proceedings, which, once resolved, will facilitate the ultimate wind-down of the Applicant's estate in a timely manner and the subsequent termination of the CCAA Proceedings.[41]

36. Further, the Settlement Agreement, by permitting the by Applicant to obtain the Company Share, will increase the recovery available to the Applicant's unsecured creditors in the CCAA Proceedings.[42] Should the Settlement Agreement be approved, approximately $2.5 million (net of accrued unpaid professional fees and fees necessary to complete the Claims Procedure and remaining wind-down activities) will be available for distribution to Claimants that participated in the Claims Procedure, which represents a recovery of approximately 8.1% for each Claimant with an accepted Claim. In contrast, should the Settlement Agreement not be approved, only approximately $1.1 million would be available, representing a recovery of 3.4%.[43]

(c) The Settlement Agreement is the Outcome of Good Faith Negotiations and is Supported by the Monitor and the Applicant's Largest Unsecured Creditor

37. The Settlement Agreement is the result of extensive, good faith, and arms length negotiations between the Monitor on behalf of the Applicant, and Representative Counsel on behalf of the Represented Parties (none of whom opted out of the Representative Counsel Order).

---

41 Tenth Report at para. 4.8.

42 Tenth Report at para. 4.4.

43 Tenth Report at paras. 5.5-5.7.

The Settlement Agreement is supported by both the Monitor and the Applicant's largest unsecured creditor as fair and reasonable in the circumstances, and in the best interest of the Applicant.[44]

38. Each of these facts strongly supports the approval of the Settlement Agreement. In approving settlements, courts have noted favourably where the settlement was the outcome of substantial, good faith negotiation between the parties.[45] Further, courts place significant weight on the support of the monitor for a settlement, especially where the subject matter of the settlement is complex – in such circumstances, the court will take into account the business judgment of the monitor, a court officer involved in the negotiation of the settlement.[46]

39. The Monitor has served all affected parties, including FSRA, with the materials for this motion and as of the date of this factum, the Monitor is not aware of any opposition.

C. The Stay Period Should be Extended

40. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

41. The Stay Period currently expires on August 29, 2025. The Monitor asks that the Stay Period be extended to and including January 31, 2026. The Monitor submits that extending the Stay Period is warranted for the following reasons:[47]

---

[44] Tenth Report at para. 4.7.

[45] *Northern Pulp*, at para. 18.

[46] *Nortel Networks Corporation (Re)*, 2018 ONSC 6257 at para. 27; *Maple Bank,* at para. 9.

[47] Tenth Report at para. 6.2.

(a) the Applicant, with the assistance and oversight of the Monitor, continues to act in good faith and with due diligence;

(b) the extension of the Stay Period is required to provide the necessary stability and certainty to enable the Monitor to facilitate the wind-down of the CCAA Proceedings;

(c) the extension of the Stay Period should provide the time necessary for the Monitor and Applicant to continue to pursue the distribution of surplus balance from the Plans, including the required approval of FSRA; and

(d) the Remaining Canadian Designated Amount Portion, together with any funds received by the Applicant in respect of the Hourly DB Plan and/or Salaried DB Plan surplus funds, are expected to provide sufficient liquidity to fund the remaining costs anticipated to be incurred to complete the wind-down of the CCAA Proceedings (and any related wind-down proceedings such as formal bankruptcies).

PART IV - NATURE OF THE ORDER SOUGHT

42. For the reasons set out above, the Monitor requests that this Court grant the proposed Settlement Approval Order and the proposed Stay Extension Order substantially in the form of the draft orders included at Tabs 2 and 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of August, 2025.

OSLER, HOSKIN & HARCOURT LLP
per Marleigh Dick

SCHEDULE "A": LIST OF AUTHORITIES

1. *1000156489 Ontario Inc. (Re),* (January 28, 2025), Ont S.C.J. [Commercial List], Court File No. CV-22- 00691990-00CL (Endorsement of Justice Dietrich)
2. *1057863 B.C. Ltd. (Re),* 2024 BCSC 1111
3. *Burleton v. Royal Trust Corp. of Canada*, 2003 CanLII 23638 (ONSC)
4. *Calpine Canada Energy Ltd. (Re)*, 2007 ABQB 504
5. *Great Basin Gold Ltd. (Re)*, 2012 BCSC 1773
6. *Kidd v. Canada Life Assurance Co*., 2014 ONSC 457
7. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp*., 2013 ONSC 1078
8. *Maple Bank GmbH (Re),* 2016 ONSC 7218
9. *Montreal Trust Co. of Canada v. Armstrong*, 2006 CarswellOnt 5994 (ONSC)
10. *Montreal Trust Co. of Canada v. Ontario (Superintendent of Financial Services),* 2009 ONFST 1
11. *Nortel Networks Corp*., (Re), 2010 ONSC 1708
12. *Nortel Networks Corporation (Re)*, 2018 ONSC 6257
13. *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd*., 2010 ONSC 1759
14. *Reichhold Ltd. v. Wong*, 2000 CanLII 22338 (ONSC)
15. *Robertson v. ProQuest Information & Learning Co*., 2011 ONSC 1647
16. *The Cash Store Financial Services Inc. (Re),* 2015 ONSC 7538
17. *Walter Energy Canada Holdings, Inc. (Re)*, 2017 BCSC 1968

I certify that I am satisfied as to the authenticity of every authority.

Date August 22, 2025

Signature
Marleigh Dick

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

General power of court

> **11** Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.
>
> […]

Stays, etc. — initial application

> **11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,
>
> > **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
> >
> > **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> >
> > **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

> **(2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,
>
> > **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
> >
> > **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> >
> > **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Pension Benefits Act, RSO 1990, c P.8

Entitlement to surplus

77.11 (1) Subject to section 77.11.1, the documents that create and support a pension plan and pension fund govern the entitlement of the employer and other persons to payment of surplus under the pension plan, except as otherwise provided under this Act and subject to the restrictions on payment set out in sections 78 and 79.

If no provision in a pension plan

(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after December 31, 1986.

Same, on wind up

(3) If a pension plan does not provide for payment of surplus to the employer on the wind up of the pension plan, the pension plan shall be construed to require that surplus accrued after December 31, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members, retired members and other persons entitled to payments under the pension plan on the date of the wind up**.**

On wind up of successor pension plan

(4) If a pension plan is a successor pension plan and if it is being wound up in whole or in part, the employer is not entitled to payment of surplus under the pension plan unless the documents that created and supported the original pension plan and pension fund and those that create and support the successor pension plan and pension fund both provide for payment of surplus to the employer on the wind up or partial wind up, as the case may be, of the pension plan.

Same

(5) Subsection (4) does not preclude a written agreement described in subsection (7) from providing for payment of surplus to the employer in the circumstances specified in the agreement.

Transition

(6) Subsection (4) does not apply if the effective date of the transfer of assets from the original pension plan to the successor pension plan is earlier than the date on which the Securing Pension Benefits Now and for the Future Act, 2010 received Royal Assent.

Agreement about surplus

(7) A written agreement among the following persons may provide for payment of surplus to the employer in the circumstances specified in the agreement and as of the date specified in the agreement:

1. If the surplus is to be paid to the employer while the pension plan continues in existence,

i. the employer,

ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents members may agree on behalf of those members), and

iii. the number which is considered appropriate in the circumstances by the Chief Executive Officer of former members, retired members and other persons who are entitled to payments under the pension plan as of the specified date for payment of the surplus.

2. If the surplus is to be paid to the employer on the wind up of the pension plan in whole,

i. the employer,

ii. at least two-thirds of the members of the pension plan (and, for this purpose, a trade union that represents or represented members on the date of the wind up may agree on behalf of those members), and

iii. the number which is considered appropriate in the circumstances by the Chief Executive Officer of former members, retired members and other persons who are entitled to payments under the pension plan as of the date of the wind up.

3. If the surplus is to be paid to the employer on the partial wind up of the pension plan,

i. the employer,

ii. at least two-thirds of the members of the pension plan affected by the partial wind up (and, for this purpose, a trade union that represents or represented affected members on the date of the partial wind up may agree on behalf of those members), and

iii. the number which is considered appropriate in the circumstances by the Chief Executive Officer of former members, retired members and other persons who are affected by the partial wind up and who are entitled to payments under the pension plan as of the date of the partial wind up.

Effect of agreement

(8) A written agreement prevails over any document that creates and supports the pension plan and pension fund, it prevails over subsections (2), (3) and (4), and it prevails despite any trust that may exist in favour of any person.

[…]

Payment out of pension fund to employer

78 (1) No money that is surplus may be paid out of a pension fund to the employer without the prior consent of the Chief Executive Officer.

[…]

Payment of surplus

Continuing pension plan, payment to employer

79

[…]

Wind up, payment to employer

(3) Subject to section 89, the Chief Executive Officer shall not consent to payment of surplus to an employer out of a pension plan that is being wound up in whole unless,

(a) the Chief Executive Officer is satisfied, based on reports provided with the employer's application for payment of the surplus, that the pension plan has a surplus;

(b) the payment of surplus to the employer on the wind up of the pension plan is authorized either as provided in section 77.11 or by a court order declaring that the employer is entitled to the surplus when the plan is being wound up;

(c) provision has been made for the payment of all liabilities of the pension plan as calculated for purposes of the termination of the pension plan; and

(d) the applicant and the pension plan comply with all other requirements prescribed under other sections of this Act in respect of the payment of surplus.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 1000156489 ONTARIO INC.

Court File No: CV-22-00691990-00CL

Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE MONITOR

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, Suite 6200
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Martino Calvaruso (LSO# 57359Q)
Tel: 416.862.6665
Email mcalvaruso@osler.com

Fax: 416.862.6666

Counsel for Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of 1000156489 Ontario Inc. (f/k/a DCL Corporation) and not in its personal or corporate capacity