

**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 IGNITE HOLDINGS INC., IGNITE SERVICES INC., and IGNITE
INSURANCE CORPORATION**

Applicants

FACTUM OF THE APPLICANTS

November 27, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. Ignite Holdings Inc., Ignite Services Inc., and Ignite Insurance Corporation (collectively, the “**Applicants**”) were granted protection from their creditors under the CCAA pursuant to the Initial Order of this Court dated October 30, 2023, as amended and restated on November 9, 2023.
2. This motion is brought by the Applicants seeking an order (the “**Priority Claims Order**”) approving the Priority Claims Procedure to resolve claims against the Purchased Shares that may rank in priority to the Senior Secured Obligations owing to the Applicants’ first-ranking secured creditor, Aviva (the “**Priority Claims**”).²
3. The Applicants also seek approval and authorization for the Monitor to enter into and execute the Reimbursement Agreement, which would allow the Monitor to make a Distribution to the DIP Lender from proceeds of the Transactions under the Purchase Agreement.³
4. For the reasons described below, it is in the best interests of the Applicants and their stakeholders for the Court to approve the Priority Claims Order.

PART II – FACTS

A. Background

5. The Applicants carry on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance. Through the Company’s digital platform and with the support of its broker licensed employees, the Company assists its customers with shopping for and purchasing of various insurance policies from multiple insurance companies.⁴
6. Facing a severe liquidity crisis, the Applicants sought and obtained protection under the CCAA on October 30, 2023, pursuant to the Initial Order, which was amended and restated on November 9, 2023 (the “**ARIO**”).⁵
7. Also on November 9, 2023, the Applicants sought and obtained the Approval and Reverse Vesting Order, which among other things approved the Purchase Agreement between

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Stephen Livingstone sworn November 22, 2023 (the “**Third Livingstone Affidavit**”), Motion Record of the Applicants dated November 22, 2023 (“**MR**”), Tab 2.

² *Ibid* at [para. 3](#), MR Tab 2.

³ *Ibid* at [para. 30](#), MR Tab 2.

⁴ *Ibid* at [para 5](#), MR Tab 2.

⁵ *Ibid* at [paras. 8](#) and [10](#), MR Tab 2.

Ignite Holdings, as vendor, and Southampton, as Purchaser, and the Transactions contemplated therein.⁶

8. The Transactions contemplated in the Purchase Agreement have been structured to form a “reverse vesting” transaction whereby, among other things, Southampton will purchase the new shares of the Company from Ignite Holdings (the “**Purchased Shares**”) and become the sole shareholder of the Company. After closing, all Excluded Contracts, Excluded Assets, and Excluded Liabilities with respect to the Company will be transferred and “vested out” to Residual Co., so as to allow Southampton to indirectly acquire the Company’s business and assets on a “free and clear” basis.⁷

9. The Company has certain liabilities in respect of unremitted source deductions that have not been definitively quantified and that may rank ahead of Aviva’s security. Pursuant to section 25(e) of the ARIO, the Monitor is authorized to assist the Applicants, to the extent required by the Applicants, in their implementation of a process to identify and determine Priority Claims.⁸

10. Pursuant to the ARIO, amounts of any super-priority claims of the CRA for unremitted source deductions, which priority is not reversed by operation of applicable law (the “**CRA Priority Payables**”) rank ahead of the DIP Lender’s Charge.⁹

11. The development of a claims process by the Applicants and the Monitor, in consultation with Aviva, in respect of Priority Claims, including the CRA Priority Payables, is also a requirement under the Limitation of Liability Agreement.¹⁰

B. The Priority Claims Procedure

12. The Applicants and the Monitor, in consultation with the DIP Lender and Aviva, designed the Priority Claims Procedure for the identification, quantification, and resolution of any Priority Claims, which will be transferred and vested in Residual Co. upon closing of the Transactions.¹¹

13. The Applicants and the Monitor consulted the CRA on multiple occasions leading up to the date of this affidavit in connection with the adequacy of the timelines established by the

⁶ *Ibid* at [para. 12](#), MR Tab 2.

⁷ *Ibid* at [para. 13](#), MR Tab 2.

⁸ *Ibid* at [para. 11](#), MR Tab 2.

⁹ *Ibid* at [para. 10](#), MR Tab 2.

¹⁰ *Ibid*, MR Tab 2.

¹¹ *Ibid* at [para. 10](#), MR Tab 2.

proposed Priority Claims Order with respect to the quantification of the amounts of the Source Deductions up to the date of filing.¹²

14. The key terms of the Priority Claims Procedure, and as set out in the Priority Claims Order, are the following:¹³

(a) *Notice*. The Monitor shall provide notice of the Priority Claims Order and the Priority Claims Bar Date within five (5) Business Days following the issuance of the Priority Claims Order;

(b) *Priority Claims Bar Date*. The Priority Claims Bar Date to submit a Proof of Claim with respect to all Priority Claims is 5:00 p.m. (Toronto time) on January 11, 2024;

(c) *Priority Claims Procedure*. The Monitor shall review all Proofs of Claim and may accept, settle, or dispute the amount and priority of each asserted Priority Claim set out therein for the purpose of distribution. Also, the Monitor may, at any time, request additional information with respect to any asserted Priority Claim, and may request that a Priority Claimant file a revised Proof of Claim;

(d) *Notice of Dispute*. If the Monitor is unable to resolve any asserted Priority Claim within a time period or in a manner satisfactory to the Monitor and wishes to dispute such asserted Priority Claim, the Monitor shall deliver a Notice of Dispute to the applicable Priority Claimant; and

(e) *Resolution of Disputed Priority Claims*. The Monitor may at any time refer any Disputed Priority Claim or a portion thereof to the Court for resolution, or as may be otherwise ordered by the Court or agreed to by the Monitor and the applicable Priority Claimant.

C. The Reimbursement Agreement

15. The Applicants also seek approval and authorization for the Monitor to enter into and execute the Reimbursement Agreement, a copy of which is attached as Exhibit "C" to the Third Livingstone Affidavit.

¹² *Ibid* at [para. 10](#), MR Tab 2.

¹³ [Proposed Priority Claims Order](#), MR Tab 3.

16. Pursuant to the proposed Reimbursement Agreement, *inter alia*, (i) within 2 business days of the closing of the Transactions, the Monitor shall pay to the DIP Lender \$1.1 million, in satisfaction of the principal amount owing under the DIP Facility (the “**Distribution**”), and (ii) the Monitor may seek a return, refund, or repayment of the Distribution, if required, as determined by the Monitor in its reasonable discretion, to satisfy any deficit relating to the CRA Priority Payables, or on such other grounds as may be approved by the Court.¹⁴

PART III – ISSUES

17. The issue on this motion is whether the Court should approve the Priority Claims Procedure and approve and authorize the execution of the Reimbursement Agreement between the Monitor and the DIP Lender, as contemplated in the Priority Claims Order.

PART IV – LAW & ARGUMENT

A. The Priority Claims Procedure should be approved

18. While there is no express statutory authority for a priority claims process in the CCAA, priority claims processes have previously been approved by Canadian courts.¹⁵

19. The Court’s general power under section 11 of the CCAA includes the authority to approve a process to solicit and determine claims against a debtor company. This authority is “well accepted” in CCAA proceedings, and this Court has routinely granted claims procedure orders.¹⁶

20. CCAA courts have stated that claims processes should fulfill three key objectives:

(a) **Certainty:** Justice Morawetz held in *Timminco Ltd, Re*, that “it is of fundamental importance to determine the quantum of liabilities to which the debtor and, in certain circumstances, third parties are subject.”¹⁷

(b) **Fairness:** The Court should bear in mind the requirements of appropriateness, good faith and due diligence when exercising CCAA authority, which

¹⁴ Third Livingstone Affidavit, *supra* at para. 30, MR Tab 2.

¹⁵ *Essar Steel Algoma Inc. (Re)*, Priority Claims Order issued October 11, 2018 [Court File No. CV-15-000011169-00CL]; *33 Yorkville Residences Inc., Re*, Priority Claims Procedure Order issued March 11, 2021 [Court File No. CV-20-00637297-00CL].

¹⁶ *Re Toys “R” Us (Canada) Ltd*, 2018 ONSC 609 at para. 8; CCAA, ss. 11.

¹⁷ *Timminco Ltd, Re*, 2014 ONSC 3393 at para. 41.

in a claims process means giving creditors a level playing field with respect to their claims and ensuring the reasonableness of any claims procedure;¹⁸ and

(c) **Efficiency:** In the context of a claims procedure, “the practice has arisen for the court to create by order a claims process that is both flexible and expeditious,” which can mean implementing solutions that reduce costs, time, and the burden on the judiciary’s limited resources.¹⁹

21. The Priority Claims Procedure set out in the Priority Claims Order meets the three objectives set out above for the following reasons:

- (a) it is necessary to ascertain the potential universe of Priority Claims that may exist against the Applicants, to, among other things, permit Residual Co. to return to this Court to seek approval of distributions to secured creditors and/or priority creditors from the purchase price received under the Purchase Agreement;²⁰
- (b) it promotes a fair outcome for all involved parties by providing Priority Claimants with adequate notice and opportunity to prove their Priority Claims prior to the Priority Claims Bar Date;²¹ and
- (c) it facilitates an efficient process by imposing clear and reasonable deadlines for the submission and determination of Priority Claims and provides for a fair and expeditious adjudication procedure for the resolution of any disputes regarding the status and/or amount of any Priority Claim.²²

22. The Monitor is of the view that the proposed Priority Claims Procedure is fair and reasonable, and the approval of the Priority Claims Order is appropriate in the circumstances and agreeable to the CRA, Aviva and the DIP Lender.²³

¹⁸ *Nortel Networks Corp. (Re)*, 2018 ONSC 278 at para. 126 citing *BA Energy Inc., (Re)*, 2010 ABQB 507.

¹⁹ *ScoZinc Ltd., Re*, 2009 NSSC 136 at paras. 23, 25 and 28-30.

²⁰ Third Livingstone Affidavit, *supra* at para. 27, MR Tab 2.

²¹ *Ibid* at para. 28, MR Tab 2.

²² *Ibid* at para. 29, MR Tab 2.

²³ Second Report of KPMG Inc., in its capacity as Monitor, dated November 23, 2023, (the “**Second Report**”) at para. 33.

B. The Court has the jurisdiction to approve the Reimbursement Agreement and authorize the Monitor to make the Distribution to the DIP Lender

23. Section 11 of the CCAA provides that a court may, "*subject to the restrictions set out in [the CCAA] ... make any order it considers appropriate in the circumstances.*" The court has inherent jurisdiction to fill in the gaps of the CCAA to give effect to its objects.²⁴

24. Orders granting interim distributions are routinely conferred by Canadian courts.²⁵ Furthermore, CCAA courts have previously authorized the execution of a reimbursement agreement authorizing the monitor to make interim distributions,²⁶ and interim distributions made by a monitor to a DIP lender.

25. In *Re AbitibiBowater Inc.*, Justice Gascon considered a number of factors, including that the payee's security was valid and enforceable, the amounts owed to the payee exceeded the distribution, and whether the distribution will leave the estate with sufficient liquidity.²⁷

26. In its capacity as DIP Lender, Primary has provided interim financing to the Applicants in these CCAA Proceedings, pursuant to the DIP Facility Agreement in the principal amount of \$1.1 million. The obligations of the Applicants to Primary under the DIP Facility Agreement are secured by the DIP Lender's Charge.²⁸

27. Furthermore, the Monitor and the Applicants expect that there will be sufficient proceeds from the Transactions to repay in full both the obligations under the DIP Facility Agreement and the Priority Claims based on information in the Applicants' books and records and the Notice of Assessment from the CRA.²⁹

28. As such, the factors discussed in *Re AbitibiBowater Inc.* are met in this case.

PART V – ORDER SOUGHT

29. For the reasons set out above, the Applicants respectfully submit that the Court should grant the Priority Claims Order in the form attached to the Applicants' Motion Record.

²⁴ *Re Nortel Networks Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]), at para. 30.

²⁵ *Carillion Canada Holdings Inc., Re*, Interim Distribution Order issued August 4, 2021 [Court File No. CV-18-590812-00CL]; *IMV Inc., Re*, Interim Distribution and WEPPA Order issued September 6, 2023 [Hfx No. 52334].

²⁶ *Timminco Ltd., Re*, Order issued August 28, 2012 [Court File No. CV-12-9539-00CL].

²⁷ *Re AbitibiBowater Inc.*, 2009 QCCS 6461 at paras. 71-75.

²⁸ Third Livingstone Affidavit, *supra* at paras. 9 and 10, MR Tab 2.

²⁹ Second Report, *supra* at para. 36.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of November, 2023.



STIKEMAN ELLIOTT LLP

SCHEDULE "A"
LIST OF AUTHORITIES

Cases

1. *Essar Steel Algoma Inc. (Re)*, Priority Claims Order issued October 11, 2018 [Court File No. CV-15-000011169-00CL]
2. *33 Yorkville Residences Inc., Re*, Priority Claims Procedure Order issued March 11, 2021 [Court File No. CV-20-00637297-00CL]
3. *Re Toys "R" Us (Canada) Ltd*, 2018 ONSC 609
4. *Timminco Ltd, Re*, 2014 ONSC 3393
5. *Nortel Networks Corp. (Re)*, 2018 ONSC 278
6. *ScoZinc Ltd., Re*, 2009 NSSC 136
7. *Re Nortel Networks Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List])
8. *Carillion Canada Holdings Inc., Re*, Interim Distribution Order issued August 4, 2021 [Court File No. CV-18-590812-00CL]
9. *IMV Inc., Re*, Interim Distribution and WEPPA Order issued September 6, 2023 [Hfx No. 52334].
10. *Timminco Ltd., Re*, Order issued August 28, 2012 [Court File No. CV-12-9539-00CL]
11. *Re AbitibiBowater Inc.*, 2009 QCCS 6461

SCHEDULE "B"
RELEVANT LEGISLATION

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

General power of court

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

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PROCEEDING COMMENCED AT TORONTO

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