

**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 1000704712 ONTARIO INC., IGNITE HOLDINGS INC., AND IGNITE  
INSURANCE CORPORATION**

Applicants

**FACTUM OF THE APPLICANTS  
(Re: CCAA Termination and Distribution Order)**

January 28, 2024

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TO: THE SERVICE LIST

## PART I - OVERVIEW<sup>1</sup>

1. Until closing of the Transactions, the Ignite Group, through Ignite Services, carried on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance. Through Ignite Group's digital platform and with the support of its broker licensed employees, Ignite Services assisted its customers with shopping for and purchasing of various insurance policies from multiple insurance companies.

2. As a result of the Ignite Group's deteriorating financial position and inability to meet obligations to their creditors as they became due, the Ignite Group sought and obtained protection under the CCAA pursuant to the Initial Order. The protection under the CCAA had been sought, in part, to provide the Ignite Group with an opportunity to implement the sale of their business for the benefit of all their stakeholders.

3. On October 26, 2023, Ignite Holdings, as Vendor, and Southampton, as Purchaser entered into the Purchase Agreement pursuant to which Southampton would acquire the business of the Ignite Group. On November 9, 2023, this Court granted the Approval and Reverse Vesting Order which, among other things, approved the Purchase Agreement, the Transactions contemplated therein and authorized the Ignite Group to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions.

4. The Transactions closed on December 1, 2023, and, among other things, the style of cause in these CCAA Proceedings was amended to remove Ignite Services as an Applicant in these CCAA Proceedings, with Residual Co. becoming an Applicant in these CCAA Proceedings.

5. The Applicants now seek the CCAA Termination and Distribution Order which, among other things:

(a) provides for the termination of these CCAA Proceedings and the discharge of the Monitor upon the CCAA Termination Time;

(b) approves the Monitor's Reports and the activities of the Monitor referred to therein;

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<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the affidavit of Stephen Livingstone sworn January 25, 2024 (the "**Livingstone Affidavit**").

- (c) approves the fees and disbursement of KPMG, in its capacity as Monitor and Proposed Monitor, and its counsel throughout the CCAA Proceedings and the anticipated further fees and disbursements of the Monitor and its counsel required to complete the administration of the CCAA Proceedings;
- (d) authorizes the Monitor, for and on behalf of the Applicants, to make the Distributions;
- (e) authorizes Residual Co. to assign the Earnout to Aviva pursuant to the Assignment Agreement;
- (f) authorizes the assignment of the Applicants into bankruptcy prior to the CCAA Termination Time and pursuant to the BIA, and authorizes and empowers KPMG to act as Trustee of each of the Applicants;
- (g) terminates the Charges upon the CCAA Termination Time;
- (h) grants a release to the Monitor, its counsel, and each of their respective affiliates, and each of their respective current and former directors, officers, partners, employees and agents (collectively, the “**Released Parties**”) from any and all claims that any Party may have or be entitled to assert against the Released Parties now or hereafter in relation to the CCAA Proceedings; and
- (i) extends the Stay Period until the CCAA Termination Time.

6. For the reasons set forth herein, the Applicants respectfully submit that the relief requested is fair, reasonable, and appropriate for the Court to grant.

## **PART II – SUMMARY OF THE FACTS**

7. The facts underlying this motion are more fully set out in the various affidavits filed by the Ignite Group in these CCAA Proceedings.

### **A. Background**

8. As referenced above, until closing of the Transactions, the Ignite Group, through Ignite Services, carried on business as a digital insurance brokerage for personal, auto, commercial, pet, and travel insurance.<sup>2</sup>

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<sup>2</sup> Livingstone Affidavit at [para. 4](#).

9. Ignite Services was operating at a loss since 2018 and continued to operate at a loss until the commencement of the CCAA Proceedings due to a variety of industry factors, including significant customer acquisition and capital investment costs. As a result of its deteriorating financial position, the Ignite Group became unable to meet obligations to their creditors, including its first-ranking secured creditor, Aviva, with respect to the Senior Secured Obligations owing, and the CRA, with respect to outstanding source deductions.<sup>3</sup>

10. Facing a severe liquidity crisis, on October 30, 2023, the Ignite Group sought and the Court granted the Initial Order pursuant to the CCAA in favour of the Applicants. On November 9, 2023, the Applicants sought and obtained the ARIO. The Initial Order and the ARIO, among other things:

- (a) appointed KPMG as Monitor;
- (b) approved the execution by the Applicants of the DIP Facility Agreement, pursuant to which the Applicants were authorized to borrow up to a total amount of \$1.1 million and granted the corresponding DIP Lender's Charge;
- (c) granted the Administration Charge and the D&O Charge.<sup>4</sup>

11. Also on November 9, 2023, the Ignite Group sought and obtained the Approval and Reverse Vesting Order, which, among other things, approved the Purchase Agreement, the Transactions contemplated therein and authorized the Ignite Group to take such additional steps and execute such additional documents as necessary or desirable for the completion of the Transactions.<sup>5</sup>

12. Furthermore, on November 29, 2023, the Ignite Group sought and obtained the Priority Claims Order which approved the Priority Claims Procedure to resolve any claims against the Purchased Shares ranking in priority to the Senior Secured Obligations owing to Aviva.<sup>6</sup>

13. The Priority Claims Order also approved the Reimbursement Agreement pursuant to which, among other things, the Monitor was authorized to make a distribution to the DIP Lender following closing of the Transactions.<sup>7</sup>

14. The Ignite Group received one (1) Proof of Claim by the Priority Claims Bar Date from the CRA, with respect to the CRA Priority Payables, in the aggregate amount of \$3,468,541.12.<sup>8</sup>

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<sup>3</sup> *Ibid* at paras. 5-9.

<sup>4</sup> *Ibid* at paras. 10-11.

<sup>5</sup> *Ibid* at para. 18.

<sup>6</sup> *Ibid* at para. 23.

<sup>7</sup> *Ibid* at para. 24.

15. The Transactions closed on December 1, 2023. Among other things, the following occurred upon delivery of the Monitor's Closing Certificate and closing of the Transactions:

- (a) all of Ignite Services' right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co.;
- (b) all of the Excluded Liabilities were transferred to, assumed by and vested in Residual Co.;
- (c) all of the right, title and interest in and to the Purchased Shares were vested absolutely and exclusively in Southampton free and clear of and from any Claims and Encumbrances;
- (d) the Adjustable Promissory Note was assigned by Ignite Holdings to Residual Co. and all rights, title, and interests in and to the Adjustable Promissory Note held by Ignite Holdings were vested absolutely in Residual Co.; and
- (e) Ignite Services was deemed to cease being an Applicant in these CCAA Proceedings, with Residual Co. becoming an Applicant in these CCAA Proceedings.<sup>9</sup>

16. Upon closing of the Transactions, Ignite Holdings also contributed, as a capital contribution to Residual Co., its contingent right to receive payment, if any, under the contingent indebtedness, in an aggregate amount of \$2.5 million (the "**Principal Amount**") owing by Ignite Services to Ignite Holdings pursuant to the terms of the form of adjustable promissory note attached as Exhibit "A" to the Purchase Agreement (the "**Adjustable Promissory Note**"), issued by Ignite Services in favour of Ignite Holdings on November 29, 2023.<sup>10</sup>

17. Under the terms of the Adjustable Promissory Note, Ignite Services promised to pay to Residual Co. the Principal Amount subject to adjustments related to the performance of the acquired business as outlined in the Adjustable Promissory Note (the "**Earnout**"). The Adjustable Promissory Note contains certain covenants regarding the conduct of the business by the Purchaser.<sup>11</sup>

18. Since the closing of the Transactions, the Applicants, with the assistance of the Monitor, have completed various post-closing matters required under the Purchase Agreement. Such matters include, among others:

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<sup>8</sup> *Ibid* at [para. 25](#).

<sup>9</sup> *Ibid* at [para. 28](#).

<sup>10</sup> *Ibid* at [para. 21](#).

<sup>11</sup> *Ibid* at [para. 22](#).

- (a) the full repayment of the total advances of \$1.1 million made by Primary to Ignite Services under the DIP Facility, in satisfaction of the terms of the Reimbursement Agreement and the amounts secured by the DIP Lender's Charge; and
- (b) review of the CRA's Priority Claim and related discussions with counsel to the CRA.<sup>12</sup>

**B. Termination of the CCAA Proceedings and Discharge of the Monitor**

19. The proposed CCAA Termination and Distribution Order provides that the CCAA Proceedings will be terminated upon the service of the Monitor's Termination Certificate on the service list in these CCAA Proceedings certifying to the knowledge of the Monitor, all matters to be attended to in connection with the CCAA Proceedings have been completed.<sup>13</sup>

20. Prior to the CCAA Termination Time, the Applicants and/or the Monitor are required to take various steps such as:

- (a) distributing the remaining proceeds being held pursuant to the Purchase Agreement to pay:
  - (i) the reasonable and documented fees and costs of the Monitor and its professional advisors and professional advisors of Ignite Services and Residual Co. for services performed prior to and, other than in respect of Ignite Services, after the closing of the Transactions, relating to these CCAA Proceedings;
  - (ii) amounts in connection with any post-closing obligations of the Applicants under the Purchase Agreement, including the fees and disbursements incurred in connection with the completion of the tax matters contemplated under Section 8.3 of the Purchase Agreement, with respect to Ignite Services and Residual Co.;
  - (iii) certain of the Charges granted in these CCAA Proceedings;
- (b) attending to any remaining post-closing matters under the Purchase Agreement and any necessary corporate or administrative filings;

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<sup>12</sup> *Ibid* at [para. 29](#).

<sup>13</sup> *Ibid* at [para.31](#).

(c) making the Distributions and assigning the Earnout to Aviva in repayment of the Senior Secured Obligations; and

(d) bankrupting the Applicants (collectively, these are the “**Remaining CCAA Tasks**”).<sup>14</sup>

21. At the CCAA Termination Time, the Charges will be terminated immediately, and KPMG will be released and discharged as Monitor.<sup>15</sup>

### **C. Assignment of the Applicants into Bankruptcy**

22. Given that the Transactions did not provide sufficient proceeds to satisfy the Applicants’ indebtedness to their creditors, the proposed CCAA Termination and Distribution Order envisions a bankruptcy for the Applicants and authorizes the Applicants, with the assistance of the Monitor, to make an assignment in bankruptcy pursuant to the BIA before the CCAA Termination Time, and authorizes and empowers, but does not obligate, KPMG to act as the Trustee of the Applicants.<sup>16</sup>

23. After the Remaining CCAA Tasks are completed, the most logical and cost-effective solution is to allow the Applicants, with the assistance of the Monitor, to take any actions and steps which may be necessary to assign or cause the assignment of the Applicants into bankruptcy in order to complete this matter.<sup>17</sup>

24. Pursuant to the proposed CCAA Termination and Distribution Order, the Trustee is authorized to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA, including, without limitation:

(a) administering the bankruptcy estates of Residual Co., Ignite Holdings, and Ignite Insurance under a single court file number and title of proceeding;

(b) sending a notice of the first meeting of creditors (the “**Notice**”) in the manner prescribed by section 102 of the BIA by sending a consolidated Notice for all of the Applicants to accompany the Notice set out in subsection 102(2) of the BIA;

(c) convening meetings of creditors and inspectors in the bankrupt estates of the Applicants through one combined advertisement and conducting such meetings jointly

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<sup>14</sup> *Ibid* at [para. 58](#).

<sup>15</sup> *Ibid* at [para. 33](#).

<sup>16</sup> *Ibid* at [para. 34](#).

<sup>17</sup> *Ibid* at [para. 38](#).

provided that the results of any creditors' vote shall be separately tabulated for each such bankrupt estate;

(d) using a consolidated form of proof of claim that directs creditors to identify the bankrupt estate in which a claim is made for voting and for distribution purposes;

(e) maintaining a consolidated bank account with respect to the Applicants' respective bankruptcy estates;

(f) issuing consolidated reports in respect of the bankruptcy estates of the Applicants;

(g) performing a consolidated making, filing, advertising and distribution of all filings and notices in the bankrupt estates of the Applicants required under the BIA; and

(h) appointing a single group of inspectors to be the inspectors for the consolidated bankruptcy estates of the Applicants.<sup>18</sup>

#### **D. Distributions and Assignment of Earnout**

25. The Applicants are seeking authorization for the Monitor, for and on behalf of the Applicants, to make the Distributions, as following:

(a) to the CRA in satisfaction of its Priority Claim totaling \$3,468,541.12;

(b) to KPMG, as Trustee, in the amount of the Bankruptcy Reserve; and

(c) to Aviva in satisfaction of amounts owing by the Applicants with respect to the Senior Secured Obligations, not to exceed the outstanding amount owing by the Applicants under the Senior Secured Obligations.<sup>19</sup>

26. Given that the proposed Distributions to Aviva will not satisfy the Senior Secured Obligations owing to Aviva, Residual Co. seeks to vest all its rights, title and interests in and to the Adjustable Promissory Note to Aviva, by assigning the Earnout in favour of Aviva pursuant to the Assignment Agreement.<sup>20</sup>

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<sup>18</sup> *Ibid* at [para. 35](#).

<sup>19</sup> *Ibid* at [para.42](#).

<sup>20</sup> *Ibid* at [para. 50](#).



27. For the reasons outlined below, the Distributions and assignment of the Earnout to Aviva being sought is appropriate in the circumstances and will assist with completion of the CCAA Proceedings in the most efficient manner.

#### **E. Releases in Favour of the Monitor and its Counsel**

28. The Applicants are seeking releases for the Released Parties from any and all claims that any Person may have or be entitled to assert against the Released Parties now or hereafter in relation to the CCAA Proceedings.<sup>21</sup>

29. For the reasons outlined below, the releases being sought are appropriate in the circumstances and will assist with completion of the CCAA Proceedings.

#### **F. Approval of the Monitor's Fees and Activities**

30. The Applicants seek approval of the Monitor's activities as outlined in the Monitor's Reports and the approval of the fees and disbursements of KPMG, in its capacity as Monitor and the Proposed Monitor, incurred during the period September 15, 2023 through to and including January 15, 2024 (the "**KPMG Fee Period**"), approval of the fees and disbursements of its counsel, Osler, Hoskin & Harcourt LLP ("**Osler**") incurred during the period September 28, 2023 through to and including January 15, 2023 (the "**Osler Fee Period**", and together with the KPMG Fee Period, the "**Fee Periods**").<sup>22</sup>

31. In support of this motion, the Monitor delivered its Third Report, which attaches affidavits from representatives of the Monitor and its counsel that provide a comprehensive listing of the accounts sought to be passed, including each account (redacted for matters of privilege) and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.<sup>23</sup>

32. The fees and disbursements, exclusive of harmonized sales taxes, of KPMG during the KPMG Fee Period total \$435,936.25 and \$36,322.16, respectively.<sup>24</sup>

33. The fees and disbursements, exclusive of harmonized sales taxes, of Osler during the Osler Fee Period total \$163,614.00 and \$1,166.71, respectively.<sup>25</sup>

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<sup>21</sup> *Ibid* at [para. 52](#).

<sup>22</sup> *Ibid* at [para. 55-56](#); Third Report of the Monitor, KPMG Inc., dated January 26, 2024 ("**Monitor's Third Report**"), [paras. 47-48](#).

<sup>23</sup> *Ibid*. Affidavit of Anamika Gadia sworn January 26, 2024 ("**Gadia Affidavit**"); Affidavit of Michael De Lellis sworn January 26, 2024 ("**De Lellis Affidavit**").

<sup>24</sup> Monitor's Third Report, *supra* at [para 47](#).

<sup>25</sup> Monitor's Third Report, *supra* at [para. 48](#).

34. The Monitor and the Monitor's counsel expect to incur additional fees related to the Remaining CCAA Tasks, prior to the CCAA Termination Date. The Applicants are requesting approval to pay these amounts without further order of the Court.<sup>26</sup>

**G. Extending the Stay Period**

35. As noted above, the Applicants and/or the Monitor will be completing the CCAA Remaining Tasks. While these activities will be completed as soon as possible, they will not be able to be completed prior to January 31, 2024.<sup>27</sup>

36. To avoid the cost of a future stay extension, the Applicants seek a stay extension through to the CCAA Termination Date.<sup>28</sup>

**PART III – ISSUES**

37. The issues to be considered on this motion are whether the Court should:

- (a) authorize the termination of the CCAA Proceedings, and the discharge of the Monitor as at the CCAA Termination Time;
- (b) authorize the assignment of the Applicants into bankruptcy and authorize and empower KPMG to act as Trustee of each of the Applicants;
- (c) approve the Distributions and assignment of the Earnout;
- (d) approve the activities of the Monitor as outlined in the Monitor's Reports, and the fees and disbursements of KPMG, in capacity as Monitor and Proposed Monitor, and its counsel, including the estimate of the fees to be incurred through the completion of these CCAA Proceedings;
- (e) grant the releases in favour of the Released Parties; and
- (f) extend the Stay Period until and including the CCAA Termination Time.

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<sup>26</sup> Livingstone Affidavit, *supra* at [para. 56](#); Monitor's Third Report, *supra* at [para 50](#).

<sup>27</sup> Livingstone Affidavit, *supra* at [para. 59](#).

<sup>28</sup> *Ibid.*

## PART IV – LAW AND ARGUMENT

### A. The CCAA Proceedings Should be Terminated and the Monitor Should be Discharged

38. Section 11 of the CCAA vests this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”<sup>29</sup> The discretion conferred by section 11 of the CCAA is not boundless. Rather, it must be exercised in furtherance of CCAA’s remedial objectives, having regard to whether:

- (a) the order sought is appropriate in the circumstances;
- (b) the debtor company is acting in good faith; and
- (c) the debtor company is acting with due diligence.<sup>30</sup>

39. An order under section 11 of the CCAA will be appropriate where it “advances the policy objectives underlying the CCAA.” These objectives include maximizing creditor recovery and providing a “timely, efficient and impartial resolution of a debtor’s insolvency”.<sup>31</sup>

40. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination and Distribution Order – terminating a debtor company’s proceedings under the CCAA and discharging the court-appointed monitor.<sup>32</sup> The prior Orders have also provided for a variety of additional relief to assist in the interim and subsequent periods surrounding the termination of the CCAA proceedings.

41. Having regard to the foregoing considerations, the Applicants submit that it is appropriate for this Court to terminate the CCAA Proceedings in the manner contemplated by the CCAA Termination and Distribution Order given that:

- (a) the Applicants have no ongoing business operations;
- (b) since the granting of the Initial Order, the Ignite Group and thereafter Residual Co. (as Applicant), in consultation with the Monitor, have acted in good faith and with due diligence to, among other things, stabilize their business,

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<sup>29</sup> CCAA, s. 11.

<sup>30</sup> *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10 at para. 49.

<sup>31</sup> *Ibid* at paras. 40 and 46.

<sup>32</sup> *In the Matter of a Plan of Compromise or Arrangement of GolfTown Canada Holdings Inc. et al, Termination Order* (March 29, 2018), Toronto, CV-19-629552-00CL; *In the Matter of a Plan of Compromise or Arrangement of Old API Wind-Down Ltd., Termination Order* (May 17, 2019), Toronto, CV-18-603053-00CL; *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp., Distribution and Termination Order* (February 15, 2022), Toronto, CV-21-00673304-00CL.

negotiate and execute the Purchase Agreement, close the Transactions, and complete various post-closing steps;<sup>33</sup>

- (c) all matters requiring resolution within the ambit of the CCAA (the Remaining CCAA Tasks) will have been completed by the CCAA Termination Time and no amounts are or will be owing in respect of any of the Charges;<sup>34</sup> and
- (d) the Monitor supports the termination of the CCAA Proceedings on the terms set out in the proposed CCAA Termination and Distribution Order.<sup>35</sup>

**B. Applicants and Monitor should be Authorized to make an Assignment in Bankruptcy and Related Relief should be Granted**

42. The proposed CCAA Termination and Distribution Order authorizes the Applicants, with the assistance of the Monitor, to make an assignment in bankruptcy pursuant to the BIA before the CCAA Termination Time, and authorizes and empowers, but does not obligate, KPMG to act as the Trustee of the Applicants.

43. The proposed CCAA Termination and Distribution Order further provides for various procedural orders that will assist the Trustee with the subsequent bankruptcy proceedings. CCAA Courts have granted similar orders in seeking to facilitate the subsequent proceedings, including with respect to the administration of the bankrupts' estates on a consolidated basis as proposed here.<sup>36</sup>

44. The CCAA provides the Court with broad discretion in respect of the Monitor's functions in a particular CCAA proceeding. Section 23(1)(k) of the CCAA provides that the Monitor can "carry out any other functions in relation to the [debtor] company that the court may direct".<sup>37</sup> In addition, section 11 of the CCAA authorizes this Court to make any order that is necessary and appropriate in the circumstances.<sup>38</sup>

45. In furtherance of the remedial objectives of the CCAA, this Court has routinely granted orders akin to the proposed CCAA Termination and Distribution Order with respect to

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<sup>33</sup> Livingstone Affidavit, *supra* at [para 30](#).

<sup>34</sup> *Ibid* at [paras. 29\(a\), 29\(c\), 40, 58](#).

<sup>35</sup> Monitor's Third Report, *supra* at [para. 59](#).

<sup>36</sup> *In the Matter of a Plan of Compromise or Arrangement of TGF Acquisition Parent Ltd et al, Wind Down Order* (June 22, 2021), Toronto, CV-21-00657098-00CL; and *In the Matter of a Plan of Compromise or Arrangement of King Street Company et al, Termination Order* (March 29, 2021), Toronto, CV-20-00650945-00CL.

<sup>37</sup> CCAA, [s. 23\(1\)\(k\)](#).

<sup>38</sup> CCAA, [s. 11](#).

authorization for the debtor company to be assigned in bankruptcy.<sup>39</sup>

**C. The Distributions Should be Authorized and the Assignment Agreement should be approved.**

46. The Applicants are seeking authority to make the Distributions, as well as the assignment of the Earnout to Aviva, pursuant to the Assignment Agreement.

47. 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.<sup>40</sup>

48. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. This Court has noted that courts often order payments to creditors outside of a CCAA plan.<sup>41</sup>

49. With respect to the proposed Distributions to Aviva, the Monitor's counsel has reviewed the loan and security documentation relating to the Aviva Loan Agreement, and subject to standard assumptions and qualifications, confirmed that such security documentation is valid and enforceable.<sup>42</sup>

50. The amount owing by the Applicants to Aviva with respect to the Senior Secured Obligations (inclusive of per diem interest) as of January 30, 2024, will be \$7,357,212.93 (the "**Pay-Out Amount**").<sup>43</sup>

51. The Distributions to Aviva will not satisfy the Pay-Out Amount, where the expected deficiency is more than \$2.5 million with respect to the Senior Secured Obligations owing to Aviva.<sup>44</sup> Thus, Residual Co. further seeks to vest all its rights, title and interests in and to the Adjustable Promissory Note to Aviva, pursuant to the Assignment Agreement.<sup>45</sup>

52. Furthermore, the Applicants seek to use a portion of the remaining proceeds being held pursuant to the Purchase Agreement to fund to the Trustee the Bankruptcy Reserve in the

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<sup>39</sup> *In the Matter of a Plan of Compromise or Arrangement of TGF Acquisition Parent Ltd. et al*, [Wind Down Order](#) (June 22, 2021), Toronto, CV-21-00657098-00CL; *In the Matter of a Plan of Compromise or Arrangement of GolfTown Canada Holdings Inc. et al*, [CCAA Termination Order](#) (March 29, 2018), Toronto, CV-19-629552-00CL; *In the Matter of a Plan of Compromise or Arrangement of Old API Wind-Down Ltd.*, [CCAA Termination Order](#) (May 17, 2019), Toronto, CV-18-603053-00CL.

<sup>40</sup> *Re Nortel Networks Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List]), at [para. 30](#).

<sup>41</sup> *Nortel Networks Corp. Re*, 2014 ONSC 4777 at [paras. 53-55](#).

<sup>42</sup> Livingstone Affidavit, *supra* at [para. 47](#).

<sup>43</sup> *Ibid* at [para. 48](#).

<sup>44</sup> Monitor's Third Report, *supra* at [paras. 40, 45](#).

<sup>45</sup> Livingstone Affidavit, *supra* at [para. 50](#).

amount of \$75,000 to fund the costs of the bankruptcies of the Applicants. Upon the completion of the bankruptcies, should there be any portion remaining under the Bankruptcy Reserve, and provided that the Senior Secured Obligations had not been satisfied in full, the funds shall be returned by the Trustee to Aviva, in an amount not to exceed the outstanding amount owing by the Applicants under the Senior Secured Obligations.<sup>46</sup>

**D. The Monitor's Activities in the Monitor's Reports, and the Fees and Disbursements of the Monitor and Osler should be Approved**

**(i) Monitor's Reports and Activities**

53. In *Re Target Canada Co.*, Morawetz R.S.J. (as he then was) stated that a request to approve a monitor's report "is not unusual"<sup>47</sup> and that: there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process... Specifically, Court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
  - (i) re-litigation of steps taken to date; and
  - (ii) potential indemnity claims by the Monitor.<sup>48</sup>

54. The form of the proposed CCAA Termination and Distribution Order with respect to approval of the Monitor's Reports and the Monitor's activities described therein, is consistent with the language used in *Target* and subsequent proceedings.<sup>49</sup>

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<sup>46</sup> *Ibid* at [para. 41](#).

<sup>47</sup> *Re Target Canada Co.*, 2015 ONSC 7574 at [para. 2](#) [*Target*], cited with approval in *Laurentian University of Sudbury*, 2022 ONSC 2927 at para. 9. ([Monitor's Website](#)) [*Laurentian*].

<sup>48</sup> *Target, supra* at [para. 22](#).

55. In the present case, the Monitor's Reports, and the conduct and activities of the Monitor referred to therein should be approved. KPMG, in its capacity as Monitor and Proposed Monitor, has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO. No party has put forward evidence to the contrary.

**(ii) Jurisdiction of this Court to Approve the Accounts**

56. The jurisdiction of this Court to approve the accounts of KPMG, in its capacity as Monitor and Proposed Monitor, and its counsel is confirmed in paragraphs 31 of the ARIO, which provides that the Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.<sup>50</sup>

**(iii) The Fair and Reasonable Test for Approval of Accounts**

57. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness".<sup>51</sup> The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.<sup>52</sup>

58. The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional's services may not be instructive when looked at in isolation. The Ontario Court of Appeal provides the following guidance: "The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took".<sup>53</sup> In this case, it is not necessary or desirable for the Court to engage in a review of each individual entry to determine whether the KPMG's and Osler's accounts are fair and reasonable. There has been considerable disclosure of the activities of the Monitor, the Proposed Monitor and Osler in the Monitor's Reports filed throughout the CCAA Proceedings. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout the CCAA Proceedings, it is respectfully submitted that the Court can and should determine that the KPMG's and Osler's accounts are fair and reasonable.

59. There has been adequate disclosure of the activities of KPMG, in its capacity as Proposed Monitor and Monitor, and Osler in the Monitor's Reports and throughout the CCAA Proceedings. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout the CCAA Proceedings, it is respectfully submitted that

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<sup>49</sup> *Ibid* at paras. 7 and 26; *In the Matter of a Plan of Compromise or Arrangement of Old CLHC Company*, Fee Approval and Stay Order (September 29, 2020), Toronto, CV-19-631523-00CL.

<sup>50</sup> Amended and Restated Initial Order dated November 9, 2023.

<sup>51</sup> *Nortel Networks Inc*, 2022 ONSC 6680 at para 10.

<sup>52</sup> *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at paras 15, 21.

<sup>53</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para. 45. [*Diemer*] and cited with approval in *Laurentian* at para. 9.

the Court can and should determine that the KPMG's and Osler's accounts are fair and reasonable.

**(iii) Factors to Be Considered**

60. The test to be applied in determining whether to approve KPMG's and Osler's fees is whether they are fair and reasonable. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal has recognized the following list of non-exhaustive factors:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.<sup>54</sup>

61. These factors are not intended to be an exhaustive list and other factors may be material in any particular case. Certain of the relevant factors are addressed immediately below.

62. KPMG, with the assistance of Osler, carried out extensive activities during the Fee Periods, as detailed in the Monitor's Reports. The more significant responsibilities that the Monitor has assumed include: (a) conducting the pre-filing sales process; (b) overseeing the negotiations with respect to the Purchase Agreement; (c) closing of the Transactions and attending to various post-closing matters with the Applicants (as set out above); (d) obtaining, overseeing and ultimately repaying the obligations under the DIP Facility Agreement and (e)

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<sup>54</sup> *Diemer*, *supra* at [para 33](#); see also *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400 at [para 23](#).



supervising and assisting with activities relating to the Priority Claims Procedure with the Ignite Group and its counsel. The Monitor also assisted and, in many cases, dealt directly with suppliers, creditors, and other stakeholders to maintain normal course operations following the commencement of the CCAA Proceedings.<sup>55</sup>

63. The breadth of matters detailed in the Monitor's Reports demonstrate the diligence and thoroughness displayed by KPMG and Osler.

64. The time spent, and thus the fees and disbursements of KPMG and Osler resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the Applicants and its stakeholders with the goal of making a distribution to the Applicants' creditors as quickly as possible.

65. KPMG's and Osler's professional fees and disbursements are comparable to the rates charged by other professional firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring matters.

66. Accordingly, it is respectfully submitted that a consideration of the factors articulated by the courts supports the conclusion that the remuneration of KPMG and Osler is fair and reasonable and their fees and disbursements for the Fee Periods, respectively, should be approved.

## **E. The Releases Should be Granted**

67. The proposed CCAA Termination and Distribution Order includes releases in favour of the Released Parties (the Monitor, its counsel, and each of their respective affiliates, directors, officers, partners, employees, and agents) from any and all liability that the Released Parties may have in relation to the CCAA Proceedings.

68. CCAA courts have, on multiple occasions, approved releases in the absence of a CCAA plan, both on consent and in contested matters. These releases have been in favour of, among other parties, directors, officers, monitors, counsel, employees, shareholders and advisors.<sup>56</sup>

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<sup>55</sup> Monitor's Third Report, *supra* at [para. 19](#); Livingstone Affidavit, *supra* at [paras. 29-30](#).

<sup>56</sup> *Green Relief, Re*, 2020 ONSC 6837 [*Green Relief*] at [para. 76](#); *Nelson Education Limited (Re)*, 2015 ONSC 5557 at [para. 49](#); *Golf Town Canada Holdings Inc. (Re)*, [CCAA Termination Order](#) (March 29, 2018), Toronto, CV-16-11527-00CL; *Green Growth Brands Inc. et al. (Re)*, [Order Terminating CCAA Proceedings](#) (May 19, 2021), Toronto, Court File No. CV-20-00641220-00CL; *TGF Acquisition Parent Ltd., Wind-Down Order* (June 22, 2021), Toronto, CV-21-00657098-00CL; *Superette Inc., Re, CCAA Termination Order*, (January 30, 2023), Toronto, CV-22-00686245-00CL.

69. Justice Penny in *Harte Gold*, citing Morawetz C.J.'s decision in *Lydian*, evaluated the requested release with reference to the non-exhaustive factors listed below. While the *Lydian* matter involved a Plan of Arrangement, the factors applied equally in a non-Plan scenario, as was the case in *Harte Gold*, which involved a Reverse Vesting Order. Accordingly, the factors to be considered by this Court when determining whether to grant the requested releases are:

- (a) Whether the claims to be released are rationally connected to the purpose of the plan;
- (b) Whether the plan can succeed without the releases;
- (c) Whether the parties being released contributed to the plan;
- (d) Whether the releases benefit the debtors as well as the creditors generally;
- (e) Whether the creditors voting on the plan have knowledge of the nature and the effect of the releases; and
- (f) Whether the releases are fair, reasonable and not overly-broad.<sup>57</sup>

70. Justice Penny noted that, as in most discretionary exercises, it is not necessary for each of the above factors to apply in order for a release to be granted.<sup>58</sup>

71. The releases sought by the Applicants are consistent with those that have previously been approved by this Court and as will be described below, are aligned with the factors set out in *Lydian*, and are appropriate in the circumstances, as:

- (a) ***The claims to be released are rationally connected to the purpose of the restructuring.*** The claims released are rationally connected to the Applicants restructuring. Given that a purpose of a CCAA proceeding is to maximize creditor recovery, a release that helps achieve this goal is rationally connected to the purpose of the Applicants' restructuring;
- (b) ***The Released Parties contributed to the restructuring.*** The Released Parties made significant contributions to the Ignite Group's and Residual Co.'s (as Applicant) restructuring, both prior to and throughout these CCAA Proceedings. Among other things, the extensive efforts of the Monitor was instrumental to the

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<sup>57</sup> *Harte Gold Corp. (Re)*, 2022 ONSC 653 [*Harte Gold*] at paras. 80-86; *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54 [*Lydian*]. See also *Green Relief*, *supra*, where Justice Koehnen also cited Morawetz C.J.'s decision in *Lydian*.

<sup>58</sup> *Harte Gold*, *supra* at para. 80.

conduct of the pre-filing Sale Process. The Monitor was also instrumental to the execution of the Purchase Agreement, and attendance to all post-closing matters. With a sale that resulted in the Ignite Services' (a prior Applicant in these CCAA Proceedings) business continuing as a going concern, these CCAA Proceedings have had a successful outcome for the benefit of the Ignite Group's stakeholders. The Released Parties have clearly contributed time, energy, and resources to achieve this outcome and accordingly, are deserving of the release being sought;

(c) ***The Releases are fair, reasonable and not overly broad.*** The releases are sufficiently narrow in the circumstances as the Released Claims do not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable released party. The proposed form of the CCAA Termination Order provides that the releases would be effective at the CCAA Termination Time;

(d) ***The Applicants' restructuring may be jeopardized without the Releases.*** The Releases will bring certainty and finality for the Released Parties with respect to these CCAA Proceedings; and

(e) ***Creditors had knowledge of the nature and effect of the releases.*** Creditors on the Service List were served with materials relating to this motion. The Applicants have received no objection to the releases.

72. The Monitor is of the view that the releases being sought are fair and reasonable in the circumstances, and therefore supports the releases being sought by the Applicants.<sup>59</sup>

#### **F. The Stay Period Should be Extended**

73. The Stay Period currently expires on January 31, 2024. Pursuant to the CCAA Termination and Distribution Order, the Stay Period is proposed to be extended to the CCAA Termination Time.

74. Section 11.02(2) of the CCAA provides the Court the discretion to make an Order extending the stay granted in an initial order.<sup>60</sup> In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.<sup>61</sup>

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<sup>59</sup> Monitor's Third Report, *supra* at [para. 59](#).

<sup>60</sup> CCAA, [s. 11.02\(2\)](#).

<sup>61</sup> CCAA, [s. 11.02\(3\)](#).

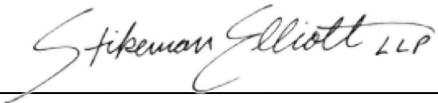
75. The Applicants have acted and continue to act in good faith and with due diligence in respect of all matters relating to these CCAA Proceedings. The extension of the Stay Period to the CCAA Termination Time will permit the Applicants and the Monitor to complete Remaining CCAA Tasks in an efficient manner with the benefit of the stay of proceedings. Further, the proposed extension of the Stay Period will obviate the need for a further attendance before the Court which would only result in additional costs being incurred and occupation of further court time.<sup>62</sup>

76. The Monitor supports the proposed extension of the Stay Period and does not believe that it will materially prejudice any of the Applicants' stakeholders.<sup>63</sup>

#### **PART V – ORDER SOUGHT**

77. For the reasons set out above, the Applicants respectfully submit that the Court should grant the CCAA Termination and Distribution Order in the form attached to the Applicants' Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28<sup>th</sup> day of January, 2024.



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**STIKEMAN ELLIOTT LLP**

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<sup>62</sup> Livingstone Affidavit, *supra* at paras. 58-59.

<sup>63</sup> *Ibid* at para. 60; Monitor's Third Report, *supra* at para. 59.

**SCHEDULE “A”  
LIST OF AUTHORITIES**

**Cases**

1. *9354-9186 Quebec Inc. v Callidus Capital Corp.*, 2020 SCC 10
2. *Re Nortel Networks Corp.*, (2009), 55 C.B.R. (5th) 229 (Ont. S.C.J. [Comm. List])
3. *Nortel Networks Corp, Re*, 2014 ONSC 4777
4. *Re Target Canada Co.*, 2015 ONSC 7574
5. *Laurentian University of Sudbury*, 2022 ONSC 2927
6. *Nortel Networks Inc*, 2022 ONSC 6680
7. *Re Nortel Networks Corporation et al*, 2017 ONSC 673
8. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851
9. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400
10. *Green Relief, Re*, 2020 ONSC 6837
11. *Nelson Education Limited (Re)*, 2015 ONSC 5557
12. *Harte Gold Corp. (Re)*, 2022 ONSC 653
13. *Lydian International Limited (Re)*, 2020 ONSC 4006

**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.

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Duties and Functions**

**23 (1)** The monitor shall

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

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

AND IN THE MATTER OF PLAN OF COMPROMISE OR ARRANGEMENT OF 1000704712 ONTARIO INC., IGNITE HOLDINGS INC., AND  
IGNITE INSURANCE CORPORATION

Applicants

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS  
(RE: CCAA TERMINATION AND  
DISTRIBUTION ORDER)**

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