

**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 ORIGINAL TRADERS ENERGY LTD.
AND 2496750 ONTARIO INC. (each, an "Applicant" and
collectively, the "Applicants")**

**FACTUM OF THE MONITOR
(Monitor's Enhanced Powers and Amended Bid Process Approval Order)**

October 11, 2023

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FACTUM OF THE MONITOR

PART I: OVERVIEW

1. The Monitor is seeking an Order (the “**Monitor’s Enhanced Powers and Amended Bid Process Approval Order**”), among other things:
 - (a) providing the Monitor with enhanced powers in connection with the business and property of Original Traders Energy Ltd., 2496750 Ontario Inc., OTE Logistics LP, and Original Traders Energy LP (together, the “**OTE Group**”); and
 - (b) approving an amended bid process (the “**Amended Bid Process**”) for the sale of the assets of the OTE Group to be carried out by the Monitor.
2. The Monitor’s Enhanced Powers and Amended Bid Process Approval Order would also expressly deny a motion brought by Glenn Page (“**Page**”) and 2658658 Ontario Inc. (“**265**”) for, among other things, the appointment of a Chief Restructuring Officer (a “**CRO**”).
3. As an officer of the Court and given its knowledge of the OTE Group, an order enhancing the powers of the Monitor to address any concerns raised regarding governance of the OTE Group is a far better alternative than the appointment of a CRO. The Monitor is best positioned to be granted enhanced powers over the business and property of the OTE Group, and the appointment of a CRO is not necessary or appropriate in the circumstances. The Monitor also believes that the Amended Bid Process will provide an opportunity to achieve a value maximizing sale of the assets of the OTE Group and allow it to effectively canvass the market for the benefit of the OTE Group’s stakeholders, having regard to the very short timeframe available prior to the expiry of the gas and fuel licenses.
4. For these reasons and as set out further below, the Monitor believes the relief sought in the Monitor’s Enhanced Powers and Amended Bid Process Approval Order is fair and reasonable and is in the best interests of the OTE Group’s creditors and will not prejudice any stakeholders.

PART II: FACTS

5. The facts underlying this motion are more fully set out in the Supplement to the Fifth Report of the Monitor dated October 6, 2023 (the “**Supplemental Fifth Report**”). Capitalized terms used but not otherwise defined herein have the meanings ascribed in the Supplemental Fifth Report.¹

A. Background to Motion

6. The Monitor prepared a report dated September 28, 2023 (the “**Fifth Report**”) in connection with a hearing scheduled before the Court on October 4, 2023. At that time, the following motion materials had been served in connection with the October 4th hearing:

- (a) Counsel to OTE USA LLC (“**OTE USA**”) served motion materials seeking an Order, among other things:
 - (i) directing the Monitor to establish a data-room accessible to OTE USA, and others if appropriate, subject to the implied undertaking rule, and on such additional terms as the relevant parties may agree or the Court may direct; and
 - (ii) directing the Monitor, Original Traders Energy LP and Original Traders Energy Ltd. (“**OTE GP**”) as General Partner of Original Traders Energy LP, and other custodians of documents to be identified, to populate the data room with the documents responding to a document production protocol as agreed by the parties or ordered by this Court, for the purposes of, among other things, adducing evidence in respect of Scott Hill and Miles Hill or persons or entities affiliated with them, and accounting for the alleged wrongful use or receipt of funds,

¹ The Supplemental Fifth Report of the Monitor dated October 6, 2023 (the “**Supplemental Fifth Report**”) and other materials filed in these CCAA Proceedings can be found on the Monitor’s website: <http://home.kpmg/ca/OTEGroup>.

payment or benefits to Scott Hill, Miles Hill or persons or entities affiliated with them, in respect of the Applicants.

- (b) Counsel to the OTE Group served motion materials seeking an Order (the “**Third Stay Extension Order**”), among other things:
- (i) extending the Stay Period (as defined in the Initial Order) to April 26, 2024;
 - (ii) amending the claims procedure pursuant to the Claims Procedure Order granted by this Court dated April 27, 2023 pursuant to which amendment the OTE Group, with the assistance of the Monitor, will seek to identify, quantify and resolve certain claims by former employees;
 - (iii) approving a sale process for the business and property of the OTE Group (the “**Bid Process**”), to be carried out by the Monitor, as detailed in the Fifth Report; and
 - (iv) approving the Fifth Report and the activities and conduct of the Monitor in relation to the OTE Group and these CCAA Proceedings.

7. The Monitor was supportive of the relief sought by the OTE for the reasons set out in the Fifth Report.²

8. On October 2, 2023, counsel to Glenn Page and 2658658 Ontario Inc. served a motion returnable on October 4, 2023 seeking an Order (the “**CRO Order**”), among other things:

- (a) appointing William Aziz of BlueTree Advisors as CRO of the OTE Group;

² Supplemental Fifth Report at para 3.

- (b) directing Scott Hill and Miles Hill to fully cooperate with the CRO;
- (c) directing that any sales process for the OTE Group's assets include the Certificate of Possession currently held by Scott Hill for Lot 32-7 Concession 1 Township Tuscarora CLSR 65905, the parcel on Six Nations Reserve No. 40 where the OTE Head Office and the Six Nations Blending Location are located; and
- (d) the adjournment, if necessary, of the OTE Group's motion for the Third Stay Extension Order.

9. In their motion materials, Page and 265 asserted various concerns with the management of the OTE Group, and argued that the appointment of a CRO is necessary to ensure an orderly restructuring or sale of the OTE Group.

10. The OTE Group, the Mareva Respondents, OTE USA, and the Monitor agreed to adjourn the above relief to a later date. In connection therewith, the Court scheduled a hearing for October 12, 2023, following the parties' attendance on October 4th.³

11. The Monitor served its Supplemental Fifth Report to provide the Court with its views and recommendations on the relief to be sought on October 12th, as well as to provide further information to the Court on various matters unrelated to the relief sought. The relief sought by the Monitor is described in more detail below. The OTE Group has served an amended motion record seeking the approval of an Order approving substantially the same relief originally sought in the Third Stay Extension Order (except for the approval of the Bid Process, given that the Monitor is now seeking approval of the Amended Bid Process). For the reasons set out in the Fifth Report, the Monitor continues to support the relief sought

³ Supplemental Fifth Report at para 5.

by the OTE Group in its amended motion (including an extension of the stay of proceedings under the CCAA) and believes it is fair and reasonable in the circumstances.⁴

B. Monitor's Enhanced Powers

12. The Monitor understands that the OTE Group opposes the appointment of a CRO, and that Scott Hill is prepared to resign as the director and officer of Original Traders Energy Ltd.⁵

13. Among other things, the Monitor's enhanced powers would authorize it to:

- (a) manage the business of the OTE Group;
- (b) protect and preserve the property of the OTE Group;
- (c) conduct the Amended Bid Process;
- (d) work with the various stakeholders;
- (e) oversee and direct the preparation and dissemination of financial and other information of the OTE Group; and
- (f) file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") on behalf of the OTE Group or any of the OTE Group entities.⁶

C. The Amended Bid Process

14. The original Bid Process was described in detail in the Fifth Report.⁷

⁴ Supplemental Fifth Report at para 20.

⁵ Supplemental Fifth Report at para 9; Eighth Affidavit of Scott Hill sworn October 9, 2023 at paras 8-9 ("**Eighth Hill Affidavit**").

⁶ Supplemental Fifth Report at para 10.

⁷ Supplemental Fifth Report, Appendix A; Fifth Report of the Monitor dated September 28, 2023 ("**Fifth Report**") at paras 34-41.

15. The Amended Bid Process narrows the assets for sale to the right, title and interests of the OTE Group in the chattels identified at Schedule 1 to the Amended Bid Process due to uncertainty surrounding the ownership of fuel blending equipment, including claims that have been or may be asserted by landlords in respect thereof.⁸ The Amended Bid Process also provides for consultation rights to the Royal Bank of Canada (“**RBC**”), in its capacity as the secured lender to the OTE Group.⁹

16. Aside from those amendments, the key aspects of the Amended Bid Process remain substantially the same as what was originally sought in the Bid Process. Pursuant to the Amended Bid Process:

- (a) the Amended Bid Process shall be conducted by the Monitor, with the assistance of the OTE Group and in consultation with RBC;
- (b) on October 16, 2023 an initial offer summary will be sent by the Monitor to a list of potential interested parties (the “**Interested Parties**”);
- (c) the Monitor will cause a notice of the Amended Bid Process to be published in the Globe and Mail (National Edition) and such other publications as the Monitor deems appropriate;
- (d) the Monitor will establish a data room and provide Interested Parties who have signed a non-disclosure with access;
- (e) Interested Parties will be required to submit binding offers (“**Binding Offers**”) to the Monitor by no later than November 16, 2023; and

⁸ Supplemental Fifth Report at para 16.

⁹ Supplemental Fifth Report at para 18.

- (f) Binding Offers that are deemed acceptable to the Monitor, in consultation with RBC, may be presented to the Court for approval.

PART III: ISSUES

17. The issues to be considered on this motion are whether:

- (a) this Court should provide the Monitor with additional enhanced powers in these circumstances to address governance concerns; and
- (b) this Court should approve the Amended Bid Process.

A. The Monitor Should be Granted Enhanced Powers

18. Pursuant to ss. 11 and 23(1)(k) of the CCAA, this Court has the authority to expand the powers of the Monitor.¹⁰ As the Supreme Court of Canada held, section 11 of the CCAA provides the Court with a broad discretion that should be exercised in furtherance of the remedial objectives of the CCAA, and where it has been demonstrated that (a) the order sought is appropriate in the circumstances, (b) the applicant has been acting in good faith and with due diligence.¹¹ Section 23(1)(k) of the CCAA specifically provides that the monitor shall carry out any other functions in relation to the debtor company that the court may direct.

19. As such, it has become accepted that a monitor's powers may be enhanced to allow it to function as a "super monitor" under the CCAA¹², including to provide super monitor powers to allow a monitor to exercise the powers of the board of directors of an entity after its board and management have resigned.¹³ Orders providing for enhanced powers, including to exercise management functions and to

¹⁰ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at [para 91](#); *Ernst & Young Inc. v. Essar Global Fund Limited*, [2017 ONCA 1014](#) at [paras 106, 117-118](#).

¹¹ *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at [paras 47-49](#).

¹² *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, [2020 QCCA 659](#) at [para 68](#) (*Aquadis*).

¹³ *Re Nortel Networks Corporation et al.*, [2014 ONSC 6973](#) at [para 31](#).

bankrupt entities, are increasingly common in CCAA proceedings.¹⁴ The fact that granting the monitor's enhanced powers will potentially maximize value for stakeholders has been a relevant consideration in the decision to grant such enhanced powers.¹⁵

20. Regardless of whether Scott Hill resigns, the Monitor is of the view that it should be granted the enhanced powers requested, and that the CRO should not be appointed. In this case, the Court already determined it was appropriate to expand the Monitor's powers at the outset of these proceedings to allow it to conduct investigations regarding the OTE Group, and noted that these investigations would benefit all stakeholders.¹⁶ The Monitor's enhanced powers requested at this motion would ensure that the Monitor's investigation is not impeded and will provide the required independent oversight and governance to allow the Monitor to continue its investigations for the benefit of the stakeholders of the OTE Group and address the governance concerns that have been raised by Page and 265.

21. Further, the Monitor is of the view that an order enhancing its powers is a far better alternative than the appointment of a CRO because, among other things:

- (a) the Monitor will be able to quickly transition to its enhanced role given the necessary knowledge it has accumulated pertaining to the OTE Group through its role as the Monitor commencing January 2023, along with months of involvement previous to its appointment;
- (b) significant costs would need to be incurred should a CRO be appointed, as the CRO would need to, among other things, spend time obtaining appropriate background on the OTE

¹⁴ [Aquadis](#) at [para 82](#).

¹⁵ *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, [Endorsement of Justice Conway dated May 12, 2023](#) at para 13; *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#) at [paras. 2-3, 68-69](#); *Harte Gold* at [paras 91-93](#).

¹⁶ *In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, [Endorsement of Justice Osborne dated January 30, 2023](#) at paras 51-55.

Group and the CCAA Proceedings and retain additional legal counsel, and the fees and costs of the CRO and its counsel would be in addition to the fees and costs of the professionals already involved in these proceedings; and

- (c) the appointment of a CRO is simply not necessary or warranted in these circumstances as the OTE Group's business has been significantly downsized due to the loss of key customers, necessitating the implementation of the Reduced Operations Plan, as described in the Fifth Report and further detailed in the Supplemental Fifth Report.¹⁷

22. As an officer of the Court, the Monitor has, and will continue to, exercise its enhanced powers in a fair and impartial manner under the supervision of the Court. The Monitor's requested enhanced powers are supported by the OTE Group and RBC.¹⁸ Further, the Monitor's oversight of the OTE Group should address the concerns of Page and 265, and will ensure that the OTE Group has the appropriate supervision and governance structure to carry out the Amended Bid Process and complete the CCAA Proceedings.

23. For these reasons, the Monitor is of the view that its enhanced powers should be granted, and the appointment of a CRO should be denied.

B. The Amended Bid Process Should be Approved

24. The remedial nature of the CCAA confers broad powers to facilitate restructurings, including the power to approve a sale process in relation to a CCAA debtor's business and assets, prior to or in the absence of a plan of compromise and arrangement.¹⁹

¹⁷ Supplemental Fifth Report at paras 12 and 28-39; Fifth Report at paras 21-28.

¹⁸ Supplemental Fifth Report at para 13; Eighth Hill Affidavit at para 8.

¹⁹ *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#) at [para 48](#) (*Nortel*).

25. In determining whether to approve a sale process, this Court has considered the following factors (among others):

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole “economic community”?
- (c) Do any of the debtors’ creditors have a *bona fide* reason to object to a sale of the business?
- (d) Is there a better viable alternative?²⁰

26. The factors set out in subsection 36(3) of the CCAA, while not technically applicable, have also been considered when deciding whether to approve a sale process:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in its 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

²⁰ [Nortel](#) at [para 49](#); [Brainhunter Inc. \(Re\)](#), [2009 CanLII 72333 \(ON SC\)](#) at [para 13](#); [Danier Leather Inc. \(Re\)](#), [2016 ONSC 1044](#) at [para 23](#).

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²¹

27. In consideration of the above criteria and factors, the Amended Bid Process should be approved because:

- (a) the Amended Bid Process is warranted. To date, there has not been a process to sell the assets of the OTE Group, and the Amended Bid Process is intended to effectively canvass the market to enter into a sale or sales of assets that would maximize value for stakeholders;
- (b) the Amended Bid Process seeks to address concerns and feedback received from stakeholders regarding the original Bid Process, which was first prepared in consultation with the Monitor. The Amended Bid Process does not seek to sell assets for which ownership is uncertain (such as blending equipment over which landlords have asserted or may assert rights); however, it still provides for a mechanism for bidders to negotiate the potential use of leased premises or fixtures with landlords through discussions to be arranged by the Monitor on a best reasonable efforts basis. The Amended Bid Process also provides that any disputes as to the ownership, interests and rights of the OTE Group in any premises or fixtures may be brought before the Court for determination after the conclusion of the Amended Bid Process if the resolution of such disputes is necessary for the consummation of the Successful Bid or is otherwise determined to be in the interests of the creditors of the OTE Group. In the circumstances, the Monitor believes the process

²¹ *U.S. Steel Canada Inc., (Re)*, [2015 ONSC 2523](#) at para 8.

leading to the preparation of the Amended Bid Process was reasonable, and does not believe any creditor has a reasonable basis to object to the Amended Bid Process;

- (c) the Amended Bid Process will benefit the whole economic community of the OTE Group as the Amended Bid Process is designed and intended to solicit the highest and best bid for the assets of the OTE Group, and to provide a market test for the benefit of all stakeholders;
- (d) the Amended Bid Process will be commenced without delay once approved by the Court, and the duration will be sufficient to allow parties to participate and submit offers on a reasonable timeline, keeping in mind the circumstances of this case and the fact that the loss of key customers has resulted in the business being put under the Reduced Operations Plan and fuel and gas licenses expire at the end of 2023;
- (e) the OTE Group supports the Amended Bid Process;
- (f) RBC, in its capacity as the secured bank creditor of the OTE Group, supports the Amended Bid Process, which provides it with consultation rights throughout; and
- (g) the Monitor is well positioned to administer the Amended Bid Process with the assistance of the OTE Group and in consultation with RBC, and is of the view that the Amended Bid Process should be approved.

28. The Monitor submits that the Amended Bid Process provides an appropriate framework that will fairly canvass the market to obtain the best offer for the assets of the OTE Group which will maximize value for the stakeholders.

29. For the above reasons, the Monitor submits that the Amended Bid Process should be approved.

PART IV: RELIEF REQUESTED

30. The Monitor submit that all of the qualifications required to obtain the requested relief are met and requests that this Court grant the proposed form of Monitor's Enhanced Powers and Amended Bid Process Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Handwritten signatures in blue ink, separated by a vertical slash. The signature on the left is more stylized, while the one on the right is more legible.

Raj Sahni / Thomas Gray

October 11, 2023

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, [2020 QCCA 659](#)
3. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
4. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
5. *Ernst & Young Inc. v. Essar Global Fund Limited*, [2017 ONCA 1014](#)
6. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
7. *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, [Endorsement of Justice Conway dated May 12, 2023](#)
8. *In the Matter of a Plan of Compromise or Arrangement of Original Traders Energy Ltd. and 2496750 Ontario Inc.*, [Endorsement of Justice Osborne dated January 30, 2023](#)
9. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#)
10. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(ON SC\)](#)
11. *Re Nortel Networks Corporation et al.*, [2014 ONSC 6973](#)
12. *U.S. Steel Canada Inc., (Re)*, [2015 ONSC 2523](#)

SCHEDULE B – STATUTES RELIED ON

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.

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

Restriction on disposition of business assets

36(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition

Factors to be considered

(3) 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 monitor approved the process leading to the proposed sale or disposition;
- (c)** whether the monitor 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.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b)** the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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ONTARIO INC.

Court File No. CV-23-00693758-00CL

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SUPERIOR COURT OF JUSTICE
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