

Court File No. 31-2946538

Estate No. 31-2946538

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, c. B-3, AS AMENDED OF DECISIONONE  
CORPORATION, A CORPORATION FORMED UNDER THE  
LAWS OF NEW BRUNSWICK

**FACTUM OF DECISIONONE CORPORATION**

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Lawyers for DecisionOne Corporation

TO: **THE SERVICE LIST**

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**FACTUM OF DECISIONONE CORPORATION**

**PART I - INTRODUCTION**

1. DecisionOne Corporation (New Brunswick) ("**D1 Canada**"), its direct parent DecisionOne Corporation (Delaware) ("**D1 US**"), and its indirect parent Soroc Technology Holdings LLC ("**Soroc Holdings**"), and their affiliates, operated a North American IT services business. The corporate group faced significant financial challenges, secured debt defaults and liquidity constraints in late 2022 and have engaged in extensive out of court restructuring efforts over the past several months.<sup>1</sup>

2. The secured revolving facility of the corporate group has been repaid in full, and the substantial majority of the corporate group's operations have already been sold to an affiliate of their senior secured lenders through a series of credit bid and security enforcement transactions in the United States in March of this year.<sup>2</sup>

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<sup>1</sup> Affidavit of Jeffrey Varsalone sworn May 23, 2023 ("**Varsalone Affidavit**") at para 3, Motion Record of the Applicants returnable June 5, 2023 ("**MR**"), Tab 2, p 12.

<sup>2</sup> Varsalone Affidavit at para 4, MR, Tab 2, p 12.

3. D1 Canada's assets are the only remaining operating assets of the corporate group to be divested. D1 Canada's remaining business does not generate positive cash flow on a stand-alone basis and its liquidity is insufficient to continue as a going concern.<sup>3</sup>

4. D1 Canada seeks to implement a stalking horse sale process that will ensure an expedited going concern solution for the D1 Canada business.

5. The stalking horse process, and the proposed concurrent conditional approval of a stalking horse credit bid from D1 Canada's senior secured lenders, provide an economically efficient and responsible approach to address D1 Canada's current circumstances to preserve jobs and the remaining going concern value of the business. D1 Canada respectfully submits that the proposed stalking horse process should be approved.<sup>4</sup>

## **PART II - SUMMARY OF FACTS**

### *Background of D1 Canada Business*

6. D1 Canada, D1 US and Soroc Holdings, and their affiliates carried on an IT hardware procurement and IT service business in Canada and the United States. There were two aspects to the business:

- (a) one operated historically by Soroc Technology Inc. and Soroc Technology Corp. (collectively, "**Soroc**"); and
- (b) the other operated historically by D1 Canada and D1 US (collectively "**DecisionOne**").<sup>5</sup>

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<sup>3</sup> Varsalone Affidavit at para 5, MR, Tab 2 p 12.

<sup>4</sup> Varsalone Affidavit at paras 6 and 7, MR, Tab 2, pp 12-13.

<sup>5</sup> Varsalone Affidavit at para 11, MR, Tab 2, p 14.

7. The DecisionOne business was acquired by the corporate group in early 2022 (the “**D1 Acquisition**”). The D1 Acquisition was funded primarily through a US \$72 million increase in the corporate group’s existing secured term loan facility (the “**Term Facility**”) for which White Oak Global Advisors, LLC acts as agent (the “**Term Facility Agent**”).<sup>6</sup>

8. DecisionOne carried on a business of providing technology support services in North America. Those services included: IT asset management, including planning, procurement, upgrades and dispositions; staffing augmentation; general day-to-day IT support services; technology consulting; and digital signage.<sup>7</sup>

9. The D1 Canada business was historically a small portion of the broader North American offering of DecisionOne. The annual revenues of D1 Canada in 2022 were approximately 4% of the annual revenues of DecisionOne overall. D1 Canada employs approximately 20 people in Canada, as compared to the over 400 people who were employed by D1 US in the United States.<sup>8</sup>

#### Defaults Under Term Facility

10. The acquisition of DecisionOne did not lead to the commercial benefits anticipated. In particular, DecisionOne was, from the time of acquisition, a persistently negative cash flow business. The losses from DecisionOne were unsustainable in view of the size of DecisionOne and the additional leverage and debt service costs resulting from its acquisition.<sup>9</sup>

11. By November, 2022, multiple events of default had occurred and were continuing under the Term Facility of DecisionOne and Soroc. As a result of these events of default, the Term Facility Agent declared the obligations under the Term Facility, then totalling approximately US

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<sup>6</sup> Varsalone Affidavit at para 12, MR, Tab 2, p 14.

<sup>7</sup> Varsalone Affidavit at para 20, MR, Tab 2, p 16.

<sup>8</sup> Varsalone Affidavit at paras 21 and 22, MR, Tab 2, p 16.

<sup>9</sup> Varsalone Affidavit at para 13, MR, Tab 2, p 15.

\$97 million of outstanding principal, to be immediately due and payable by DecisionOne and Soroc.<sup>10</sup>

*Restructuring Efforts To Date For D1 US And Soroc*

12. A number of restructuring alternatives in the best interest of DecisionOne and Soroc were explored from November 2022 to March 2023.<sup>11</sup>

13. Following extensive consideration of restructuring options over a number of months and discussions with lenders and shareholders regarding options to preserve the business, the Soroc business was sold as a going concern in an out-of-court sale to an affiliate of the lenders under the Term Facility acting on their behalf (the “**Lender Affiliate**”) through a credit bid transaction.<sup>12</sup>

14. The credit bid transaction for the Soroc business was completed following a marketing process in which no executable transactions were identified that would: (a) repay the Soroc and DecisionOne secured revolving credit facility; and (b) provide consideration to the Term Facility Agent in excess of the credit bid amount. In contrast, the credit bid transaction provided for cash payments that would repay the secured revolving credit facility and provided value to the remaining senior secured lenders.<sup>13</sup>

15. With respect to the DecisionOne business, extensive efforts were also made to explore possible sales. Due to the service-based nature of the DecisionOne business, its operations did not depend upon substantial property, plant, equipment or inventory. The key value drivers for the business were:

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<sup>10</sup> Varsalone Affidavit at para 14, MR, Tab 2, p 15.

<sup>11</sup> Varsalone Affidavit at para 15, MR, Tab 2, p 15.

<sup>12</sup> Varsalone Affidavit at para 43, MR, Tab 2, p 21.

<sup>13</sup> Varsalone Affidavit at para 44, MR, Tab 2, p 21.

- (a) Master service agreements and tailored work orders entered into with large corporate clients;
- (b) Vendor relationships with suppliers who provide the IT hardware that complements the DecisionOne service deliveries; and
- (c) Experienced technical staff.<sup>14</sup>

16. Extensive efforts were made to identify potential sales of the DecisionOne business. Given the small number of industry players, six parties who were either competitors or operating complementary businesses were invited to engage, and did engage, in discussions about the opportunity. Those parties were selected with input from DecisionOne's financial advisory firm and Chief Restructuring Officer. More detailed discussions about potential transaction structures and values for the DecisionOne business were undertaken with three of those participants who submitted letters of intent for a transaction. Any potential transaction was complicated by a number of operational and financial issues that DecisionOne continued to experience and, ultimately, no actionable transaction was identified.<sup>15</sup>

17. Following those discussions with potential acquirers, in March 2023 a determination was made to transfer the much larger D1 US business to a subsidiary of an affiliate of the lenders under the Term Facility acting on their behalf through a credit bid transaction, which was structured as a foreclosure process under the *Uniform Commercial Code* in the United States (the "**D1 US Sale**"). This was the highest and best executable transaction for the D1 US business.<sup>16</sup>

18. The D1 US Sale resulted in a reduction in the amounts outstanding under the Term Facility and preserved employment for approximately 200 employees of D1 US. The D1 Canada assets

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<sup>14</sup> Varsalone Affidavit at para 26, MR, Tab 2, p 17.

<sup>15</sup> Varsalone Affidavit at para 45, MR, Tab 2, p 22.

<sup>16</sup> Varsalone Affidavit at paras 46 and 47, MR, Tab 2, p 22.

were ultimately excluded from that sale as the D1 Canada assets could not be transferred under the US foreclosure procedures and concerns about potential liabilities of D1 Canada could not be adequately investigated and resolved on the timeline required.<sup>17</sup>

19. The only remaining operating assets of DecisionOne and Soroc that have not been sold are the limited operations and assets of D1 Canada. The marketable assets of D1 Canada are primarily certain customer contracts and accounts receivable.<sup>18</sup>

20. The principal amount of outstanding obligations under the Term Facility following the above transactions total approximately \$46 million (excluding non-recourse amounts).<sup>19</sup>

21. The Proposal Trustee (defined below) has received an opinion from its independent counsel confirming the validity, enforceability and perfection, of the security held by the Term Facility Agent to secure the obligations under the Term Facility that were guaranteed by D1 Canada. The Term Facility Agent has first in time registrations on D1 Canada's property and assets in relevant jurisdictions and, accordingly, has a first ranking security interest senior to any other security interests or liens on D1 Canada's property and assets to the extent of the amounts guaranteed by D1 Canada.<sup>20</sup>

### The Sale Process

22. For the purpose of establishing a court-supervised marketing and sale process, D1 Canada filed a Notice of Intention to Make a Proposal under Division I, Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, on May 19, 2023 (the "BIA"). KPMG Inc. has been appointed as trustee in those proceedings (in such capacity, the "Proposal Trustee").

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<sup>17</sup> Varsalone Affidavit at para 46, MR, Tab 2, p 22.

<sup>18</sup> Varsalone Affidavit at paras 48 and 41, MR, Tab 2, p 23 and 21.

<sup>19</sup> Varsalone Affidavit at para 33, MR, Tab 2, p 19.

<sup>20</sup> First Report of KPMG Inc., in its capacity as Proposal Trustee, dated June 1, 2023 ("First Report") at paras 37 and 38;



KPMG Inc. has been working with Soroc and DecisionOne for several months in connection with the broader restructuring of the corporate group.<sup>21</sup>

23. The prior marketing efforts for the DecisionOne business over the period of November 2022 to March 2023 provided insight into the potentially interested purchasers of the D1 Canada business. Because the DecisionOne business was not cash flow positive on a standalone basis, it was primarily attractive to strategic acquirers seeking to acquire customers to incorporate into their own existing businesses. That conclusion is particularly applicable to D1 Canada due to its relatively small scale that would not justify building out independent infrastructure for support on a standalone basis.<sup>22</sup>

24. The above-described prior experience marketing the DecisionOne business and D1 Canada's limited liquidity has led to the conclusion that any sale process for the D1 Canada business on its own should be targeted and expedited. The proposed stalking horse sale process has been developed based upon that objective.<sup>23</sup>

25. Consistent with the prior transactions to acquire portions of the DecisionOne and Soroc businesses, the stalking horse transaction (the "**Stalking Horse Bid**") has been negotiated with an affiliate of the senior secured lenders (the "**Stalking Horse Purchaser**") for the acquisition of the majority of D1 Canada's remaining assets. The Stalking Horse Bid is a credit bid in the form of an asset purchase agreement on customary terms for a transaction of this type. Notably, the transaction would proceed on an 'as is, where is' basis.<sup>24</sup>

26. If it is the successful bid, the proposed Stalking Horse Bid will ensure that the substantial majority of D1 Canada's employees will continue to have employment offers and the business's

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<sup>21</sup> Varsalone Affidavit at paras 53 and 54, MR, Tab 2, p 24.

<sup>22</sup> Varsalone Affidavit at para 59, MR, Tab 2, p 26.

<sup>23</sup> Varsalone Affidavit at para 60, MR, Tab 2, p 26.

<sup>24</sup> Varsalone Affidavit at paras 55, 56 and 57(a), MR, Tab 2, p 24.

customers will continue to have a service provider going forward that remains integrated with the ongoing D1 US business already owned by the senior secured lenders. This continued integration is beneficial because the D1 Canada and D1 US businesses have many overlapping customers that obtain services from DecisionOne in both jurisdictions.<sup>25</sup>

27. D1 Canada seeks to implement a stalking horse process to verify if any other parties are willing, by a bid deadline of June 20, 2023, to provide greater value for the D1 Canada business than the Stalking Horse Bid. If no such transaction materializes, the intention is to complete the Stalking Horse Bid immediately. The proposed bid deadline is a full 4 weeks after the process was launched by KPMG on May 23, 2023, as described further below.<sup>26</sup>

28. A stalking horse process is desirable in this case because the D1 Canada business is particularly vulnerable in the context of an insolvency proceeding due to the nature of customer and supplier contracts, which generally allow customers and suppliers to cease working with D1 Canada quickly if concerns about business continuity of D1 Canada arise. A clear going concern solution at the outset of the process will assist in maintaining the confidence of customers and suppliers about the continuity of the D1 Canada business.<sup>27</sup>

### Stalking Horse Process Summary

29. The proposed sale process<sup>28</sup> (the “**Stalking Horse Sale Procedures**”) is summarized below:

- (a) The Proposal Trustee, in consultation with D1 Canada, will prepare a list of known potential bidders and will deliver a summary document to those parties describing

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<sup>25</sup> Varsalone Affidavit at paras 6 and 7, MR, Tab 2, p 13

<sup>26</sup> Varsalone Affidavit at paras 9 and 61(b), MR, Tab 2, p 13 and 27.

<sup>27</sup> Varsalone Affidavit at para 50, MR, Tab 2, p 23.

<sup>28</sup> Varsalone Affidavit at para 61, MR, Tab 2, p 28; Exhibit J to the Varsalone Affidavit, MR, Tab 2J, p 404.

the opportunity and inviting recipients to participate in the bidding process. This process has already commenced on May 23, 2023. The known potential bidders include those parties previously approached in the pre-filing DecisionOne sale process.

- (b) Interested parties may also have access to an electronic data site containing confidential information, subject to entry into a proposed form of non-disclosure agreement.
- (c) The deadline for submission of binding bids based on the form of the Stalking Horse APA shall be June 20, 2023, four weeks after the start of the marketing process.
- (d) All bids must satisfy certain minimum criteria regarding (i) the amount of cash and non-cash consideration offered, (ii) the irrevocable period for bids, which must be at least until a prescribed outside date; (iii) the form of a final and binding transaction agreement based upon the Stalking Horse APA form; and (iv) a cash deposit of 10% of the purchase price offered.
- (e) All potential transactions must be submitted on an 'as is, where is' basis.
- (f) If one or more qualified bids are received by the applicable bid deadline, the Proposal Trustee may elect to conduct an auction.
- (g) If no qualified bids are received by the bid deadline other than the Stalking Horse Bid, then the parties shall proceed to complete the transaction contemplated by the Stalking Horse Bid without further court approval.

30. A sale of the D1 Canada business must proceed on an expedited basis at this time to preserve going concern value. That sale will benefit the employees, vendors and customers of the D1 Canada business and will maximize recovery for the lenders under the Term Facility.<sup>29</sup>

31. Based upon the balance of the amounts guaranteed by D1 Canada under the Term Facility at this time and the financial performance of the D1 Canada business and assets, it appears that the senior secured lenders are the only remaining creditors who have an economic interest in those assets. The senior secured lenders support the approval of the sale process.<sup>30</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

32. The issues to be determined on this Motion are:

- a) whether the proposed Stalking Horse Sale Procedures should be approved;
- b) whether the sale contemplated in the Stalking Horse Bid, and the vesting of the purchased assets in the Stalking Horse Purchaser, should be approved at this time, subject to completion of the Stalking Horse Sale Procedures without any other higher or better bid; and
- c) whether the time period for D1 Canada to file a proposal should be extended pursuant to Section 50.4(9) of the BIA to permit the Stalking Horse Sale Procedures to be completed.

#### *The Stalking Horse Sale Procedures Should Be Approved*

33. This Court has previously set out the following factors when determining if a proposed sale process should be approved in the context of a CCAA proceeding:

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<sup>29</sup> Varsalone Affidavit at para 62, MR, Tab 2, p 28.

<sup>30</sup> Varsalone Affidavit at para 63, MR, Tab 2, p 28.

- a) Is a sale transaction warranted at this time?
- b) Will the sale benefit the whole 'economic community'?
- c) Do any of the debtors' creditors have a *bona fide* reason to object to the sale of the business?
- d) Is there a better viable alternative?<sup>31</sup>

34. D1 Canada submits that each of the above factors is strongly in favour of advancing the proposed sale process at this time.

35. The DecisionOne and Soroc businesses have already been sold in their entirety on a going concern basis, with the exception of the limited assets and operations of D1 Canada. The D1 Canada business has never operated as a self-sustaining enterprise and is cash flow negative.<sup>32</sup> Liquidity will be exhausted imminently. If any value is to be realized from the D1 Canada business for the benefit of its stakeholders, a sale to a strategic acquirer should proceed at this time to preserve value.

36. The Stalking Horse Sale Procedures, including the certainty of a going concern outcome through the Stalking Horse Bid, will benefit the whole economic community. Going concern operations will be maintained for the benefit of employees, vendors and customers in Canada. The senior secured lenders, whose outstanding debt far exceeds the value of the D1 Canada business, also support the proposed transaction and will be able to reintegrate the D1 Canada business with the previously purchased D1 US business if the Stalking Horse Bid is the successful transaction.

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<sup>31</sup> *Nortel Networks Corporation (Re)*, (2009) 55 CBR (5<sup>th</sup>) 229 (Ont. S.C.J.) at para 49.

<sup>32</sup> Varsalone Affidavit at para 5, MR, Tab 2, p 12.

37. No creditor has a bona fide reason to object to the proposed process. The senior secured lenders, who are the only remaining lenders with an economic interest in D1 Canada, are supportive of the process.<sup>33</sup> A significant majority of the employees of D1 Canada would benefit from continued employment offers. Vendors and customers would benefit from the continuation of existing commercial relationships. If there is any higher or better offer than the proposed Stalking Horse Bid, there will be a reasonable opportunity for that transaction to be advanced.

38. Efforts to explore alternative restructuring options have been extensive over the past several months. No viable alternative executable going concern stand-alone restructuring option has been identified for the D1 Canada business.<sup>34</sup> A sale transaction is the only viable option for a number of reasons including: (i) the quantum of secured debt that remains outstanding cannot be restructured in a manner that would be reasonably acceptable to the senior secured lenders given the balance of that debt relative to the apparent value of the D1 Canada assets; (ii) D1 Canada does not generate positive cash flow on its own; and (iii) the D1 Canada business does not have the infrastructure and support systems to operate as a stand-alone restructured business.

39. In *Boutique Euphoria Inc. (Re)*<sup>35</sup> the Quebec Superior Court set out the following non-exhaustive factors as important considerations in assessing whether a stalking horse bid process in particular should be approved:

- a) Has there been some control exercised at the first stage of the competition (namely that to become the stalking horse bidder) and to what extent? In other words, some assurances should exist that the horse chosen is indeed the right one.

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<sup>33</sup> Varsalone Affidavit at para 62, MR, Tab 2, p 28.

<sup>34</sup> Varsalone Affidavit at para 62, MR, Tab 2, p 28.

<sup>35</sup> [2007 QCCS 7129](#) at para. 37.

- b) Is there a need for stability within a very short time frame for the debtor to continue operations and the restructuring contemplated to be successful?
- c) Are the economic incentives for the stalking horse bidder, in terms of break up fee, topping fee and overbid increments protection, fair and reasonable?
- d) Are the time lines contemplated reasonable to ensure a fair process at the second stage of the competition, namely that to become the successful over bidder?

40. In the current case, the unsuccessful pre-filing marketing efforts as well as the overall value of the business of D1 Canada relative to the greater amount guaranteed by D1 Canada under the Term Facility, both support the conclusion that the credit bid provided by the Stalking Horse Bidder is indeed the right stalking horse bid. The assets of DecisionOne were subjected to a detailed pre-filing marketing process with potential strategic acquirers that did not yield an executable solution that would satisfy the outstanding secured debt and preserve the going concern. The senior secured lenders have proposed a viable going concern solution in which they would face a material shortfall but preserve going concern operations for the benefit of other stakeholders. An opportunity remains open for other potential bidders to offer consideration in an amount that would similarly maintain going concern operations for other stakeholders and be supported by the senior secured lenders.

41. The entire value of the D1 Canada business depends upon the ongoing work of employees as well as other intangible assets such as customer and vendor relationships. That value can only be preserved if the parties contributing to the D1 Canada business have assurance that a going concern solution is available. The Stalking Horse Bid provides that clear and certain going concern solution that provides required stability in this case.

42. The Stalking Horse Bidder is not seeking any break fee or other customary economic incentives. The additional qualified bid consideration (at \$150,000) is sufficient to offset the costs of proceeding with a competitive process without being prohibitive to other bidders.

43. The timeline for the Stalking Horse Sale Process is expedited but reasonable in the circumstances. Sale processes with similarly expedited timelines have been approved by this Court in previous recent cases where, as here, pre-filing marketing processes were commenced prior to the approval order.<sup>36</sup> In this case, the stalking horse marketing process commenced two weeks in advance of the motion for court approval, which provides 4 weeks for parties to submit a qualified bid. In view of the limited liquidity remaining available to D1 Canada, which will be exhausted shortly, and the limited size of the D1 Canada business, as well as the prior marketing process, which already raised awareness about the potential sale of D1 Canada, the expedited sale process is reasonable and necessary in the circumstances of this case. As noted above, all parties previously approached in the pre-filing DecisionOne sale process have received notice of the current sale process.<sup>37</sup>

*The Conditional Approval and Vesting Order for the Stalking Horse Bid Should Be Granted*

44. D1 Canada also requests conditional approval of the sale under the Stalking Horse Bid at this time. Specifically, if no bid on terms consistent with the Stalking Horse Bid but offering greater consideration than the Stalking Horse Bid (plus the applicable bid increment) is submitted by the bid deadline in accordance with the Stalking Horse Sale Procedures, the Stalking Horse Bid will be deemed accepted and approved by the Court.

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<sup>36</sup> *In the Matter of a Plan of Compromise or Arrangement of DCL Corporation* (Court File No: CV-22-00691990-00CL) [Endorsement of Justice Osborne dated February 27, 2023 \(Ont. S.C.J. \(Commercial List\)\)](#).

<sup>37</sup> First Report at para. 53.



45. This relief is requested in the circumstances to avoid the time and cost of a subsequent sale approval hearing if no superior bids are identified through the Stalking Horse Sale Procedures.

46. There are compelling reasons to adopt the efficient approach proposed here and, as described below, there are precedents to do so. The key factors dictating a streamlined, efficient approach to this case are as follows:

- a) First, the liquidity constraints facing D1 Canada are exceptionally severe, creating a requirement for an expedited and extremely efficient sale process.
- b) Second, the proposed credit bid transaction would have been the highest and best transaction submitted for the D1 Canada assets on their own in the pre-filing marketing process.
- c) Third, the D1 Canada business is the final remaining operating asset in the DecisionOne and Soroc group, and it is reasonable to conclude that the D1 Canada business, generating revenues of less than \$5 million per year, is not of sufficient value to fully satisfy its secured obligations to the senior secured lenders who appear to be significantly underwater when comparing the outstanding guaranteed amount to the apparent value of this collateral.
- d) Fourth, it is reasonable to expect that the Stalking Horse Bid will be the highest and best offer for the D1 Canada assets and provide the highest consideration to applicable stakeholders as the senior secured lenders indirectly control the D1 US business for which the D1 Canada business is valuable as an extension of that US business.

47. The Stalking Horse Sale Procedures are useful to provide further confirmation and comfort to the Court and to stakeholders that no higher or otherwise better offer is available. However,

the process should be conducted as efficiently as possible in view of the particular economic realities of the current situation.

48. Courts have granted a conditional sale approval order in other cases recently, including in the insolvency proceedings of *Dove Cleaners* and *0876242 BC Ltd.*<sup>38</sup>

49. D1 Canada submits that conditional approval should be granted in this case in view of the factors established for approval of a sale under Section 65.13 of the BIA:<sup>39</sup>

- a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b) whether the proposal trustee approved the process leading to the proposed sale or disposition;
- c) whether the proposal trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d) the extent to which the creditors were consulted;
- e) the effects of the proposed sale or disposition on the creditors and other interested parties;  
and
- f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

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<sup>38</sup> *2519920 Ontario Inc. o/a Dove Cleaners* (Court File No: 31-2803414) [Order dated April 9, 2022 \(Ont. S.C.J.\)](#); *Institutional Mortgage Capital Canada Inv. C. 0876242 BC Ltd.*, [2022 BCSC 1520 \(British Columbia Supreme Court\)](#).

<sup>39</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, at [s. 65.13](#).

50. Each of the factors described above supports approval of the Stalking Horse Bid at this time for the following reasons:

- a) The marketing process undertaken to date has been targeted and reasonable and conducted for several months. The Stalking Horse Sale Procedures will provide a further and reasonable test of the market.
- b) The Proposal Trustee approves of the proposed process in the circumstances.
- c) The Proposal Trustee has confirmed in a report to the Court their view that the Stalking Horse Bid, if the successful bid under the Stalking Horse Sale Procedures, provides a going concern solution that is more beneficial and more efficient for those parties with an economic interest in D1 Canada to any subsequent sale or liquidation of assets in a bankruptcy.<sup>40</sup> Further, it is not reasonably foreseeable that going concern value could be preserved in a bankruptcy.
- d) The sole lenders with an economic interest in D1 Canada are the senior secured lenders with respect to the amounts guaranteed by D1 Canada. Those lenders have been consulted throughout and support the process. Trade creditors and employees are anticipated to be largely unaffected by the transaction and to continue with the go-forward business, subject to certain limited downsizing.
- e) If the Stalking Horse Bid is the successful bid, then the recovery to the secured lenders will have been maximized and many stakeholders, such as employees and trade creditors, will receive offers to have their arrangements with D1 Canada assumed.

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<sup>40</sup> First Report at para. 46(i).

- f) Given the sale process undertaken to date, the value of the secured debt outstanding relative to the business, and efforts to test the market further through the Stalking Horse Sale Procedures, it is submitted that the Court can reasonably conclude the consideration under the Stalking Horse Bid is fair and reasonable absent an alternative transaction offering higher value timely submitted by the bid deadline in accordance with the Stalking Horse Sale Procedures.

*The Time Period To File A Proposal Should Be Extended*

51. If the Proposal Trustee is not able to file a proposal in respect of D1 Canada with the official receiver within a period of 30 days after the date the D1 Canada notice of intention was filed, or within any extension of that period granted under Section 50.4(9), then D1 Canada will be deemed to have made an assignment in bankruptcy.<sup>41</sup>

52. The 30-day period prescribed by the BIA would expire in this case prior to the bid deadline in the Stalking Horse Sale Process. Accordingly, an extension of that time will be required to allow the sale process to run its course without an intervening bankruptcy, which would impact going concern operations and practically prevent the sale process from being completed with optimal results.

53. Section 50.4(9) of the BIA provides that the Court may extend the time in which D1 Canada can file a proposal if the Court is satisfied of the following:

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;

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<sup>41</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, at [s. 50.4\(8\)](#).

- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

54. Courts have confirmed that the provision of additional time for a court-approved sale process to be completed is an appropriate basis for an extension under Section 50.4(9) of the BIA.<sup>42</sup>

55. In the current case, D1 Canada has acted in good faith and with due diligence over the past several months to attempt to resolve its financial concerns in the best interests of all stakeholders. These proceedings and the proposed sale process are a continuation of those good faith efforts and diligence.<sup>43</sup>

56. If the proposed extension of time is not granted, the likely outcome is a shutdown of operations upon a bankruptcy and transition of D1 Canada's assets to a trustee in bankruptcy, which would be prejudicial to D1 Canada's employees, customers and secured lenders.

57. No creditor is prejudiced by the extension of time to file a proposal in this case. The goal of the extension is to allow a value maximizing sale process to be completed. The senior secured creditors of D1 Canada are supportive of the process and face a substantial shortfall. There is no reasonable prospect of recovery for any subordinate creditors other than through the proposed sale process and a going concern sale. Accordingly, there is no practical prejudice to such

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<sup>42</sup> *In the Matter of the Notice of Intention of Make a Proposal of Spartan Bioscience Inc.*, (Court File No.: 33-2726552), [Endorsement of Justice Kershman dated April 20, 2021 \(Ont. S.C.J. \(Bankruptcy and Insolvency\)\)](#).

<sup>43</sup> Varsalone Affidavit at para 70, MR, Tab 2, p 29.

creditors at this time in permitting the stay of proceedings under the BIA and the sale process to continue.

**PART IV - ORDER REQUESTED**

58. The proposed sale process approval order and sale approval order are an efficient solution to the uncommon circumstances facing the D1 Canada and D1 US businesses. D1 Canada respectfully requests that the Court grant the proposed order to permit D1 Canada's prompt transition through its restructuring process.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1st day of June, 2023.



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## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *Nortel Networks Corporation (Re)*, [\(2009\) 55 CBR \(5<sup>th</sup>\) 229 \(Ont. S.C.J.\)](#)
2. *Boutique Euphoria Inc. (Re)*, [2007 QCCS 7129](#)
3. *In the Matter of a Plan of Compromise or Arrangement of DCL Corporation* (Court File No: CV-22-00691990-00CL), [Endorsement of Justice Osborne dated February 27, 2023 \(Ont. S.C.J. \(Commercial List\)\)](#)
4. *2519920 Ontario Inc. o/a Dove Cleaners* (Court File No: 31-2803414) [Order dated April 9, 2022 \(Ont. S.C.J.\)](#)
5. *Institutional Mortgage Capital Canada Inv. C. 0876242 BC Ltd.*, [2022 BCSC 1520 \(British Columbia Supreme Court\)](#)
6. *In the Matter of the Notice of Intention of Make a Proposal of Spartan Bioscience Inc.*, (Court File No.: 33-2726552), [Endorsement of Justice Kershman dated April 20, 2021 \(Ont. S.C.J. \(Bankruptcy and Insolvency\)\)](#)

## SCHEDULE "B"

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

*Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended*

#### Restriction on disposition of assets

- **Factors to be considered**

**65.13 (4)** In deciding whether to grant the authorization, the court is to consider, among other things,

- **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- **(b)** whether the trustee approved the process leading to the proposed sale or disposition;
- **(c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- **(d)** the extent to which the creditors were consulted;
- **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
- **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.



## Notice of intention

### Where assignment deemed to have been made

**50.4 (8)** Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under [section 49](#); and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under [section 102](#), at which meeting the creditors may by ordinary resolution, notwithstanding [section 14](#), affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

### Extension of time for filing proposal

**50.4 (9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A  
PROPOSAL UNDER THE BANKRUPTCY AND INSOLVENCY ACT,  
R.S.C. 1985, c. B-3, AS AMENDED OF DECISIONONE CORPORATION,  
A CORPORATION FORMED UNDER THE LAWS OF NEW BRUNSWICK

Court File No. 31-2946538  
Estate No. 31-2946538

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF DECISIONONE CORPORATION**

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