

**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 1000156489 ONTARIO INC. (the “**Applicant**”)

APPLICANT

**FACTUM**

June 15, 2023

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solely in its capacity as Monitor of  
1000156489 Ontario Inc. (f/k/a DCL  
Corporation) and not in its personal or  
corporate capacity

## 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) (“**DCL Canada**” or the “**Applicant**”) in its proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. On this motion, the Monitor seeks an order (the “**Claims Procedure Order**”) for, among other things, the following relief:

(a) granting the proposed claims procedure (the “**Claims Procedure**”) pursuant to which claimants may file claims against the Applicant, or against the Applicant’s current or former directors (“**Directors**”) or officers (“**Officers**”), as applicable; and

(b) extending the period of the CCAA stay of proceedings (the “**Stay Period**”) until and including December 31, 2023.

3. The Applicant and its affiliated Chapter 11 Debtors recently underwent a sale process culminating in a going-concern sale of substantially all of the business and assets of the Applicant and the Chapter 11 Debtors. The Applicant no longer has any business, operations, or employees. On May 8, 2023, this Court granted the Monitor the expanded powers necessary to conduct an orderly wind-down of the Applicant. A necessary step in this orderly wind-down is a determination of the number and value of claims against the Applicant.

4. The Monitor now seeks approval of the Claims Procedure to effect this determination. The proposed Claims Procedure is typical of liquidating CCAAs and similar claims procedures have been approved in prior CCAA proceedings. The Claims Procedure will be implemented by the

Monitor and provides potential Claimants with sufficient notice and time to evaluate their potential Claims and submit Proofs of Claim accordingly. The Monitor also seeks to extend the Stay Period for the period necessary to implement the proposed Claims Procedure and to begin to assess, quantify and seek to resolve the claims filed in connection therewith. The Monitor submits that the Claims Procedure Order is fair and reasonable and should be granted.<sup>1</sup>

## PART II - SUMMARY OF FACTS

### A. The CCAA Proceedings

5. The Applicant is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”).<sup>2</sup> Holdings is 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**”).<sup>3</sup>

6. On December 20, 2022, the Applicant obtained an initial order from this Court under the CCAA, pursuant to which the Monitor was appointed as monitor.<sup>4</sup>

7. The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group.<sup>5</sup> On the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (the “**Chapter 11 Debtors**”) each 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 “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and

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<sup>1</sup> Unless otherwise stated, all monetary amounts referred to in this factum are expressed in U.S. dollars. Capitalized terms used in this factum but not otherwise defined herein have the meanings accorded to them in the Sixth Report of the Monitor dated June 14, 2023 (the “[Sixth Report](#)”), the Fifth Report of the Monitor dated May 3, 2023 (the “[Fifth Report](#)”), or the Claims Procedure Order.

<sup>2</sup> Sixth Report at para. 1.3.

<sup>3</sup> Sixth Report at para. 1.3.

<sup>4</sup> Sixth Report at para. 1.1.

<sup>5</sup> Sixth Report at para. 1.4.

together with the CCAA Proceedings, the “**Restructuring Proceedings**”).<sup>6</sup> On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.<sup>7</sup>

8. The DCL Group conducted a sales process in the restructuring proceedings that culminated in a transaction (the “**Transaction**”) with Pigments Services, Inc. (including any permitted assignees, “**Pigments**”).<sup>8</sup> The Transaction included the sale of substantially all the business and assets of the Applicant.

9. On March 29, 2023, this Court issued an Order (the “**Approval and Vesting Order**”) approving the Transaction and extending the Stay Period until and including June 30, 2023. The Transaction closed on April 14, 2023.<sup>9</sup>

10. On May 8, 2023, this Court issued an Order (the “**Expansion of Monitor’s Powers Order**”), which granted the Monitor expanded powers to, among other things, oversee the wind-down activities of the Applicant, including making an orderly distribution to creditors.<sup>10</sup>

**(a) Amounts Received by the Monitor**

11. Upon closing of the Transaction, Pigments paid the following amounts to the Monitor (each as defined below):

(a) The Canadian Designated Amount Portion of \$575,000;

(b) The CCAA Cash Pool of \$750,000; and

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<sup>6</sup> Sixth Report at para. 1.4.

<sup>7</sup> Sixth Report at para. 1.4.

<sup>8</sup> Sixth Report at para. 1.6.

<sup>9</sup> Sixth Report at para. 1.6.

<sup>10</sup> Sixth Report at para. 1.7.

- (c) Approximately \$1.4 million in respect of HST exigible on the Transaction, to be held on behalf of the Applicant, in trust.<sup>11</sup>

*Canadian Designated Amount Portion*

12. Pursuant to the Approval and Vesting Order, the Canadian Designated Amount Portion is to be used to pay all remaining costs, professional fees and other amounts incurred in connection with the CCAA Proceedings and the wind-down of the Applicant.<sup>12</sup>

13. The Monitor has not yet disbursed any amounts from the Canadian Designated Amount Portion and continues to hold \$575,000. Approximately \$255,000 (CAD \$340,000) of professional fees are outstanding to the Applicant's legal counsel, the Monitor, and the Monitor's legal counsel, relating to the period after the closing of the Transaction.<sup>13</sup>

14. Any excess amounts remaining from the Canadian Designated Amount Portion will be transferred to the CCAA Cash Pool.<sup>14</sup>

*CCAA Cash Pool*

15. Pursuant to the Approval and Vesting Order, the CCAA Cash Pool is to be held by the Monitor for the benefit of the Applicant's estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings. The Monitor has not yet disbursed any amounts from the CCAA Cash Pool and continues to hold \$750,000.<sup>15</sup> It is intended that the CCAA Cash Pool, less

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<sup>11</sup> Sixth Report at para. 3.6.

<sup>12</sup> Sixth Report at para. 3.7.

<sup>13</sup> Sixth Report at para. 3.8.

<sup>14</sup> Fifth Report at para. 4.7.

<sup>15</sup> Sixth Report at para. 3.9.

any applicable administrative costs, will be made available for distribution to claimants with proven claims in the Claims Procedure, subject to further order of this Court.

### *HST Balance*

16. The Monitor continues to hold on behalf of the Applicants approximately \$1.4 million in respect of HST eligible on the Transaction. The Monitor is currently working with the Applicant's tax advisors to file the applicable HST returns and to remit the amount required to the Canada Revenue Agency on behalf of the Applicant.<sup>16</sup>

### **B. Proposed Claims Procedure**

17. Now that the Transaction has closed, it is necessary to conduct an orderly wind-down of the Applicant. This will begin through the implementation of the Claims Procedure.

18. The purpose of the proposed Claims Procedure is to establish a process for the identification, quantification, and resolution of claims of claimants of the Applicant and of the Applicant's current and former Directors and Officers.<sup>17</sup> The Claims Procedure will be implemented by the Monitor on behalf of the Applicant.<sup>18</sup>

19. Key steps and timelines in the proposed Claims Procedure Order are summarized below:<sup>19</sup>

<b>Timeframe</b>	<b>Activity</b>
June 20, 2023	Scheduled date for the hearing of the motion seeking the proposed Claims Procedure Order
No later than July 4, 2023	Claims Packages to be sent by the Monitor, on behalf of the Applicant, to each of the known Potential Claimants
August 18, 2023	Claims Bar Date for the filing of Prefiling Claims against the Applicant and the Director/Officer Claims

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<sup>16</sup> Sixth Report at para. 3.10.

<sup>17</sup> Sixth Report at para. 4.2.

<sup>18</sup> Sixth Report at para. 4.4.

<sup>19</sup> Sixth Report at para. 4.3.

**(a) Claims**

20. The proposed Claims Procedure will solicit the following claims:<sup>20</sup>

- (a) **Prefiling Claims:** any right or claim of any Person against the Applicant in connection with any indebtedness, liability or obligation of any kind whatsoever in existence on or before the Filing Date (December 20, 2022);
- (b) **Restructuring Period Claims:** any right or claim of any Person against the Applicant arising out of the restructuring, disclaimer, termination or breach by the Applicant on or after the Filing Date of any contract, lease or other agreement; and
- (c) **Director/Officer Claims:** any existing or future right or claim of any Person against one or more of the Directors and/or Officers of the Applicant in their capacity as a Director or Officer.

21. The proposed Claims Procedure does not apply to any Excluded Claim, namely:<sup>21</sup>

- (a) any Claim secured by any of the Charges (as defined in the Amended and Restated Initial Order);
- (b) any Claim of Pigments or any Affiliate thereof;
- (c) any Claim of: (a) Wells Fargo Bank, National Association, including any Claim as Administrative Agent under the Credit Agreement, dated as of April 25, 2018 (as amended, supplemented and otherwise modified from time to time) (the

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<sup>20</sup> Sixth Report at para. 4.4.

<sup>21</sup> Sixth Report at para. 4.5.

“**Revolving Loan Agreement**”); (b) Delaware Trust Company, including any Claim as Collateral Agent under the Credit Agreement, dated as of April 6, 2018 (as amended, supplemented and otherwise modified from time to time) (the “**Term Loan Agreement**”); (c) any lender or other agent from time to time under the Revolving Loan Agreement or the Term Loan Agreement; and (d) and in each case of (a), (b), or (c), any of their respective Affiliates;

- (d) any Claim enumerated in sections 5.1(2) and 19(2) of the CCAA; and
- (e) any Excluded Claim arising through subrogation.

**(b) Claims Bar Dates**

22. Any Claimant asserting a Prefiling Claim and/or a Director/Officer Claim must file the applicable Proof of Claim form with the Monitor in respect of such claim by 5:00PM Eastern Standard Time on August 18, 2023 (the “**Claims Bar Date**”).<sup>22</sup> Any Prefiling Claim or Director/Officer Claim not filed by the Claims Bar Date shall be extinguished and the Claimant barred from asserting such Claim.<sup>23</sup>

23. Any Claimant asserting a Restructuring Period Claim must file the applicable Proof of Claim form with the Monitor in respect of such claim by the later of: (i) thirty (30) days after the date on which the Monitor sends a Claims Package in respect of such Restructuring Period Claim; or (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”).<sup>24</sup> Any Restructuring

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<sup>22</sup> Sixth Report at para. 4.8.

<sup>23</sup> Sixth Report at paras. 4.8 and 4.18.

<sup>24</sup> Sixth Report at para. 4.9.

Period Claim not filed by the Claims Bar Date shall be extinguished and the Claimant barred from asserting such Claim.<sup>25</sup>

**(c) Assessment and Determination of Claims**

24. The Monitor will review all Proofs of Claim received on or before the applicable claims bar date and accept, revise, or disallow the classification, nature, and/or amount of each Claim.<sup>26</sup>

25. If the Monitor intends to revise or disallow a Claim, the Monitor will notify the Claimant by sending a Notice of Revision or Disallowance along with the reasons for such revision or disallowance.<sup>27</sup> A Claimant wishing to dispute a Notice of Revision or Disallowance must file a Notice of Dispute or Revision or Disallowance within fourteen (14) calendar days after the date on which the Monitor sent the Notice of Revision or Disallowance.<sup>28</sup> Any Claimant that does not file a Notice of Dispute of Revision or Disallowance with the Monitor within the 14-day time period shall be deemed to have accepted the amount and determination as set out in the Notice of Revision or Disallowance for voting and distribution purposes, as applicable. The Claimant's right to dispute the same or otherwise pursue the Claim in a greater amount than that provided for in the Notice of Revision of Disallowance shall be forever extinguished and barred.<sup>29</sup>

26. In respect of Director/Officer Claims, the Monitor will undertake its review of such Proofs of Claim in consultation with the relevant Director or Officer.<sup>30</sup> The Monitor will provide the relevant Director or Officer (and their counsel, if known) with a copy of any Proofs of Claim received in respect of such Director/Officer Claims. The Monitor will also provide the relevant

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<sup>25</sup> Sixth Report at paras. 4.9 and 4.18.

<sup>26</sup> Sixth Report at para. 4.11.

<sup>27</sup> Sixth Report at para. 4.12.

<sup>28</sup> Sixth Report at para. 4.13.

<sup>29</sup> Sixth Report at para. 4.14.

<sup>30</sup> Sixth Report at para. 4.11.

Director or Officer (and their counsel, if known) with any applicable Notice of Revision or Disallowance and Notice of Dispute of Revision or Disallowance.<sup>31</sup>

27. Directors or Officers subject to Director/Officer Claims may be entitled to claim indemnification from the Applicant. Such claims for indemnification are “**D&O Indemnity Claims**”.<sup>32</sup> For each Director/Officer Claim filed in accordance with the Claims Procedure, a corresponding D&O Indemnity Claim shall be deemed to have been filed in respect of each Director/Officer Claim prior to the applicable claims bar date.<sup>33</sup> Directors and Officers shall not be required take any action in respect of any such D&O Indemnity Claim.<sup>34</sup>

28. The proposed Claims Procedure Order provides that any Person that does not deliver a Proof of Claim to the Monitor on or before the applicable claims bar date: (i) shall not be entitled to attend or vote at a Meeting in respect of such Claim; (ii) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise; (iii) shall not be entitled to any further notice in the CCAA Proceedings (unless it has otherwise sought to be included on the Service List); and (iv) shall be forever barred from making or enforcing such Claim against the Applicant, the Directors or the Officers or any of them, and such Claim shall be extinguished without any further act or notification.<sup>35</sup>

### **PART III - THE ISSUES AND THE LAW**

29. The issues now before this Court are whether:

- (a) this Court should approve the proposed Claims Procedure; and

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<sup>31</sup> Sixth Report at paras. 4.11-4.13.

<sup>32</sup> Claims Procedure Order, section 2(l).

<sup>33</sup> Sixth Report at para. 4.17.

<sup>34</sup> Sixth Report at para. 4.17.

<sup>35</sup> Sixth Report at para. 4.18.

(b) this Court should extend the Stay of Proceedings until December 31, 2023.

**A. The Claims Procedure should be approved**

30. Section 11 of the CCAA gives the Court the power to make any order it considers appropriate in the circumstances, which includes the ability to approve a process for filing and determining claims against a debtor company. Furthermore, the Court's power under section 12 of the CCAA to "fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement" has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.<sup>36</sup>

31. The general practice in CCAA proceedings is for debtors to apply to the Court for approval of a process to solicit claims against the debtor company and/or its directors and officers and to establish a deadline for filing claims. This Court routinely approves claims processes in CCAA restructurings.<sup>37</sup>

32. A claims procedure enables a CCAA debtor to determine the validity and quantum of claims against the debtor and/or its officers and directors in order to make a distribution to creditors. This determination is key to any CCAA proceeding, including a proceeding involving a liquidation of assets.<sup>38</sup>

33. Claims procedure orders should be both flexible and expeditious to achieve the broad remedial objectives of the CCAA and to ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.<sup>39</sup> The order should be fair and

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<sup>36</sup> *Re Toys "R" Us (Canada) Ltd.*, [2018 ONSC 609](#) [Commercial List] at para. 8 [*"Toys 'R' Us"*]; *Re Timminco Ltd.*, [2014 ONSC 3393](#) at para. 40 [*"Timminco"*].

<sup>37</sup> *Toys "R" Us* at [para. 8](#); see also *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#) [*"U.S. Steel"*] at paras. 5-6.

<sup>38</sup> *Re Walter Energy Canada Holdings Inc.*, [2016 BCSC 1746](#) [*"Walter"*] at para. 81; *Timminco* at [para. 41](#).

<sup>39</sup> *Re ScoZinc Ltd.*, [2009 NSSC 136](#) at para. 23; *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#) at para. 30-31 [*"Laurentian"*].

reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims.<sup>40</sup>

34. The proposed Claims Procedure is fair and reasonable and should be approved.

(a) *The Claims Procedure provides sufficient notice to Potential Claimants.* The Monitor will send a Claims Package to each known Potential Claimant by or before July 4, 2023; advertise the Claims Procedure in a national newspaper and publish information about the Claims Procedure on its website; and deliver a copy of the Claims Package to any Person claiming to be a Claimant upon request.<sup>41</sup> With respect to any notices of disclaimer delivered after the date of the Claims Procedure Order, the Monitor will deliver an accompanying Claims Package.<sup>42</sup>

(b) *Potential Claimants have sufficient time to submit a Proof of Claim.* The Claims Bar Date for Pre-Filing Claims and Director/Officer Claims is August 18, 2023. Potential Claimants with Pre-Filing Claims and/or Director/Officer Claims will therefore have more than a month to submit Proofs of Claim in respect of such claims.<sup>43</sup> Similarly, Potential Claimants with Restructuring Period Claims will have a minimum period of thirty (30) days to file the applicable Proof of Claim form with the Monitor. The Monitor believes that these periods are sufficient for a Claimant to evaluate and submit any Claim they may have.<sup>44</sup>

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<sup>40</sup> *Laurentian* at [para. 32](#).

<sup>41</sup> Sixth Report at para. 4.10.

<sup>42</sup> Sixth Report at para. 4.10.

<sup>43</sup> Sixth Report at para. 4.8.

<sup>44</sup> Sixth Report at paras. 4.8 and 4.9.

- (c) *The Claims Procedure is employee-friendly.* Unionized workers of the Applicant are represented by the Teamsters Chemical, Energy and Allied Workers (Local Union No. 1979) (the “**Union**”). The Union is authorized to file a Proof of Claim on its own behalf and on behalf of any or all Unionized Employees.<sup>45</sup> Any Non-Union Employee wishing to file a Proof of Claim can obtain a Claims Package from the Monitor. The Monitor is authorized and empowered to assist any Claimant, including any current or former employee of the Applicant or the Union, in filing a Proof of Claim.<sup>46</sup>
- (d) *The Claims Procedure will be independent.* The Monitor will undertake the Claims Procedure, in consultation with Directors and Officers where appropriate.
- (e) *Disputed Claims will be fairly and efficiently adjudicated.* If a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a satisfactory time period or manner, the Monitor shall notify the Claimant (and, if applicable, any relevant Directors or Officers and their counsel). The Monitor shall then refer the Claim to dispute resolution, either to the Court or to such alternative dispute resolution proceeding as may be ordered by the Court or agreed to by the parties (the Claimant, the Monitor, and if applicable, any relevant Directors or Officers).<sup>47</sup>

**B. The Stay of Proceedings should be extended**

35. 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

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<sup>45</sup> Sixth Report at para. 4.7.

<sup>46</sup> Sixth Report at para. 4.6.

<sup>47</sup> Sixth Report at paras. 4.15-4.16.

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.

36. The Stay Period currently expires on June 30, 2023. The Monitor asks that the Stay Period be extended until December 31, 2023. The Monitor submits that extending the Stay Period is warranted for the following reasons:

- (a) extending the Stay Period to December 31, 2023 will provide the necessary time for the Monitor to implement the proposed Claims Procedure and to assess, quantify and seek to resolve the claims filed in connection therewith;
- (b) the stay of proceedings is required to provide the necessary stability and certainty to enable the Monitor to facilitate the wind-down of the CCAA Proceedings;
- (c) the Canadian Designated Amount Portion and the CCAA Cash Pool are expected to provide sufficient liquidity to fund the remaining costs associated with the wind-down of the Applicant's estate and other administrative costs of the CCAA Proceedings, respectively, including, for certainty, through to and beyond the proposed extended Stay Period; and
- (d) the Applicant, under the direction and oversight of the Monitor, continues to act in good faith and with due diligence.<sup>48</sup>

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<sup>48</sup> Sixth Report at para. 5.2.

**PART IV - NATURE OF THE ORDER SOUGHT**

37. For the reasons set out above, the Monitor requests that this Court grant the proposed Claims Procedure Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 15th day of June, 2023:



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**OSLER, HOSKIN & HARCOURT, LLP**  
**per Marleigh Dick**

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**TO: SERVICE LIST**

## SCHEDULE “A”: LIST OF AUTHORITIES

### *Cases*

1. *In the matter of a plan of compromise or arrangement of DCL Corporation*, Court File No. CV-22-00691990-00CL (Ont SCJ [Commercial List]), Fifth Report of the Monitor Alvarez & Marsal Canada Inc, May 3, 2023 (the “[Fifth Report](#)”)
2. *In the matter of a plan of compromise or arrangement of DCL Corporation*, Court File No. CV-22-00691990-00CL (Ont SCJ [Commercial List]), Sixth Report of the Monitor Alvarez & Marsal Canada Inc, June 14, 2023 (the “[Sixth Report](#)”)
3. *Laurentian University of Sudbury*, [2021 ONSC 3885](#)
4. *ScoZinc Ltd.*, [2009 NSSC 136](#)
5. *Timminco Ltd.*, [2014 ONSC 3393](#)
6. *Toys “R” Us (Canada) Ltd.*, [2018 ONSC 609](#) [Commercial List]
7. *U.S. Steel Canada Inc.*, [2017 ONSC 1967](#)
8. *Walter Energy Canada Holdints Inc*, [2016 BCSC 1746](#)

**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.

**Burden of proof on application**

**11.02 (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.

**Fixing deadlines**

**12** The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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

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

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

Applicant

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**FACTUM**

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Corporation) and not in its personal or corporate capacity