Court File No.: CV-22-00683820-00CL

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 VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

FACTUM OF CO-COUNSEL TO THE PROPOSED CLASS ACTION PLAINTIFF

August 10, 2022

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TO: **SERVICE LIST**

PART I – OVERVIEW

1. Voyager Digital Ltd. ("**VDL**" or the "**Canadian Debtor**") is a publicly listed company that traded on the Toronto Stock Exchange. Through its wholly owned U.S. subsidiary entities, Voyager Digital, LLC, and Voyager Digital Holdings, Inc. (collectively, the "**American Debtors**" and with the Canadian Debtor, "**Voyager**"), Voyager operated a non-custodial cryptocurrency exchange.[1]

2. At the height of its operations, Voyager purportedly had 3.5 million users and $5.9 billion USD in assets.[2] Voyager (through the American Debtors) generated revenue by, among other things, loaning its clients' crypto assets to third parties.[3]

3. Despite Voyager's initial success, it has since entered into concurrent insolvency proceedings in both the United States and Canada (the "**US Proceeding**" and the "**Canadian Proceeding**", respectively), due to, *inter alia*, risky billion-dollar lending practices. Voyager's capital raises and alleged securities offerings are also being either investigated or halted by regulators in Canada and the United States.

4. Many comments circulating online indicate that shareholders of the Canadian Debtor ("**VDL Shareholders**") are confused and fearful. They are primarily retail investors, who do not have the financial means to independently retain counsel to participate in these complex, cross-border proceedings. At present, VDL Shareholders have no public representation in the ongoing Canadian or US Proceedings, beyond the retainer held by the proposed class action plaintiff of Ms. De Sousa ("**De Sousa**") in a proposed class proceeding that has been stayed by the Canadian Proceeding ("**De Sousa Class Action**").

5. As of early August 2022, Siskinds LLP has received subscription requests from 610 individuals and/or entities who are likely VDL Shareholders.[4] It is highly probable that there are even more vulnerable VDL Shareholders who will require additional

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[1] Amended Affidavit of Tamie Dolny sworn August 7, 2022 (the "**Dolny Affidavit**") at Exhibit A.
[2] Dolny Affidavit at Exhibit E.
[3] Dolny Affidavit at Exhibit D.
[4] Dolny Affidavit at para 36.

representation beyond this number, given: (i) the size of the Canadian Debtor's financings on the Toronto Stock Exchange, with VDL Shareholders giving a total amount of over $280 million in paid-in capital to the Canadian Debtor;[5] and, (ii) online communities discussing both the Canadian and US Proceeding, which contain over 7,700 individual members.

6. On August 4, 2022 (the "**August Hearing**"), the United States Bankruptcy Court for the Southern District Court of New York issued orders which could be materially impactful and prejudicial to the VDL Shareholders' legal rights. None of the existing counsel groups appearing in the US Proceeding raised any concerns about potential prejudice to the VDL Shareholders. Clearly, independent counsel for the VDL Shareholders is necessary, without which VDL Shareholders will continue to suffer insurmountable prejudice.

7. On August 8, 2022, Alvarez & Marsal Canada Inc. in its capacity as the information officer in the Canadian Proceeding (the "**Information Officer**") served its first report (the "**First Report**"), which set out that the American Debtors owe $71.5 million to the Canadian Debtor by way of unsecured intercorporate debt obligations (the "**Intercorporate Debt**"). These Intercorporate Debt details were disclosed following many requests for this information and significant ongoing efforts by Siskinds LLP/Aird & Berlis LLP on behalf of VDL Shareholders. However, the First Report did not include any information relating to any insurance policies that may be responsive to the claims of the VDL Shareholders.

8. While VDL Shareholders will require further information on the Intercorporate Debt as Voyager continues its cross-border restructuring, the quantum of the Intercorporate Debt suggests that there may well be funds available for the VDL Shareholders. Additional advocacy is required on behalf of the VDL Shareholders to ensure that any potential recovery on the Intercorporate Debt can be achieved, and that no substantive consolidation of the Canadian Debtor occurs during the ongoing US Proceeding.

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[5] First Report of the Information Officer dated August 8, 2022 (the "**First Report**") at para 4.13.

9. Given the public nature of this file and the mounting public interest concerns of thousands of VDL Shareholders, this factum is filed in support of a motion which seeks the following relief (collectively, the "**Relief**"):

   (a) *Interim Relief*, as follows*:* That the Canadian Debtor provide counsel to De Sousa with the following "Information Provisions":[6]

      (i) Copies of any insurance policies, from whatever source, that may be responsive to the claims of the putative class members in the De Sousa Class Action (as defined below);

   (b) *Additional Relief*, as follows*:*

      (i) Certain amendments to the supplemental order granted by the Honourable Madam Justice Kimmel on July 12, 2022 (the "**Supplemental Order**") in the nature of tolling rights;[7]

      (ii) Appointing Siskinds LLP/Aird & Berlis LLP as representative counsel (in such capacity, "**Representative Counsel**") for VDL Shareholders impacted in the Canadian and US Proceeding, to be funded by a charge on the estate of the Canadian Debtor or by such other financial arrangement that this Honourable Court finds acceptable; and

      (iii) Allowing for the creation of an equity committee in the Canadian Proceeding from which Representative Counsel shall take instruction, which will include De Sousa (as defined below) as one of its members to represent the interests of the VDL Shareholders (the "**Equity Committee**").

10. It is respectfully submitted that the vulnerable VDL Shareholders require immediate Canadian judicial intervention to ensure the protection of their legal rights, given their status as retail investors and potential victims of significant misconduct.

PART II – FACTS

11. From 2021 to 2022, Voyager engaged in financing activities through its trading on public markets through the Canadian Debtor. The Canadian Debtor's primary regulator was the Ontario Securities Commission, and it was a reporting issuer in all provinces and territories

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[6] Due to the timing of service of the First Report, certain relief in the Notice of Motion dated August 4, 2022, relating to the disclosure of the Intercorporate Debt, is no longer being sought at this time. This may be sought at a later date.
[7] Due to ongoing discussions with the Information Officer, certain relief relating to an expansion of its powers is no longer being sought. Further details on this are outlined in the legal section of this Factum.

of Canada.[8]

12. Voyager stated publicly in its regulated Canadian securities disclosure documents that:[9]

    (a) Voyager limited its own credit risk by only lending to high-quality financial institutions;

    (b) Voyager entered into loan/borrow agreements on both an unsecured and secured basis; and

    (c) Voyager's primary source of liquidity was from operations cash *and* net proceeds from capital raising activities.

13. However, despite these comments, and despite VDL raising over $280 million in paid-in capital,[10] Voyager was allegedly holding billions of USD in cryptocurrency loans despite only having a market capitalization of $64 million USD by the spring of 2022.[11]

14. Media reports have since heavily criticized comments made by Voyager's CEO, Stephen Ehrlich ("**Ehrlich**"), that Voyager was a victim, and have highlighted that Voyager engaged in highly risky unsecured lending practices to the detriment of both VDL Shareholders and customers.[12] The Canadian Debtor's disclosure relating to these loans is the subject of the De Sousa Class Action.

15. On June 22, 2022, Voyager announced that it had issued a notice of default to Three Arrows Capital ("**3AC**") to call on an unsecured loan equivalent to roughly $650 million CDN (the "**3AC Loan**"). 3AC has entered into insolvency proceedings across multiple jurisdictions, and subpoenas have since been issued for the missing-at-large founders of 3AC by a federal American bankruptcy court in the Southern District of New York.[13]

16. Connections between Voyager and certain of its creditors, including the insolvent 3AC, remain murky and unclear. A thorough explanation for Voyager's decision to enter into

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[8] Dolny Affidavit at para 6.
[9] Dolny Affidavit at para 9; term used colloquially as per use in underlying source documents.
[10] First Report at para 4.13.
[11] Dolny Affidavit at paras 9-11.
[12] Dolny Affidavit at paras 10-17 and 21.
[13] Dolny Affidavit at para 18 and 20-22.

unsecured loans with its specific loan counter-parties for billions of dollars has not been publicly disclosed.

17. Voyager's loan counter-parties have also been accused of significant misconduct by the press and within filed legal documents across various jurisdictions. While 3AC's missing-at-large founders claimed that their significant financial losses were due to the collapse of the Terra/Luna blockchain ("**Terra**"), parties in other legal proceedings have raised pressing quasi-criminal concerns, including allegations of the inappropriate use of $106 million in 3AC's company funds, the inappropriate movement of crypto-assets and the transfer of $31 million USD to a potentially related corporate entity. [14]

18. After issuing notices of default to 3AC for failure to make payments on the 3AC Loan, Voyager suspended trades in early July of 2022 and shortly thereafter entered into the US Proceeding.[15]

19. Even prior to its US Proceeding, Voyager has been the subject of misconduct allegations from various securities regulators. In March of 2022, Voyager announced that it received orders from eight US state securities divisions for allegedly selling unregistered securities, with further investigations announced by July of 2022. In addition, further media reports confirm that Ehrlich made millions in disposing of Voyager equity in the spring of 2021, and that he personally offloaded his stock alongside his Delaware-based limited liability companies, with his three largest transactions being worth approximately $19 million USD.[16]

20. After starting the US Proceeding, on or about July 6, 2022, public trading in the Canadian Debtor's shares was suspended by the Investment Industry Regulatory Organization of Canada ("**IIROC**"). On the same date, Ms. De Sousa issued a notice of action for a proposed class action proceeding in Ontario against the Canadian Debtor and certain other

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[14] Dolny Affidavit at para 21.
[15] Dolny Affidavit at para 7, 19 and 34.
[16] Dolny Affidavit at paras 25-26 and 29.

individuals, including Ontario-based parties on behalf of all securities claimants and current shareholders of the Canadian Debtor.[17]

21. On July 12, 2022, the Canadian Debtor obtained initial recognition and certain other relief before this Honourable Court (the "**Initial Recognition Order**") under the *Companies' Creditors Arrangement Act* (the "**CCAA**")[18] regarding the US Proceeding. This Honourable Court deferred to July 19, 2022, the issues of whether: (i) the COMI of the Canadian Debtor is America or Canada; and (ii) the US Proceeding should be recognized as a "foreign main proceeding".

22. An endorsement released by this Honourable Court on August 4, 2022 decided that the COMI of the Canadian Debtor is America, and that the US Proceeding should be recognized as a "foreign main proceeding".[19] In this endorsement, this Honourable Court emphasized that there would be no prejudice to the Canadian stakeholders caused by the difference between finding that the proceedings in the US are "foreign main" as opposed to "foreign non-main proceedings". Accordingly, the protection of VDL Shareholders and the ability to seek the Relief sought herein, including the appointment of Representative Counsel and the Equity Committee, should not be impacted by this decision.

23. VDL Shareholders are the largest claimant and contingent creditor group of the Canadian Debtor (and its directors and officers), and are a 600-plus collective that likely has little means to pursue a claim within the ongoing complex restructuring proceedings on an individual basis, without the intervention of this Honourable Court. As stated above, no representations by American legal counsel were made during the August Hearing to preserve or protect the rights of VDL Shareholders. Furthermore, the current proposed restructuring (the "**American Plan**") *practically* substantially consolidate Voyager and is likely to significantly negatively impact VDL Shareholders' claims.[20]

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[17] Dolny Affidavit at paras 27-28.
[18] R.S.C. 1985, c. C-36.
[19] Dolny Affidavit at para 35.
[20] Dolny Affidavit at paras 32-33.

24. In essence, VDL Shareholders lack legal representation. Without urgent judicial intervention, they face the potential annihilation of their legal rights.

PART III – ISSUES

25. The issues are whether this Honourable Court should:

(a) Authorize the release of the Information Provisions to counsel to De Sousa;

(b) Amend the Supplemental Order by lifting the stay against the directors and officers and imposing tolling limitations; and

(c) Appoint Representative Counsel for VDL Shareholders impacted in the Canadian proceeding and the ongoing US proceeding, to be funded by a charge on the estate of the Canadian Debtor, and further allow the formation of the Equity Committee?

PART IV- LAW & LEGAL AUTHORITIES

(A) THE INFORMATION PROVISIONS SHOULD BE RELEASED

26. The Canadian Debtor has refused to provide: (i) the details of its insurance that is potentially responsive to claims asserted by the VDL Shareholders; or (ii) complete details relating to the Intercorporate Debt.[21] This information imbalance ought to be rectified to allow VDL Shareholders to make informed decisions as to the steps to be taken to protect their rights.

27. Canadian Courts have repeatedly emphasized that early pre-discovery production of insurance is a pragmatic necessity. In *Sharma v. Timminco Ltd.*, Justice Perell ordered the defendant, a publicly traded company much like the Canadian Debtor, to produce its insurance to the plaintiff, in part, for the following reasons:

> Although Mr. Sharma's lawyers have some knowledge about the insurance policies, that information is neither comprehensive nor adequate. Requiring disclosure of insurance information encourages the parties to make practical or pragmatic decisions about the likelihood of recovery […] Mr. Sharma's lawyers would be irresponsible if they provided advice or made a decision based on the current state of information. […]
>
> The information would be relevant to settlement discussions, but it is also relevant to […] prosecute the action. The relationship between the costs of litigation and the collectable

[21] As noted above, relief sought relating to the Intercorporate Debt is reserved for a later date, in light of disclosure of the Intercorporate Debt amount within the First Report.

> amount of recovery is a matter of concern to a plaintiff and to his or her counsel acting under a contingency fee arrangement, and this concern is particularly intense in a proposed class proceeding where the costs and the risks associated with the litigation will be high.[22]

28. Similarly, in *Pyznyi v Orsu Metals Corp.,* Justice Rady ordered that insurance be produced at the outset of the litigation prior to discovery, reasoning that disclosure of an insurance policy may affect litigation strategy and thus should occur.[23]

29. The responsive insurance appears to be one of the only possible assets potentially available to satisfy the claims of VDL Shareholders, other than the Intercorporate Debt. Production of this information is necessary and foundational to litigation strategies for the VDL Shareholders and significantly, there is no prejudice to the Canadian Debtor if this disclosure is granted.

(B) THE AMENDMENTS TO THE SUPPLEMENTAL ORDER SHOULD BE MADE

i. The Stay Against D&Os Should Be Lifted

30. This Court has now recognized the US Proceeding as the "foreign main proceeding". Yet, the Canadian Debtor has obtained a stay that is *broader* than the one granted in the US Proceeding. The stay in the Canadian Proceeding must be limited so that it mirrors the one granted in the US Proceeding for the sake of international comity.

31. On July 12, 2022, the Canadian Debtor obtained the Supplemental Order in the Canadian Proceeding that included a stay against Voyager's former, present and future directors and officers.[24] The stay granted in the US Proceeding only applies to the Canadian Debtor and its subsidiaries involved in the US Proceeding. It does not contain a stay against Voyager's former, present and future directors and officers.[25]

32. Under the CCAA, a stay against directors and officers is discretionary.[26] The stay power "should be used cautiously, and there must be some cogent reason underlying the interference with

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[22] *Sharma v Timminco Ltd*, 2010 ONSC 790 at paras 19-20.
[23] *Pysznyj v Orsu Metals Corp.*, (2009) 203 ACWS (3d) 263 (Ont. Sup. Ct. J.) at para 9.
[24] Supplemental Order at para 10.
[25] *Re Voyager Digital Holdings, Inc*, (Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief), (SDNY Bankr, No 22-10943 (MEW), filed and entered July 8, 2022).
[26] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C.-36, s 11.03(1).

the rights of those third parties in either a CCAA or receivership proceeding."[27] Canadian courts have extended the stay of proceedings to directors and officers *only* where it is important to do so to secure a successful restructuring and reorganization.[28]

33. The stay against the directors and officers here is clearly not important to secure a successful restructuring and reorganization. As described above, there is no stay against the directors and officers in the US Proceeding. If a stay against the directors and officers were necessary for the success of the plan, then it would have been sought in the US Proceeding, which this Court has recognized as the foreign main proceeding.

34. The Court must also consider the relative prejudice in considering whether a stay is appropriate in the circumstances.[29] Here, the stay introduces a cross-border unfairness and unduly prejudices Canadians, including Canadian VDL Shareholders. Canadian litigation against the Canadian Debtor's directors and officers is prohibited while the US and Canadian Proceedings are ongoing – yet American litigation faces no such prohibition. This unfairness ought to be rectified in the interest of preserving Canadian judicial authority in concurrent cross-border insolvency proceedings.

ii. The Tolling Request Should Be Granted

35. The Proposed Class Action Plaintiff requests that additions be made to the Supplemental Order as follows:

(a) Adding a paragraph which tolls all prescription, time or limitation periods applicable to any Misrepresentation Rights[30] as of the time of the initial recognition

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[27] *Credit Suisse AG v Great Basin Gold Ltd*, 2015 BCSC 1199 at para 32 [*Great Basin*], citing *Woodward's Ltd., Re (1993)*, 79 BCLR (2d) 257 (S.C.) at para 31.

[28] *Nortel Networks Corp., Re*, (2009) 179 ACWS (3d) 801 (Ont. Sup. Ct. J.) at para 36 [*Nortel*]; *Credit Suisse AG v Great Basin Gold Ltd*, 2015 BCSC 1199 at para 32; *Pacific Exploration & Production Corp, Re*, 2016 ONSC 5429 at para 26; *Tamerlane Ventures Inc, Re*, 2013 ONSC 5461 at para 21.

[29] *Great Basin*, *ibid* at para 38.

[30] Misrepresentation Rights mean any of the rights of a purchaser of a security of the Canadian Debtor to (i) commence an action for damages against the Canadian Debtor or its current or former directors or officers; and (ii) exercise a right of rescission in connection with the purchase of a security of the Canadian Debtor, pursuant to and in accordance with the requirements of (a) Parts XXIII or XXIII.1 of the Securities Act, or any corresponding or similar provisions under the securities legislation of any other Canadian province or territory; and/or (b) any contractual rights granted by the Canadian Debtor to a purchaser of its securities that are the same or substantially the same as any such statutory rights for damages or rescission, including, without limitation, in any offering memorandum pursuant to which securities of the Canadian Debtor were offered for sale.

order dated July 12, 2022 (the "**Initial Recognition Order**") until the stay is lifted; and

(b) Adding an additional paragraph which tolls the mandatory dismissal for delay provision under section 29.1 of the *Class Proceedings Act, 1992*[31] as of the time of the Initial Recognition Order dated July 12, 2022 until the stay is lifted;

36. The tolling request is appropriate in these circumstance to avoid prejudicing the claims advanced in the Proposed Class Action while these insolvency proceedings are ongoing.

37. The Proposed Class Action advances misrepresentation claims under Part XXIII.1 of Ontario's *Securities Act* on behalf of persons who acquired the Canadian Debtor's securities on the secondary market from October 28, 2021 to July 6, 2022. To assert the right of action provided by Part XXIII.1, plaintiffs must obtain leave of the Court. The limitation period under Part XXIII.1 of Ontario's *Securities Act* only stops running when a notice of motion for leave to assert the right under Part XXIII.1 is filed.[32]

38. Said limitation period will continue to run while these insolvency proceedings are ongoing without the relief requested. At the same time, the stay currently in place prohibits Ms. De Sousa from filing her notice of motion for leave and stopping the limitation period. It is further well-established that this is not a novel request by potential creditors in insolvency proceedings to preserve their rights. Similar orders have been granted in previous CCAA proceedings that involve claims made by potential creditors under Ontario's *Securities Act*.[33]

39. In addition, under section 29.1 of the *Class Proceedings Act*, on a motion, a class action must be dismissed one year after it is commenced unless one of the below occurs:

(a) the representative plaintiff has filed a final and complete motion record for certification;

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[31] S.O. 1992, c. 6 at s. 29.1 [*Class Proceedings Act*].
[32] R.S.O. 1990, c. S.5 at s 138.14(2).
[33] See: *In the Matter of a Plan of Compromise or Arrangement of CannTrust Holdings Inc et al*, Court File No. CV-20-0063j8930-00CL, Order dated April 9, 2020, at para 20; and *In the Matter of a Plan of Compromise and Arrangement of Sino-Forest Corporation,* Court File No. CV-12-9667-00CL, Order dated May 12, 2012 at paras 3-4 (authorizing the applicant to enter into a tolling agreement with the plaintiffs and defendants in an Ontario and Quebec securities misrepresentation class action).

(b) the parties have agreed in writing to a timetable for service of the motion record for certification or for the completion of one or more steps required to advance the proceeding, and have filed the timetable with the court; or

(c) the court has established a timetable for service of the representative plaintiff's motion record for certification or for completion of one or more other steps required to advance the proceeding.

40. To avoid prejudice to VDL Shareholders by the US and Canadian Proceedings (the length of which is otherwise uncontrollable), it is appropriate to grant the tolling orders requested to help maintain and preserve the pre-filing status quo. Absent the tolling requested by Ms. De Sousa, the De Sousa Class Action could be dismissed because of her inability to meet the requirements of section 29.1 of the *Class Proceedings Act* while the stay is in place.

iii. Powers of the Information Officer

41. This motion originally requested relief relating to the expansion of the powers of the Information Officer, which proposed additional powers as taken from section 23 of the CCAA, which sets out the duties and functions of a monitor. The First Report sets out that the Information Officer is of the view that any augmentation of its powers is not required at this time. The Proposed Plaintiff will therefore not seek this relief at this time, but reserves its right to bring it back on should circumstances warrant.

42. The scope of the Information Officer's current role is as set out at paragraph 122 of the Supplemental Order. It is limited to providing assistance to the Canadian Debtor, and reporting to the Court at such times and intervals that the Information Officer considers appropriate, or as the Court may direct. It is entirely distinct from the role to be played by proposed Representative Counsel, which will be responsible for advocating on behalf of and seeking protection for VDL Shareholders' rights.

(C) REPRESENTATIVE COUNSEL RELIEF

i. Representative Counsel Should Be Appointed

43. Canadian courts regularly appoint representative counsel in insolvency proceedings in situations where there are significant stakeholder or victim populations. These appointments have

occurred in some of Canada's largest insolvencies, including *Quadriga*,[34] *Bridging*,[35] *Hi-Rise*,[36] *Muscletech,*[37] and *Nortel.*[38] Representative counsel appointments have occurred in circumstances where the claimant population has ranged in size from smaller groups of only two hundred (as seen in *Hi-Rise*) to thousands of stakeholders.

44. The jurisdiction to appoint representative counsel is contained under section 11 of the CCAA, which gives this Honourable Court broad discretion to "make any order that it considers appropriate in the circumstances".[39] In addition, Rule 10.01(f) of the *Rules of Civil Procedure*[40] (the "**Rules**") permits courts to appoint one or more persons to represent any person or class who are otherwise "unascertained or have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served", where it is "necessary or desirable" to do so.

45. It is appropriate to seek a representative counsel appointment within the Canadian Proceeding. This Honourable Court has previously appointed representative counsel for Canadian claimants in ancillary Canadian proceedings that occur alongside "foreign main" proceedings initiated under Chapter 11 of the *U.S. Bankruptcy Code*. In *Re Grace Canada Inc.*, the U.S. parent of the applicant Grace Canada Inc. filed for Chapter 11 protection due to numerous product liability suits. On or about April 4, 2001, Grace Canada Inc. was granted ancillary relief under an initial order via the former s. 18.6 of the CCAA, which recognized the Chapter 11 proceeding within Canada (equivalent to the modern "foreign main" proceeding relief under the CCAA).[41] An information officer was also appointed. This Honourable Court then granted an order appointing representative counsel on behalf of claimants holding valid Canadian claims relating to asbestos attic insulation.

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[34] *Quadriga Fintech Solutions Corp, Re*, 2019 NSSC 65 [*Quadriga*].
[35] *Ontario Securities Commission v. Bridging Finance Inc. et al.,* Court File No. CV-21-00661458-00CL, Order dated October 14, 2021 [*Bridging*].
[36] *In the Matter of Hi-Rise Capital Ltd et al,* Court File No. CV-19-616261-00CL, Orders dated March 21, 2019 and April 15, 2019 [*Hi-Rise*].
[37] [2006] OJ No 3300 [*Muscletech*].
[38] [2009] OJ No 2166 [*Nortel*].
[39] *Supra* note 18.
[40] R.R.O. 1990, Reg. 194.
[41] Reference is made to the pre-amendment provisions of the cross-border insolvency sections of the CCAA; an overview of the orders granted can be found at: *Grace Canada Inc., Re,* [2008] O.J. No. 4208 [*Grace*] at paras 15-22.

46. Furthermore, representative counsel are often appointed by this Honourable Court on behalf of vulnerable, similarly-sized shareholder and/or class action groups in insolvency matters comparable to the VDL Shareholders. In *Pace Securities*,[42] during liquidation and regulatory proceedings, Hainey J appointed both representative counsel and an equity committee on behalf of 700 shareholders of certain liquidating companies that were involved in raising capital through selling preference shares and warrants. Representative counsel were later vital advocates during the eventual settlement of misconduct claims advanced on behalf of investors in the amount of approximately $40 million CDN. Further well-known representative counsel appointments were made for the benefit of class actions and/or securities claimants in each of *Sino-Forest Corp.,*[43] *CannTrust*,[44] *Poseidon,*[45] and *Cash Store Financial Services, Re*.[46]

47. As stated by the Honourable Michael J. Wood (presently Chief Justice of the Nova Scotia Court of Appeal) in *Quadriga*, "appointment of representative counsel and stakeholder representative committees are not unusual in complex CCAA proceedings […] the Court has a wide discretion to appoint representatives [which] is usually done where the affected group of stakeholders is large and, without representation, most members would be unable to effectively participate in the CCAA proceeding."[47]

48. The following factors should be considered when deciding to appoint representative counsel:[48]

(a) The vulnerability and resources of the group sought to be represented;

(b) Any benefit to the companies under CCAA protection;

(c) Any social benefit to be derived from representation of the group;

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[42] *In the Matter of a Winding Up of Pace Securities Corp et al,* Court File No. CV-20-00641059-00CL, Order dated August 6, 2020. [*Pace Securities*].
[43] *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp. (2015)*, 253 ACWS (3d) 763 (Ont. Sup. Ct. J.).
[44] *In the Matter of Canntrust Holdings Inc, et al,* Court File No. CV-20-00638930-00CL, Order dated January 29, 2021 [*Canntrust*].
[45] *In the Matter of Poseidon Concepts Corp et al,* Court File No. 1301-04363, Order dated May 30, 2013 [*Poseidon*].
[46] *Cash Store Financial Services, Re,* 2014 ONSC 4567.
[47] *Quadriga, supra* note 34 at paras 5-6.
[48] *Canwest Publishing Inc, Re*, 2010 ONSC 1328 at para 21.

(d) The facilitation of the administration of the proceedings and efficiency;

(e) The avoidance of a multiplicity of legal retainers;

(f) The balance of convenience and whether it is fair and just including to the creditors of the estate;

(g) Whether representative counsel have been appointed for those with similar interests to the group seeking representation; and

(h) The position of other stakeholders [and the Monitor, if appointed].

49. The facts of this case satisfy the test for the appointment of Siskinds LLP & Aird & Berlis LLP as Representative Counsel for the following reasons:

(a) **Vulnerability:** VDL Stakeholders are the primary affected stakeholder in the Canadian Proceeding. Over 600 VDL Stakeholders have already reached out to Siskinds LLP to obtain information about the Proposed Class Action. It would be cost-prohibitive for VDL Stakeholders and inefficient if Representative Counsel was not appointed, given their sizeable numbers;

(b) **Company Benefit:** Voyager will derive significant benefit from the appointment of Representative Counsel. The only downside to Voyager (or the Canadian Debtor) is the imposition of costs and a charge, which is minor in contrast to the size of the ongoing restructuring and offset by the prejudice which would be suffered by VDL Shareholders. The envisioned role would facilitate effective communication with and potential early settlement of VDL Stakeholders' claims, and would enable advocacy within complex cross-border proceedings;

(c) **Social Benefit:** The appointment of Representative Counsel would provide a social benefit by allowing VDL Stakeholders, especially those owed small amounts, to effectively participate and have their voices heard;

(d) **Efficiency:** The appointment of Representative Counsel would facilitate an efficient administration of Voyager's estate by enabling VDL Shareholders with similar interests to participate and provide the Canadian Debtor and the Information Officer with a single point of contact for negotiations;

(e) **Representation/Multiplicity/Conflict:** There is currently a potential conflict concern arising from American counsel to Voyager acting on behalf of all three debtors, given their potential intercorporate claims. Representative Counsel's appointment would help ensure that VDL Shareholders' rights are preserved.

Furthermore, both Siskinds LLP and Aird & Berlis LLP are leading firms in the areas of class actions and insolvency law, respectively, and would represent the interests of VDL Shareholders effectively and efficiently. The appointment of Representative Counsel would avoid a multiplicity of retainers;

(f) **Fair and Just:** As stated above, VDL Shareholders are the largest stakeholder group of the Canadian Debtor. Other than minor trade creditors, there are no secured creditors of the Canadian Debtor who will be impacted by this proposed charge, beyond the existing Administration Charge (term as defined in the Initial Order) for Canadian professionals;

(g) **Other Representation:** American representative counsel has been appointed for unsecured creditors of the American Debtors. To deny VDL Shareholders this relief would run contrary to the position taken by American courts that vulnerable stakeholders of Voyager require protection; and

(h) **Monitor's Position/Position of Other Stakeholders:** There is no monitor in the ongoing Canadian Proceeding, and the Information Officer is a neutral party who would not ordinarily take a position on victim representation. In fact, the absence of a monitor lends further support for the appointment sought. Traditionally, court-appointed officers have not opposed representative counsel appointments in insolvencies involving misconduct, such as was seen in *Quadriga* and *Bridging*. It would be highly unusual for any court-appointed officer to oppose a representative counsel role in a (potentially) misconduct-based insolvency, absent a compelling reason. Finally, there are no other known large stakeholder groups of the Canadian Debtor who would oppose representative counsel.

50. As stated above, there are 610 VDL Shareholders who are currently subscribed to Siskinds LLP seeking further information on the Canadian and US Proceedings. This is a vulnerable pool of potential victims, with additional VDL Shareholders who have likely not yet been made aware of the ongoing proceedings. Without Representative Counsel, VDL Shareholders will suffer an insurmountable prejudice to their legal rights.

ii. An Equity Committee Should Be Appointed

51. Stakeholder committees are regularly appointed to direct representative counsel. It is traditional for representative counsel to take direction from stakeholder committees on advocacy and litigation steps.[49]

52. The appointment of an Equity Committee is necessary to effectively represent VDL Stakeholders and instruct Representative Counsel.

53. The Equity Committee's primary function will be to work with and instruct Representative Counsel on VDL Shareholders' behalf. It is proposed that the Equity Committee will be

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[49] As seen in *Hi-Rise* and *Quadriga*, *supra* notes 33 and 35.

comprised of three (3) to five (5) individuals that are VDL Shareholders (either personally or on behalf of an entity), with membership to be comprised of a representative cross-section of different investor profiles to provide diverse views to this Honourable Court.

54. Establishment of an Equity Committee is justified for the following reasons:

(a) The Equity Committee will be an efficient way of identifying VDL Shareholders' interests and concerns;

(b) The Equity Committee will provide direction in a way that represents diverse views; and

(c) The Equity Committee will reduce duplicative filings that will otherwise prejudice or otherwise interfere with the Information Officer and Voyager's restructuring efforts.

iii. A Charge Should Be Secured Against the Canadian Debtor's Estate

55. It is respectfully submitted that the professional fees and disbursements of Aird & Berlis LLP and Siskinds LLP should be secured by a priority charge against the Voyager estate with respect to the services they provide as Representative Counsel in these insolvency proceedings. Aird & Berlis LLP and Siskinds LLP reserve their right to seek a Court approved contingency fee, in accordance with the terms of the retainer with Ms. De Sousa, with respect to services performed in their work for the proposed class in the De Sousa Class Action that is outside their role as Representation Counsel or that they are not compensated for in their role as Representative Counsel. In seeking any contingency fee, the amounts received as Representative Counsel will be disclosed to the Court.

56. This Honourable Court derives its statutory authority to grant an administrative charge in favour of Representative Counsel pursuant to section 11.52(c) of the CCAA.[50] Funding charges for representative counsel should be made where it is fair and just to do so. Funding should only be provided for the benefit of those who would otherwise have no legal representation, as is the *exact* case for VDL Shareholders.[51]

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[50] R.S.C. 1985, c. C.-36, s 11.52(1)(c).
[51] *Fraser Papers Inc, Re*, [2009] OJ No 4287 at para 10.

57. The following non-exhaustive list of factors can also be considered in granting an administrative charge: the size and complexity of business being restructured; the role of the beneficiaries; duplication; whether the quantum is fair; the position of other secured creditors; and the position of the monitor.[52]

58. At hand:

(a) **Size**: The Canadian Debtor retains approximately $2.5 million USD,[53] which amount would easily cover the funding of Representative Counsel, as well as the Administration Charge granted pursuant to the Supplemental Order. Furthermore, Voyager as a collective entity was a complex, billion-dollar cryptocurrency company with a significant body of remaining assets, despite its insolvency.

(b) **Role**: As discussed above, the role is to act on behalf of at least 610 (and likely thousands more) vulnerable VDL Shareholders who lack any current representation and will suffer prejudice as a result of failed group representation. The ongoing practical substantive consolidation of the US Proceeding will negatively impact this victim group further, and potential misconduct by Voyager may have induced the VDL Shareholders to make their original investments. All of these factors are strongly in favour of the appointment of Representative Counsel and an Equity Committee.

(c) **Duplication:** There is no duplication.

(d) **Quantum**: Costs proposed by Siskinds LLP/Aird & Berlis LLP are reasonable. By contrast, in *Pace Securities*, representative counsel's fees were later approved by this Honourable Court in the amount of $6,000,000 CDN on behalf of representation of a similarly sized group of claimants to the VDL Shareholders.[54] The proposed charge of $500,000 is conservative in light of this previous precedent, and balances the need for fiscal moderation with appropriate payment to professionals.

(e) **Other Creditors:** As stated above, VDL Shareholders are the largest creditor group of the Canadian Debtor. Other than minor trade creditors, there are no stakeholders who will be impacted by this proposed charge.

(f) **Monitor's Position:** As stated above, it would be highly unusual for any court-appointed officer to oppose a representative counsel role, bar a compelling reason for stakeholders to not have a voice.

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[52] *Supra* note 48 at para 54.
[53] First Report at para 4.16.
[54] *Pace Securities*, Order dated October 19, 2021.

PART V – RELIEF SOUGHT

59. As the VDL Shareholders are the primary stakeholders of the Canadian Debtor, and given the significant misconduct concerns against the various Voyager parties and their lending counterparts, the vulnerable VDL Shareholders need effective representation and judicial protection.

60. In light of the foregoing, it is respectfully requested that this Court grant the aforementioned Relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of August, 2022.

Siskinds LLP and Aird & Berlis LLP

SISKINDS LLP and AIRD & BERLIS LLP

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Sharma v Timminco Ltd*, 2010 ONSC 790.

2. *Pysznyj v. Orsu Metals Corp. (2009)*, 203 ACWS (3d) 263 (Ont. Sup. Ct. J.).

3. *Re Voyager Digital Holdings, Inc*, (Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief), (SDNY Bankr, No 22-10943 (MEW), filed and entered July 8, 2022).

4. *Credit Suisse AG v Great Basin Gold Ltd*, 2015 BCSC 1199.

5. *Nortel Networks Corp., Re (2009)*, 179 ACWS (3d) 801 (Ont. Sup. Ct. J.).

6. *Pacific Exploration & Production Corp, Re*, 2016 ONSC 5429.

7. *Tamerlane Ventures Inc, Re*, 2013 ONSC 5461.

8. *In the Matter of a Plan of Compromise or Arrangement of CannTrust Holdings Inc et al*, Court File No. CV-20-00638930-00CL, Order dated April 9, 2020.

9. *In the Matter of a Plan of Compromise and Arrangement of Sino-Forest Corporation,* Court File No. CV-12-9667-00CL, Order dated May 12, 2012.

10. *Quadriga Fintech Solutions Corp, Re*, 2019 NSSC 65.

11. *Ontario Securities Commission v. Bridging Finance Inc. et al.,* Court File No. CV-21-00661458-00CL, Order dated October 14, 2021.

12. *In the Matter of Hi-Rise Capital Ltd et al,* Court File No. CV-19-616261-00CL, Orders dated March 21, 2019 and April 15, 2019.

13. *Muscletech Research and Development Inc, Re*, [2006] OJ No 3300.

14. *Nortel Networks Corp, Re*, [2009] OJ No 2166.

15. *Grace Canada Inc., Re*, [2008] O.J. No. 4208.

16. *In the Matter of a Winding Up of Pace Securities Corp et al,* Court File No. CV-20-00641059-00CL, Order dated August 6, 2020. [*Pace Securities*]

17. *Labourers' Pension Fund of Central and Eastern Canada (Trustees of) v. Sino-Forest Corp. (2015)*, 253 ACWS (3d) 763 (Ont. Sup. Ct. J.).

18. *In the Matter of Canntrust Holdings Inc, et al,* Court File No. CV-20-00638930-00CL, Order dated January 29, 2021.

19. *In the Matter of Poseidon Concepts Corp et al,* Court File No. 1301-04363, Order dated May 30, 2013.

20. *Cash Store Financial Services, Re,* 2014 ONSC 4567.

21. *Canwest Publishing Inc., Re.*, 2010 ONSC 1328.

22. *Fraser Papers Inc. Re.*, [2009] O.J. No. 4287.

23. *Pace Securities*, Order dated October 19, 2021 [*without Appendix "B"*].

SCHEDULE "B"
RELEVANT STATUTES

1. *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36

PART II

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 — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section. […]

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

2. *Securities Act,* R.S.O. 1990, c S.5.

PART XXIII.1

CIVIL LIABILITY FOR SECONDARY MARKET DISCLOSURE

INTERPRETATION AND APPLICATION

Definitions
138.1 In this Part,

"compensation" means compensation received during the 12-month period immediately preceding the day on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the fair market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded; ("rémunération")

"core document" means,

(a) a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements and an interim financial report of the responsible issuer, where used in relation to,

(i) a director of a responsible issuer who is not also an officer of the responsible issuer,

(ii) an influential person, other than an officer of the responsible issuer or an investment fund manager where the responsible issuer is an investment fund, or

(iii) a director or officer of an influential person who is not also an officer of the responsible issuer, other than an officer of an investment fund manager,

(b) a prospectus, a take-over bid circular, an issuer bid circular, a directors' circular, a notice of change or variation in respect of a take-over bid circular, issuer bid circular or directors' circular, a rights offering circular, management's discussion and analysis, an annual information form, an information circular, annual financial statements, an interim financial report and a material change report required by subsection 75 (2) or the regulations of the responsible issuer, where used in relation to,

(i) a responsible issuer or an officer of the responsible issuer,

(ii) an investment fund manager, where the responsible issuer is an investment fund, or

(iii) an officer of an investment fund manager, where the responsible issuer is an investment fund, or

(c) such other documents as may be prescribed by regulation for the purposes of this definition; ("document essentiel");

"document" means any written communication, including a communication prepared and transmitted only in electronic form,

(a) that is required to be filed with the Commission, or

(b) that is not required to be filed with the Commission and,

(i) that is filed with the Commission,

(ii) that is filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with any exchange or quotation and trade reporting system under its by-laws, rules or regulations, or

(iii) that is any other communication the content of which would reasonably be expected to affect the market price or value of a security of the responsible issuer; ("document")

"expert" means a person or company whose profession gives authority to a statement made in a professional capacity by the person or company, including, without limitation, an accountant, actuary, appraiser, auditor, engineer, financial analyst, geologist or lawyer, but not including a designated credit rating organization; ("expert")

"failure to make timely disclosure" means a failure to disclose a material change in the manner and at the time required under this Act or the regulations; ("non-respect des obligations d'information occasionnelle")

"influential person" means, in respect of a responsible issuer,

(a) a control person,

(b) a promoter,

(c) an insider who is not a director or officer of the responsible issuer, or

(d) an investment fund manager, if the responsible issuer is an investment fund; ("personne influente")

"issuer's security" means a security of a responsible issuer and includes a security,

(a) the market price or value of which, or payment obligations under which, are derived from or based on a security of the responsible issuer, and

(b) which is created by a person or company on behalf of the responsible issuer or is guaranteed by the responsible issuer; ("valeur mobilière d'un émetteur")

"liability limit" means,

(a) in the case of a responsible issuer, the greater of,

(i) 5 per cent of its market capitalization (as such term is defined in the regulations), and

(ii) $1 million,

(b) in the case of a director or officer of a responsible issuer, the greater of,

(i) $25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the responsible issuer and its affiliates,

(c) in the case of an influential person who is not an individual, the greater of,

(i) 5 per cent of its market capitalization (as defined in the regulations), and

(ii) $1 million,

(d) in the case of an influential person who is an individual, the greater of,

(i) $25,000, and

(ii) 50 per cent of the aggregate of the influential person's compensation from the responsible issuer and its affiliates,

(e) in the case of a director or officer of an influential person, the greater of,

(i) $25,000, and

(ii) 50 per cent of the aggregate of the director's or officer's compensation from the influential person and its affiliates,

(f) in the case of an expert, the greater of,

(i) $1 million, and

(ii) the revenue that the expert and the affiliates of the expert have earned from the responsible issuer and its affiliates during the 12 months preceding the misrepresentation, and

(g) in the case of each person who made a public oral statement, other than an individual referred to in clause (d), (e) or (f), the greater of,

(i) $25,000, and

(ii) 50 per cent of the aggregate of the person's compensation from the responsible issuer and its affiliates; ("limite de responsabilité")

"management's discussion and analysis" means the section of an annual information form, annual report or other document that contains management's discussion and analysis of the financial condition and financial performance of a responsible issuer as required under Ontario securities law; ("rapport de gestion")

"public oral statement" means an oral statement made in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed; ("déclaration orale publique")

"release" means, with respect to information or a document, to file with the Commission or any other securities regulatory authority in Canada or an exchange or to otherwise make available to the public; ("publication", "publier")

"responsible issuer" means,

(a) a reporting issuer, or

(b) any other issuer with a real and substantial connection to Ontario, any securities of which are publicly traded; ("émetteur responsable")

"trading day" means a day during which the principal market (as defined in the regulations) for the security is open for trading. ("jour de Bourse") 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 10; 2006, c. 33, Sched. Z.5, s. 14; 2007, c. 7, Sched. 38, s. 11; 2010, c. 1, Sched. 26, s. 6; 2010, c. 26, Sched. 18, s. 38.

Application

138.2 This Part does not apply to,

(a) the purchase of a security offered by a prospectus during the period of distribution;

(b) the acquisition of an issuer's security pursuant to a distribution that is exempt from section 53 or 62, except as may be prescribed by regulation;

(c) the acquisition or disposition of an issuer's security in connection with or pursuant to a take-over bid or issuer bid, except as may be prescribed by regulation; or

(d) such other transactions or class of transactions as may be prescribed by regulation. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 11.

Limitation period

138.14 (1) No action shall be commenced under section 138.3,

(a) in the case of misrepresentation in a document, later than the earlier of,

(i) three years after the date on which the document containing the misrepresentation was first released, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in the other provinces or territories in Canada in respect of the same misrepresentation;

(b) in the case of a misrepresentation in a public oral statement, later than the earlier of,

(i) three years after the date on which the public oral statement containing the misrepresentation was made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same misrepresentation; and

(c) in the case of a failure to make timely disclosure, later than the earlier of,

(i) three years after the date on which the requisite disclosure was required to be made, and

(ii) six months after the issuance of a news release disclosing that leave has been granted to commence an action under section 138.3 or under comparable legislation in another province or territory of Canada in respect of the same failure to make timely disclosure. 2002, c. 22, s. 185; 2004, c. 31, Sched. 34, s. 23.

Suspension of limitation period

(2) A limitation period established by subsection (1) in respect of an action is suspended on the date a notice of motion for leave under section 138.8 is filed with the court and resumes running on the date,

(a) the court grants leave or dismisses the motion and,

(i) all appeals have been exhausted, or

(ii) the time for an appeal has expired without an appeal being filed; or

(b) the motion is abandoned or discontinued. 2014, c. 7, Sched. 28, s. 15.

***3. Class Proceedings Act*, 1992, S.O. 1992, c. 6**

Mandatory dismissal for delay

29.1 (1) The court shall, on motion, dismiss for delay a proceeding commenced under section 2 unless, by the first anniversary of the day on which the proceeding was commenced,

(a) the representative plaintiff has filed a final and complete motion record in the motion for certification;

(b) the parties have agreed in writing to a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding, and have filed the timetable with the court;

(c) the court has established a timetable for service of the representative plaintiff's motion record in the motion for certification or for completion of one or more other steps required to advance the proceeding; or

(d) any other steps, occurrences or circumstances specified by the regulations have taken place. 2020, c. 11, Sched. 4, s. 26; 2021, c. 25, Sched.1, s. 1.

4. *Rules of Civil Procedure*, R.R.O. 1990, Reg 194.

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;

(b) the determination of a question arising in the administration of an estate or trust;

(c) the approval of a sale, purchase, settlement or other transaction;

(d) the approval of an arrangement under the *Variation of Trusts Act*;

(e) the administration of the estate of a deceased person; or

(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

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

AND IN THE MATTER OF VOYAGER DIGITAL LTD.

APPLICATION OF VOYAGER DIGITAL LTD. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-22-00683820-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto

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