

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

**MOTION RECORD
(Stay Extension Motion, Returnable June 21, 2024)**

June 18, 2024

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

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

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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF 1000156489 ONTARIO INC (the “**Applicant**”)

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(as at June 17, 2024)

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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

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TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
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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

NOTICE OF MOTION
(Stay Extension)

Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as court-appointed monitor of the Applicant (in such capacity, the “**Monitor**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), will make a Motion before the Honourable Justice Black of the Commercial List on Friday, June 21, 2024 at 10:30 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

- ☐ In writing under subrule 37.12.1(1);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference

- 2 -

at the following location:

<https://ca01web.zoom.us/j/65400327305?pwd=WC91RjNENjNnZlQ2NHpvdDlzaUNldz09#success>

THE MOTION IS FOR

1. An Order, substantially in the form of the draft order included in the Motion Record (the “**Stay Extension Order**”), among other things:

- (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on June 21, 2024 and dispensing with further service thereof;
- (b) extending the Stay Period (as defined in the Amended and Restated Initial Order, defined below) until and including January 31, 2025; and
- (c) authorizing and empowering the Monitor to execute, for and on behalf of the Company, the Escrow Release and Termination Agreement (defined below); and

2. Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE¹

1. On December 20, 2022 (the “**Petition Date**”), 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “**Applicant**”) obtained an initial order (the “**Initial Order**”) from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the CCAA. The proceedings

¹ All capitalized terms not otherwise defined have the meaning given to them in the Eighth Report of the Monitor dated June 18, 2024 (the “**Eighth Report**”).

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commenced thereby are referred to herein as the “**CCAA Proceedings**”. Among other things, the Initial Order appointed A&M as Monitor in the CCAA Proceedings;

2. On the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (collectively, 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 (such proceedings, the “**Chapter 11 Proceedings**”, and together with the CCAA Proceedings, the “**Restructuring Proceedings**”);

3. On December 29, 2022, the Applicant obtained an amended and restated Initial Order (the “**Amended and Restated Initial Order**”) that, among other things, approved the DIP Facility and the Final DIP Credit Agreement (each as defined in the First Report), and extended the Stay Period;

4. The DCL Group conducted a sales process in the Restructuring Proceedings that culminated in a transaction (the “**Transaction**”) with Pigments Services, Inc.;

5. On March 29, 2023, this Court issued an Order (the “**Approval and Vesting Order**”), which, among other things, approved the Transaction. The Transaction closed on April 14, 2023;

6. On May 8, 2023, this Court issued an Order (the “**Expansion of Monitor’s Powers Order**”), which, among other things: (i) granted the Monitor the Expanded Powers (as defined and described in the Fifth Report), expanding the powers of the Monitor to, among other things, oversee the wind-down activities of the Applicant; and (ii) changed the style of cause in the CCAA Proceedings to reflect the Applicant’s change of name following the closing of the Transaction;

7. On June 20, 2023, this Court issued an Order (the “**Claims Procedure Order**”), which, among other things: (i) granted the claims procedure (the “**Claims Procedure**”) by which creditors

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may file claims against the Applicant, or against the Applicant's Directors or Officers, as applicable; and (ii) extended the Stay Period until and including December 31, 2023;

8. On December 6, 2023, this Court issued an Order, which extended the Stay Period until and including June 30, 2024;

Extension of Stay Period

9. The Stay Period currently expires on June 30, 2024;

10. The Monitor proposes that this Court extend the Stay Period until and including January 31, 2025;

11. As of the Claims Bar Date, the Monitor received 170 Proofs of Claim totalling approximately \$40.2 million of asserted Claims against the Applicant. No Director / Officer Claims were received by the Monitor. One Claim is subject to ongoing review and adjudication by the Monitor (the "**Unresolved Claim**");

12. The Applicant's counsel and the Monitor also continue to pursue a potential recovery from the surplus balance remaining after the wind-down of the Hourly DB Plan and the Salaried DB Plan;

13. The stay of proceedings should provide the time necessary for the Monitor and the Applicant to continue the ongoing review of the Unresolved Claim, continue to pursue the surplus balance from the Hourly DB Plan and Salaried DB Plan and administer the CCAA Cash Pool (described in the Eighth Report), which continues to be held by the Monitor for the benefit of the Applicant's estate in the CCAA Proceedings;

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14. 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;

15. The Remaining Canadian Designated Amount Portion (described in the Eighth Report) and approximately \$100,000 of the CCAA Cash Pool 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);

16. The Applicant, with the assistance and oversight of the Monitor, continues to act in good faith and with due diligence;

Escrow Arrangement

17. In September 2016, the DCL Group acquired the shares of Dominion Colour Corporation (through Colour Acquisition Corporation (“**Colors**”), which subsequently amalgamated with Dominion Colour Corporation, and after further amalgamations became the Applicant in 2022) from KNRV Investments Inc. (“**KNRV**”) pursuant to a share purchase agreement that contemplated an earnout payment to KNRV;

18. KNRV and Colors also entered into an escrow agreement with BMO Trust Company, as escrow agent, dated September 2016 (the “**Escrow Agreement**”), whereby an amount held by BMO Trust Company in accordance with the Escrow Agreement (together with any accrued interest thereon, the “**Escrow Amount**”) would be made available to satisfy any *bona fide* claim

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of Colors against KNRV for a specified period. That specified period has expired and the Monitor has not been advised of the existence of any such claims;

19. KNRV has advised the Monitor that it is seeking the return of the Escrow Amount of approximately \$700,000 pursuant to the Escrow Agreement;

20. The Monitor therefore seeks authorization to execute, for and on behalf of the Applicant, the Escrow Release and Termination Agreement, substantially in the form attached as Appendix “F” to the Eighth Report (the “**Escrow Release and Termination Agreement**”);

Other Grounds

21. The provisions of the CCAA, and the statutory, inherent and equitable jurisdiction of this Honourable Court;

22. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended; and

23. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Eighth Report of the Monitor dated June 18, 2024; and

2. Such further and other evidence as counsel may advise and this Honourable Court may permit.

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June 18, 2024

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1000156489 Ontario Inc. (f/k/a DCL
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corporate capacity

TO: SERVICE LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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1000156489 ONTARIO INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**NOTICE OF MOTION
(Stay Extension)**

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TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

FRIDAY, THE 21ST

JUSTICE BLACK

)

DAY OF JUNE, 2024

B E T W E E N:

(Court Seal)

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

**ORDER
(Stay Extension)**

THIS MOTION made by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as monitor (in such capacity, the “**Monitor**”) of 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “**Company**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”) for an order seeking the extension of the Stay Period to January 31, 2025, was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion, the Eighth Report of the Monitor dated June 18, 2024 (the “**Eighth Report**”), and on hearing the submissions of counsel for the Monitor, the Company and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Marleigh Dick sworn June ●, 2024:

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated and this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Eighth Report.

STAY EXTENSION

3. **THIS COURT ORDERS** that the Stay Period is hereby extended until and including January 31, 2025.

ESCROW ARRANGEMENT

4. **THIS COURT ORDERS** that the Monitor is authorized and empowered to execute, for and on behalf of the Company, the Escrow Release and Termination Agreement, substantially in the form attached as Appendix F to the Eighth Report, with such amendments as the Monitor may agree in writing, and the Monitor shall have no liability or obligation to any person in connection with the Escrow Release and Termination Agreement or its execution thereof on behalf of the Company.

AID AND RECOGNITION

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or outside Canada to give effect to this Order and to assist the Monitor, the Company and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, and the Company, as may be necessary or desirable to give effect to this Order, or to assist the Monitor and the Company and their respective agents in carrying out the terms of this Order.

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6. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

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

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced at Toronto

**ORDER
(Stay Extension)**

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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

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

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

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

***ONTARIO*
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF THE MONITOR
(Stay Extension)**

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