

C A N A D A

**SUPERIOR COURT**  
(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N° : 500-11-057570-190

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

**9348069 CANADA INC.**

-and-

**4295862 CANADA INC.**

-and-

**MOTOVAN CORPORATION**

-and-

**MONCY HOLDING COMPANY INC.**

-and-

**MONCY FINANCIAL SERVICES COMPANY INC.**

-and-

**NICHOLS MOTORCYCLE SUPPLY INC.**

-and-

**MONCY LLC**

-and-

**MOTORCYCLE TIRES & ACCESSORIES LLC ("MTA")**

*CCAA Parties*

- and-

**KPMG INC.**

*Monitor*

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## **THIRD REPORT OF THE MONITOR**

*(Companies' Creditors Arrangement Act, R.S.C. 1985, C. C-36, As Amended)*

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FEBRUARY 13, 2020

## **CONTENTS**

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A. Introduction and Purpose of the Monitor’s Third Report.....	3
B. Restrictions and Scope Limitations.....	4
C. Monitor’s Activities since the Issuance of the Second Extension Order .....	5
D. CCAA Parties’ Restructuring Efforts since the Issuance of the Second Extension Order.....	5
E. SISP Results and the GCBI Revised Offer (Motovan) .....	6
F. The Monitor’s Recommendations.....	8

## **APPENDICES**

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Appendix A – Copies of the Offers Received in the Context of the SISP (Under Seal)	
Appendix B - Copies of the Letters Exchanged between Monitor and Bidders (Under Seal)	
Appendix C - Bidders’ Chart (Under Seal)	
Appendix D – Email from Bidder #1 (as presented in the Bidder’s Chart) (Under Seal)	
Appendix E – Email from Bidder #3 (as presented in the Bidder’s Chart) (Under Seal)	
Appendix F – GCBI Revised Offer and a Chart Outlining Impact of Changes on Net Return (Under Seal)	
Appendix G - Copy of the NBC Financing Offer (Under Seal)	
Appendix H – Email from BLG confirming BMO’s Approval of the GCBI Revised Offer (Under Seal)	

## **A. INTRODUCTION AND PURPOSE OF THE MONITOR'S THIRD REPORT**

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1. On November 28, 2019, 9348069 Canada inc., 4295862 Canada inc. and Motovan Corporation (collectively "**Motovan**" or the "**Applicants**") filed an application before the Quebec Superior Court, Commercial Division (the "**Court**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
2. On November 28, 2019, KPMG Inc., in its then capacity as proposed monitor, provided the Court with a pre-filing report dated November 29, 2019 (the "**Pre-Filing Report**") in connection with the Applicants' application seeking, *inter alia*, the issuance of an Initial Order granting the CCAA Parties protection under the CCAA and the granting of certain priority charges, namely an administration charge and a directors and officers' charge (the "**Proposed Initial Order**").
3. On December 2<sup>nd</sup>, 2019, the Court granted an initial order which provides for, among other things, the appointment of KPMG Inc. as monitor of the Applicants (in such capacity, the "**Monitor**") in these CCAA proceedings (the "**CCAA Proceedings**") and a stay of proceedings until December 12, 2019, or such later date as the Court may order against the CCAA Parties (the "**Initial Order**").
4. On December 9, 2019, the Applicants filed a motion (I) for an order extending the stay period, (II) to amend the initial order and (III) for the approval of a sale and investment solicitation process (the "**SISP**").
5. On December 12, 2019, the Court granted the Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") and the Order approving the SISP and extending the stay period up to January 31, 2020 (the "**First Extension/SISP Order**").
6. On December 20, 2019, the Monitor, in its capacity as foreign representative, obtained provisional relief, and on January 23, 2020, obtained final relief under Chapter 15 of the Bankruptcy Code for recognition of the CCAA Proceedings by the United States Bankruptcy Court for the District of Delaware (the "**US Court**").
7. On January 29, 2020, the Applicants filed a motion seeking an extension of the stay period (the "**Second Extension Motion**").
8. On January 31, 2020, the Court granted an order extending the stay period up to May 15, 2020 (the "**Second Extension Order**").
9. On February 12, 2020, the Applicants filed a Motion seeking approval of the GCBI Revised Offer (as defined hereinafter) and the issuance of an Approval and Vesting Order (the "**Motion**").
10. The purpose of this report (the "**Report**") is to provide the following information to this Court:
  - a) The terms and reference and disclaimer for the Report (section **B**);
  - b) The Monitor's activities since the issuance of the Second Extension Order (section **C**);
  - c) The CCAA Parties' restructuring efforts since the issuance of the Second Extension Order (section **D**);

- d) Motovan's Canadian assets and operations – SISP results, bids received and approval of the GCBI Revised Offer (as defined hereinafter) (section E); and
  - e) The Monitor's observations regarding the Motion (section F).
11. A more detailed description of the business operations of the CCAA Parties and background of its restructuring efforts to date is provided in the Motion.

## **B. RESTRICTIONS AND SCOPE LIMITATIONS**

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12. In preparing this Report, the Monitor has been provided with and has relied upon unaudited financial information, books and records prepared by certain senior management of the Applicants ("**Senior Management**"), and discussions with Senior Management (collectively, the "**Information**"). Except as further described in this Report:
- a) The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* and accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
  - b) Some of the information referred to in this Report consists of financial forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the *Chartered Professional Accountants Canada Handbook*, has not been performed.
13. Future oriented financial information referred to in this Report was prepared based on Senior Management's estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations could be significant.
14. The information contained in this Report is not intended to be relied upon by any prospective purchaser or investor in any transaction with the Applicants.
15. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars, which is the Applicants' common Reporting currency.

## **C. MONITOR'S ACTIVITIES SINCE THE ISSUANCE OF THE SECOND EXTENSION ORDER**

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16. Since the issuance of the Second Extension Order, the Monitor has, *inter alia*:
- a) Posted on the Monitor's websites [www.kpmg.com/ca/motovan](http://www.kpmg.com/ca/motovan) and [www.kpmg.com/ca/motovan-fr](http://www.kpmg.com/ca/motovan-fr) (the "**Website**") the Second Extension Motion, the Second Extension Order and the Second Report of the Monitor;
  - b) Assisted the CCAA Parties with its communications with employees, suppliers, lenders and other parties;
  - c) Responded to telephone calls, emails and inquiries and addressed concerns from creditors and other stakeholders and their financial and legal advisors regarding the effect of the CCAA Proceedings;
  - d) Assisted MTA with its liquidation process in respect to the American assets;
  - e) In collaboration with the Monitor's US legal counsel, submitted letters to creditors who issued demand letters or requested payment for obligations prior to the issuance of the Chapter 15 Orders (as defined in the Second Report of the Monitor);
  - f) Prepared and provided to BMO and Richter weekly updates of cash flows and weekly variance analyses of the cash flows for both Motovan and MTA; and
  - g) With regards to the SISP, had discussions with the Bidders (as defined thereafter), in particular in the context of the negotiations between GCBI (as defined thereafter) and the Bank of Montreal ("**BMO**"), in order to facilitate the conclusion of an agreement.

## **D. CCAA PARTIES' RESTRUCTURING EFFORTS SINCE THE ISSUANCE OF THE SECOND EXTENSION ORDER**

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### **Motovan's Canadian Assets and Business - The SISP**

17. The restructuring efforts in respect to Motovan's business and assets since the issuance of the Second Extension Order have been focused on the SISP in respect of Motovan's Canadian business and assets, which was conducted by KPMG CF acting as exclusive financial advisor to Motovan, under the supervision of the Monitor and the CCAA Court.
18. The results of the SISP and the approval of the GCBI Revised Offer sought from the Court pursuant to the Motion are more fully described in section E of the Report.

### **MTA's American Assets – Liquidation Process by the Agent Gordon Brothers**

19. Since January 6, 2020, MTA has been liquidating its assets with the assistance and support of Gordon Brothers, in accordance with the Agency Agreement signed on December 18, 2019, as approved by the Court.
20. The liquidation of MTA's assets in accordance with the Agency Agreement is anticipated to be completed by end of April, 2020.

## E. SISP RESULTS AND THE GCBI REVISED OFFER (MOTOVAN)

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### The SISP

21. As discussed in the First Monitor's Report and in Second Monitor's Report, a SISP was quickly implemented after the issuance of the Initial Order in respect of Motovan's Canadian business and assets, conducted by KPMG CF acting as exclusive financial advisor to Motovan, under the supervision of the Monitor and the CCAA Court.
22. The SISP procedures were discussed and ultimately approved by the Secured Lenders - Motovan (as defined hereinafter).
23. KPMG CF has conducted the SISP in accordance with the milestones which were presented to and approved by the Court on December 12, 2019, and consisted of the following:

Milestones	Timing
Finalization of a list of Potential Purchasers	Before December 10, 2019
Communication of the Teaser to the Potential Purchasers	Starting on December 10, 2019
Establishment of an Electronic Data Room	Starting on December 10, 2019
Due diligence period	December 10, 2019 to January 22, 2020
Deadline for the filing of a bid	January 22, 2020

24. During the SISP, Motovan maintained its ongoing operations in order to continue generating sales and maximizing the value of its business and assets.
25. During the SISP, KPMG CF reported on a weekly basis to the Monitor who then provided the weekly reports to Richter and the main secured creditors, namely BMO, BDC Capital Inc. and Investissement Québec (collectively the "**Secured Lenders – Motovan**"). To preserve the integrity of the SISP, Senior Management of Motovan did not receive such weekly status reports.
26. Highlights of the conduct of the SISP may be summarized as follows:
  - a) KPMG CF sent a teaser (the "**Teaser**") and a Non-Disclosure Agreement (the "**NDA**") to fifty-nine (**59**) potential purchasers;
  - b) Twelve (**12**) potential purchasers signed an NDA and were given access to the Electronic Data Room and received a copy of the process letter and the confidential information memorandum (the "**CIM**"). Copies of the NDA, process letter and CIM were provided to the Court as an appendix in the First Monitor's Report;
  - c) At the bid deadline, January 22, 2020, four (**4**) offers (the "**Offers**") were submitted to KPMG CF by four (4) bidders (the "**Bidders**"). A copy of the Offers is annexed hereto under seal as **Appendix A**;
  - d) Considering that the Offers were subject to various conditions, on January 24, 2020, the Monitor sent letters (the "**Letters**") to the Bidders asking for additional clarifications and confirmations with regards to the terms in their Offers and/or to confirm that the Monitor was in the process of completing its analysis of the numerous bids received. A copy of these Letters is annexed hereto under seal as **Appendix B**;

- e) On January 24, 2020, the Monitor provided the following documents to the Secured Lenders – Motovan:
    - i. Copies of the Offers;
    - ii. Copies of the Letters; and
    - iii. A chart prepared by the Monitor outlining the net estimated value of the transactions contemplated pursuant to the Offers (the “**Bidders’ Chart**”). A copy of the Bidder’s Chart is attached hereto under seal as **Appendix “C”**.
  - f) On January 28, 2020, the Monitor presided a call with the Secured Lenders - Motovan and their legal/financial advisors to discuss the Offers, the Bidders’ Chart and the next steps. It was decided during that call that the offer providing the highest return and providing for the better closing certainty was submitted by Gestion Claude Bigras Inc. (“**GCBI**”). However, BMO needed additional time to make its final decision with regards to the offer submitted by GCBI (“**GCBI Offer**” – forming part of the Offers – Appendix A).
27. None of the Offers received in the context of the SISF were providing for any value beyond the BMO’s senior secured lender position. In fact, even considering the completion of the transaction contemplated pursuant to the GCBI Offer, BMO is anticipated to suffer a significant loss on its senior secured position;
28. On January 28, 2020, the Bidder #1 (as presented in the Bidders’ Chart) revoked its offer. A copy of the email received from Bidder #1 is attached hereto under seal as **Appendix “D”**. Although the transaction contemplated pursuant to Bid #1 would have allowed the preservation of Motovan’s going concern operations, just like the transaction contemplated pursuant to the GCBI Offer, the expected net return was significantly lower than the one offered pursuant to the GCBI Offer.
29. On January 29, 2020, the Bidder #3 (as presented in the Bidders’ Chart) revoked its offer. A copy of the email received from the bidder’s legal counsel is attached hereto under seal as **Appendix “E”**. The transaction contemplated pursuant to Bid #3 did not provide for the continuation of Motovan’s going concern operations, rather providing for a liquidation of its assets. Besides, the net return was also significantly lower than the one offered pursuant to the GCBI Offer.
30. On February 6, 2020, and following discussions between GCBI and BMO, GCBI revised its GCBI Offer (the “**GCBI Revised Offer**”). The GCBI Revised Offer essentially dealt with some concerns expressed by the BMO and the Monitor in respect to accrued vacation for employees that will be assumed by GCBI pursuant to the completion of the transaction contemplated pursuant to the GCBI Revised Offer. The GCBI Revised Offer and a chart prepared by the Monitor outlining the impacts of the changes made pursuant to the GCBI Revised Offer on the net return are attached hereto under seal as **Appendix “F”**.
31. The GCBI Revised Offer was subject to GCBI securing financing. On February 4, 2020, GCBI provided the Monitor and BMO with a copy of a financing Commitment Letter and Term Sheet issued by the National Bank Financial (the “**NBC Financing Offer**”), allowing for the transaction contemplated pursuant to the GCBI Revised Offer to be completed. A copy of the NBC Financing Offer is annexed hereto under seal as **Appendix “G”**.

32. On February 7, 2020, BMO confirmed its approval of the GCBI Revised Offer. A copy of the email received from BMO's legal counsel, BLG, is attached hereto under seal as **Appendix "H"**.

### ***The GCBI Revised Offer***

33. The GCBI Revised Offer consists in the purchase of the following assets of Motovan (collectively the "**Purchased Assets**"):
- a) All of Motovan's inventory at closing;
  - b) All of Motovan's accounts receivable at closing; and
  - c) All of Motovan's other assets (fixed assets, trademarks, logos, marketing & promotional materials, licenses and others).
34. The transaction contemplated pursuant to the GCBI Revised Offer will allow the continuation of the business operated by Motovan, preserving most of the 57 jobs. The GCBI Revised Offer is the only remaining offer that contemplates such a going concern transaction.
35. The transaction contemplated pursuant to the GCBI Revised Offer is conditional upon satisfactory employment agreements being entered into between GCBI and members of the Senior Management at Motovan, namely, James Paladino, Michael Paladino and Carlo Paladino. James and Michael Paladino are also directors of Motovan.
36. Considering the SISP and the Offers received, the Monitor is satisfied that significant efforts were made to properly canvass the market and find an alternative that would not have involved the Senior Management of GCBI.
37. The consideration payable pursuant to the transaction contemplated pursuant to the GCBI Revised Offer is the best consideration offered within the SISP.
38. Conditions listed in the GCBI Revised Offer have all been waived and/or met, save for the issuance of the AVO (as defined hereinafter) sought pursuant to the Motion.

## **F. THE MONITOR'S RECOMMENDATIONS**

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39. The Monitor respectfully submits that the Approval and Vesting Order sought pursuant to the Motion (the "**AVO**") should be granted;
40. The Monitor supports the issuance of the AVO sought pursuant to the Motion for the following reasons:
- a) The process leading to the GCBI Revised Offer, the SISP, was reasonable and conducted in a manner to maximize the realization value for the business and assets of Motovan;
  - b) The completion of the transaction contemplated pursuant to the GCBI Revised Offer provides the best return and a greater realization than in a context of a liquidation or what would be obtained from any Offers received within the context of the SISP;
  - c) The GCBI Revised Offer is the only remaining offer contemplating a continuity of the operations of Motovan and the employment of the vast majority of Motovan's current employees;




- d) BMO, as senior secured lender, supports the transaction contemplated by the GCBI Revised Offer even if the outcome will result in a significant loss;
  - e) The transaction contemplated pursuant to the GCBI Revised Offer provides the better closing certainty;
  - f) Other Secured Creditors have been informed and kept apprised of the SISF results, the Offers and the GCBI Revised Offer and none have expressed their intention to contest the approval of same sought pursuant to the Motion; and
  - g) The transaction contemplated pursuant to the GCBI Revised Offer is the best possible outcome under the circumstances, for all stakeholders.
41. The Monitor has obtained an independent security review from its counsels confirming the validity of the security interest granted by Motovan in favour of BMO and the enforceability of BMO's rights resulting thereto over the assets subject to the GCBI Revised Offer.
42. For all these reasons, the Monitor respectfully submits to this Honourable Court that the AVO should be issued and the GCBI Revised Offer approved.

All of which is respectively submitted to this Honourable Court this 13<sup>th</sup> day of February 2020.

**KPMG INC.**

in its capacity as the Monitor of  
9348069 Canada Inc.;  
4295862 Canada Inc.;  
Motovan Corporation;  
Moncy Holding Company Inc.;  
Moncy Financial Services Company Inc.;  
Nichols Motorcycle Supply Inc.;  
Moncy LLC &  
Motorcycle Tires and Accessories LLC.

  
Per: Dev A. Coossa, CIRP, LIT  
Partner

**APPENDIX A – COPIES OF THE OFFERS RECEIVED IN THE CONTEXT  
OF THE SISP (UNDER SEAL)**

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**APPENDIX B - COPIES OF THE LETTERS EXCHANGED BETWEEN  
MONITOR AND BIDDERS (UNDER SEAL)**

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**APPENDIX C - BIDDERS' CHART (UNDER SEAL)**

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**APPENDIX D – EMAIL FROM BIDDER #1 (AS PRESENTED IN THE  
BIDDER’S CHART) (UNDER SEAL)**

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**APPENDIX E – EMAIL FROM BIDDER #3 (AS PRESENTED IN THE  
BIDDER’S CHART) (UNDER SEAL)**

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**APPENDIX F – GCBI REVISED OFFER AND A CHART OUTLINING  
IMPACT OF CHANGES ON NET RETURN (UNDER SEAL)**

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**APPENDIX G - COPY OF THE NBC FINANCING OFFER (UNDER SEAL)**



**APPENDIX H – EMAIL FROM BLG CONFIRMING BMO’S APPROVAL  
OF THE GCBI REVISED OFFER (UNDER SEAL)**

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