

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF **ORIGINAL
TRADERS ENERGY LTD. and 2496750 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Returnable October 12, 2023)**

October 10, 2023

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PART I – INTRODUCTION

1. On or about January 30, 2023, Original Traders Energy Ltd. (“**OTE GP**”) and 2496750 Ontario Inc. (“**249**” and with OTE GP, the “**Applicants**”) obtained an initial order (the “**Initial Order**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) granting the Applicants protection under the CCAA and other related relief, with a view to allowing the Applicants an opportunity to restructure its business and affairs. The Applicants’ CCAA proceedings are referred to herein as the “**CCAA Proceedings**”.

2. While OTE Logistics LP (“**OTE Logistics**”) and Original Traders Energy LP (“**OTE LP**”) are not Applicants in this proceeding, relief was extended to both OTE Logistics and OTE LP (together, the “**Limited Partnerships**”), which are related to and carry on operations that are integral to the business of the Applicants. The terms “**OTE Group**” and “**Applicants**” throughout this factum refer to the Applicants and Limited Partnerships collectively. The Initial Order also appointed KPMG Inc. as the CCAA monitor in these CCAA Proceedings (in such capacity, the “**Monitor**”).

3. On or about February 9, 2023, the Court issued an amended and restated initial order (the “**ARIO**”) under the CCAA which, *inter alia*, expanded certain charges and extended the Stay Period (as defined in the Initial Order) to April 28, 2023. Terms used below but undefined are as capitalized later within this factum.

4. This factum is submitted to this Honourable Court on behalf of the OTE Group, who is requesting the following ancillary relief:

- (a) An order (the “**Third Stay Extension Order**”), substantially in the form included in the Amended Motion Record of the OTE Group, *inter alia*, which:
 - (i) Extends the Stay Period, as defined in the Initial Order, to April 26, 2024;
 - (ii) Amends the claims procedure approved pursuant to the Claims Procedure Order dated April 27, 2023 (the “**Claims Procedure Order**”) 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; and

- (iii) Approves the Fifth Report of the Monitor dated September 28, 2023 (the “**Fifth Report**”), the Supplement to the Fifth Report of the Monitor dated October 6, 2023 (the “**Supplemental Report**”), and the activities and conduct of the Monitor in relation to the OTE Group and the CCAA Proceedings;

- (b) Such further and other relief as this Court may find just.

PART II – THE FACTS

A. Background

5. The OTE Group functions as a wholesale fuel supplier which services mainly First Nations’ petroleum stations and First Nations’ communities across Ontario.

6. The OTE Group services a total of over 30 gas stations throughout Southern Ontario, with a majority of these gas stations situated on 9 different First Nations reserves in Southern Ontario.

7. The liabilities faced by the OTE Group were triggered by alarming executive misconduct which threatens the survival of the OTE Group, arising from the actions of the former president of OTE GP, Glenn Page (“**Page**”), and other of his associates and entities, including Mandy Cox (“**Cox**”).

8. The OTE Group is missing significant portions of their books and records due to Page’s and others’ alleged misconduct. Financial information and records of the OTE Group for the entire period from January of 2021 to August of 2022 are unreliable and incomplete.

9. While the OTE Group’s investigation is still ongoing, and the full magnitude of their losses are unknown, millions of dollars effectively disappeared from the OTE Group’s control under Page’s watch, which triggered the OTE Group’s ongoing insolvency.

10. The following orders have been granted since the ARIO:
- (a) On March 15, 2023, this Court issued an injunctive order (the “**Injunctive Order**”) which, *inter alia*, restrained Page, Cox and 26586558 Ontario Inc. (“**265**”, a corporation that Page controls with Cox, his spouse, who is also a former employee of the OTE Group, and collectively, the “**Mareva Respondents**”) from selling, removing, dissipating, alienating, transferring, assigning, encumbering or similarly dealing with a seventy-foot yacht from the Italian ship builder Azimut Benetti, named “Cuz We Can”, more particularly described at Schedule “A” to the Injunctive Order (the “**Italian Yacht**”).
 - (b) On April 28, the Honourable Justice Osborne granted an Order extending the stay of proceedings to August 4, 2023 and the Claims Procedure Order.
 - (c) An Information Order was also granted on April 28, 2023 (the “**Information Order**”), by which AirSprint Inc. (“**AirSprint**”) was directed to provide to the Monitor or its counsel any requested information in connection with the ARIO issued by this Court on February 9, 2023 and any other Order of the Court, related to the OTE Group, the OTE Group Affiliates (as defined in the Information Order) or any third party owned, controlled by, or otherwise related to the OTE Group Affiliates.
 - (d) Chapter 15 proceedings under the US Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**US Bankruptcy Code**”) were also commenced by US counsel to the Monitor. As a result:
 - (i) On May 15, 2023, the United States Bankruptcy Court Southern District of Florida (Fort Lauderdale Division) granted a motion for provisional relief under s. 1519 and 1520 of the US Bankruptcy Code which entered an order for provisional relief to protect assets of the OTE Group and to impose an automatic stay of proceedings in the United States in accordance with the ongoing Canadian proceedings; and
 - (ii) On May 31, 2023, the United States Bankruptcy Court Southern District of Florida (West Palm Beach Division) granted an order recognizing the Canadian proceedings as a “foreign main proceeding” within the meaning of 11 U.S.C. § 1502 of the US Bankruptcy Code, *inter alia* certain other relief.
 - (e) On July 11, 2023, counsel to the Mareva Respondents served a motion record seeking relief for: (i) an Order setting aside the Injunctive Order; or, (ii) in the alternative, an extension of the deadline to file sworn statements in accordance with the Injunctive Order.
 - (f) On July 17, 2023, this Court granted various relief sought by the OTE Group in the form of the following orders:
 - (i) An order which:

- (1) Extended the Stay Period (as defined in the Initial Order) to November 3, 2023;
 - (2) Approved the fourth report of the Monitor (the “**Fourth Report**”); and
 - (3) Authorized and directed the addition of OTE GP to the Italian Yacht’s insurance policy.
- (ii) An order authorizing and directing the Monitor to conduct a sales process as soon as practicable for the Italian Yacht and directing AirSprint to remit to the Monitor any funds, proceeds of sale or use of any aircraft or fractional ownership or other interests therein in which the OTE Group has claimed an interest.

B. Recent Developments

11. Following the date of the Initial Order, the OTE Group has continued to work with the Monitor in managing the business of the OTE Group.¹ Subsequent to the Fourth Report however, the OTE Group became aware of the departure of certain key customers. Accordingly, the OTE Group does not anticipate being able to replace the lost sales volumes attributable to these customers in the current circumstances of its restructuring.² With the assistance of the Monitor, the OTE Group has prepared a plan to reduce the operations of the OTE Group (the “**Reduced Operations Plan**”) to limit operating costs and conserve cash as a result of the circumstances stated above.³

12. When the CCAA Proceedings commenced, the OTE Group had three blending locations: Tyendinaga, Whitefish and Six Nations (as defined in the First Hill Affidavit sworn January 27, 2023). The Reduced Operations Plan has commenced and operations at both the Tyendinaga and Whitefish blending locations (collectively, the “**Discontinued Locations**”) have ceased and all employees employed at the Discontinued Locations have been terminated (all employees who are terminated during the CCAA Proceedings are referred to herein as the

¹ Affidavit of Scott Hill sworn on September 25, 2023 at [para 23](#) [“**Seventh Hill Affidavit**”].

² *Ibid* at [para 26](#).

³ Supplemental Fifth Report of the Monitor dated October 6, 2023 [“**Supplemental Report**”], Appendix A, Fifth Report of the Monitor dated September 28, 2023 at [para 24](#) [“**Fifth Report**”].

“**Terminated Employees**”). Additionally, all movable assets and equipment have been transferred from the Discontinued Locations to the Six Nations blending location.⁴

C. Proposed Amendment to Claims Procedure

13. The OTE Group and the Monitor propose an amendment to the Claims Procedure Order to include claims of former employees of the OTE Group. As mentioned, the Monitor was authorized by the Court to carry out a claims process pursuant to the Claims Procedure Order (the “**Claims Procedure**”). As such, the Claims Procedure was carried out in accordance with the Claims Procedure Order by the Monitor with the assistance of the OTE Group. The claims bar date was June 27, 2023.⁵

14. To simplify the administration of the Claims Procedure, Terminated Employees would not be required to file proof of claim forms with respect to their individual claims (the “**Employee Restructuring Claims**”).⁶ Instead, based on the OTE Groups’ books and records, the OTE Group, in consultation with the Monitor, will prepare a notice of Employee Restructuring Claims. This notice will set out the classification, nature and amount of the Employee Restructuring Claim.⁷ The Monitor will deliver this notice, along with a claims package, to each Terminated Employee with such a claim as soon as reasonably practicable and no later than 10 business days following the date on which such Employee Restructuring Claims arise.⁸

15. These claims are then either accepted by the Terminated Employee or may be disputed based on classification, nature and/or amount of the claim by completing a notice of dispute or of disallowance (the “**Notice of Dispute of Employee Restructuring Claim**”).⁹ Any Terminated Employee who does not deliver such a Notice of Dispute of Employee

⁴ *Ibid* at [paras 25-26](#).

⁵ *Ibid* at [para 42](#).

⁶ *Ibid* at [para 44](#).

⁷ *Ibid*.

⁸ *Ibid*.

⁹ *Ibid* at [para 45](#).

Restructuring Claim to the Monitor will forever be barred from disputing the classification, nature and/or amount of the claim.¹⁰

16. Importantly, and to make the process as simple and user-friendly as possible, the Terminated Employees do not have to submit any notice to the Monitor to accept their Employee Restructuring Claims. In other words, the claims prepared by the OTE Group will be automatically accepted by the Monitor should a Notice of Dispute of Employee Restructuring Claim not be received.¹¹ This process mirrors a “negative notice” employee claims regime for a claims process, which is granted regularly by this Court in other CCAA filings, and further allows for an expeditious and streamlined process to resolving multiple claims.¹²

17. The OTE Group has continued to work with the Monitor in good faith to respond to numerous creditor and stakeholder inquiries on a daily basis.¹³

D. Motions for Enhanced Powers of the Monitor and the Appointment of a Chief Restructuring Officer

18. Page and 265 served a motion seeking, *inter alia*, the appointment of a Chief Restructuring Officer (a “**CRO**”) over the OTE Group on October 2, 2023 (the “**CRO Motion**”).¹⁴ On October 6, 2023, the Monitor served a motion seeking approval of the amended bid process for the sale of the assets of the OTE Group (the “**Amended Bid Process**”) which will include the sale of only chattels and not any fixtures or leased premises, and the authorization for the Monitor to exercise enhanced powers in its capacity as Monitor of the OTE Group, instead of the appointment of a CRO (the “**Enhanced Powers Motion**”).¹⁵

19. The OTE Group supports the relief sought by the Monitor due to, *inter alia*, the Monitor’s prior involvement with and knowledge of the OTE Group and the business,

¹⁰ *Ibid* at [para 46](#).

¹¹ *Ibid*.

¹² *Ibid* at [para 48](#).

¹³ Seventh Hill Affidavit, *supra* note 1 at [para 11](#).

¹⁴ Affidavit of Scott Hill sworn on October 9, 2023 at [para 7](#).

¹⁵ *Ibid*.

operations, property and stakeholders thereof.¹⁶ The appointment of a CRO would create additional costs in these CCAA Proceedings and create potential delays in the realization and monetization of the OTE Group property through the Amended Bid Process, should such relief be granted.¹⁷

PART III – ISSUES AND THE LAW

20. The substantive issues to be adjudicated by the Court on the OTE Group’s motion are as follows:

- (a) Should the extension to the Stay Period be granted?
- (b) Should the Monitor’s Fifth Report, Supplemental Report and past activities be approved?
- (c) Should the Claims Procedure be amended?
- (d) Should the CRO Motion be granted?

A. Should the Extension to the Stay Period Be Granted?

21. The CCAA empowers a court to extend the stay of proceedings granted to a debtor company by way of section 11.02(2). In considering whether to grant a stay extension, the Court must consider (i) whether the order sought is appropriate in the circumstances; and (ii) whether the applicant has been acting in good faith and with due diligence.¹⁸

22. Appropriateness “is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA.”¹⁹ The OTE Group respectfully submits that extending the Stay Period would be appropriate as it would allow the Monitor to, among other things, advance the Reduced Operations Plan as well as the Amended Bid Process, in cooperation with the OTE Group.²⁰

¹⁶ *Ibid* at [para 8](#).

¹⁷ *Ibid*.

¹⁸ *Companies’ Creditors Arrangement Act*, [RSC 1985, c C-36](#), ss 11.02(2)–(3) [CCAA]; *9354-9186 Québec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at [para 49](#) [*Callidus*].

¹⁹ *Callidus*, *ibid* at [para 50](#).

²⁰ Fifth Report, *supra* note 3 at [para 49](#).

23. The OTE Group, with the supervision and assistance of the Monitor, has also been operating as a going-concern in good faith and with due diligence.²¹ Since the Initial Order on January 30, 2023, the OTE Group has been working diligently with the Monitor and various stakeholders to piece together their books and records and best understand their financial position. The OTE Group has also been working with the Monitor in an effort to trace the various allegations of Page's misappropriation of the OTE Group's funds.²²

24. In this case, the Third Stay Extension Order is requested in order to afford the OTE Group time to, among other things:

- (a) Continue to manage the business of the OTE Group in the ordinary course;
- (b) Continue to maintain relations and communications with key stakeholders;
- (c) Continue to work with the Monitor to investigate missing books and records;
- (d) Assess the claims that are submitted or may be submitted as part of the amended Claims Procedure Order; and
- (e) Develop and advance the next steps for a Reduced Operations Plan and Amended Bid Process with the assistance of the Monitor.

25. The Monitor is of the view that the extension of the Stay Period is appropriate in the circumstances.²³ Further, the Fifth Report also states that, based on the Third Extended Cash Flow Forecast, as defined therein, the Monitor believes the OTE Group will have sufficient liquidity to fund both operating costs and the costs of the CCAA Proceedings through to April 28, 2024, if granted.²⁴

26. This Honourable Court has routinely approved stay extensions of similar or longer time periods than the proposed stay extension,²⁵ and the OTE Group submits that the test to extend a stay of proceedings under section 11.02(2) and 11.02(3) of the CCAA, as requested, is met.

²¹ *Ibid* at [para 52](#).

²² Seventh Hill Affidavit, *supra* note 1 at [para 40](#).

²³ Fifth Report, *supra* note 3 at [para 52](#).

²⁴ *Ibid*.

²⁵ See generally *Lydian International Limited*, [2020 ONSC 7979](#); *US Steel Canada Inc (Re)*, [2017 ONSC 1967](#); *Cline Mining Corp (Re)*, [2015 ONSC 622](#).

B. Should the Monitor’s Fifth Report, Supplemental Report and past activities be approved?

27. The approval of reports of a monitor and corresponding activities as set out therein is a standard, ordinary course request in insolvency proceedings.²⁶

28. In *Target Canada Co. (Re)* (“**Target Canada**”), this Honourable Court noted that there are good policy and practical reasons to grant the approval of a Monitor’s reports and activities, including (a) allowing a Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders’ concerns to be addressed; (c) enabling the Court to satisfy itself that a Monitor’s activities have been conducted in prudent and diligent manners; (d) providing protection for a Monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by a Monitor.²⁷ The principles set out in *Target Canada* were more recently reaffirmed by Morawetz CJ in *Laurentian University of Sudbury*, as well as in an endorsement by the court.²⁸

29. If a Monitor has met the objective test of demonstrating that it has acted reasonably, prudently and not arbitrarily, this Honourable Court should approve its past activities and reports. The OTE Group continues to work with the Monitor during these CCAA Proceedings and understands that the Monitor’s activities were carried out in accordance with the orders appointing them, were consistent with respective mandates, and were done in furtherance of the objective of developing a potential restructuring strategy for the OTE Group. The OTE Group submits that relief approving the activities of the Monitor to date should be granted.

C. Should the Claims Procedure be amended?

30. Though there is no express statutory authority for the approval of a claims procedure, sections 11 and 12 of the CCAA provide this Court with the power to make any order it considers appropriate in the circumstances and fix deadlines for the purposes of voting and for

²⁶ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [para 2](#) [*Target Canada*]; see also *Laurentian University of Sudbury*, [2022 ONSC 5850](#) at [para 17](#) [*Laurentian University of Sudbury*].

²⁷ *Target Canada*, *ibid* at [paras 2, 22–23](#).

²⁸ *Laurentian University of Sudbury*, *supra* note 26 at [para 17](#); see also *Laurentian University of Sudbury* (May 18, 2022) [CV-21-656040-00CL](#) (Endorsement) at paras 13–14.

the purposes of distributions under a compromise or arrangement.²⁹ This Court regularly grants approvals for claims procedures in connection with the CCAA restructuring process.³⁰

31. The amendment to the Claims Procedure, as described above, is designed to foster a user-friendly process for the Terminated Employees to have their claims recognized and resolved quickly. The Employee Restructuring Claim mechanism functions as a simplified “negative notice” employee claims process, and was drafted to expeditiously address Employee Restructuring Claims in an efficient and cost-effective manner.

32. Courts have found that negative notice claims processes are especially effective in handling employee claims. Recently, the British Columbia Supreme Court granted a claims process order that approved a negative notice claims process that dealt with employee claims.³¹ In that scenario, a negative notice claims process functioned in such a way whereby impacted employees were only required to file materials if they disputed the debtor’s proposed assessment of their claim.³² This negative process was positively remarked on to be “as streamlined a process as possible for the former employees”³³ and “designed to specifically address their unique interests.”³⁴

33. Similar negative notice claims processes have also been approved in Ontario by this Honourable Court. For instance, in *Just Energy Group Inc.*, all negative notice claimants were sent claim packages by the debtor, in conjunction with the monitor, detailing their claim amount based on the debtor’s books and records. As seen in the proposed amendment to the Claims Procedure, in *Just Energy Group Inc.*, the negative notice claimants were able to dispute the assessment via a notice of dispute claim.³⁵ A similar negative notice claims process with respect

²⁹ CCAA, *supra* note 18, ss [11](#) and [12](#).

³⁰ *Re Toys “R” US (Canada) Ltd.*, [2018 ONSC 609](#) at [para 9](#); see also *Timminco Limited (Re)*, [2014 ONSC 3393](#) at [para 40](#).

³¹ *Mountain Equipment Co-Operative and 1314625 Ontario Limited* (November 27, 2020) [No. S209201](#) (Order) at paras 23–25.

³² *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 2037](#) at [para 12](#).

³³ *Ibid* at [para 60](#).

³⁴ *Ibid* at [para 38](#).

³⁵ *Just Energy Group Inc.*, (September 15, 2021) [CV-21-00658423-00CL](#) (Order) at para 22.

to employee claimants was also granted during the *Payless Shoesource Canada Inc. et al* CCAA proceeding.³⁶

The Function of Negative Notice Amendment to the Claims Procedure Order

34. The integration of a negative notice claims process for the Employee Restructuring Claims is designed to be methodical and efficient. Here, the OTE Group will prepare, in consultation with the Monitor and based on the OTE Group's books and records, a notice of Employee Restructuring Claim for each Terminated Employee terminated during the CCAA Proceedings that which sets out accrued and unpaid vacation pay, termination and/or severance pay among other amounts.³⁷ From that point forward, the negative notice process built into this amendment mirrors the *Just Energy Group Inc.* and *Payless Shoesource Canada Inc. et al.* claims procedures, where Terminated Employees will be provided with their determined claim amount, after which a dispute process (as detailed above), can be ran if necessary.

35. In light of the above, the amended Claims Procedure should be approved. The following factors support this Court's exercise of discretion to approve the amendment to the Claims Procedure Order:

- (a) The amendment to the Claims Procedure allows the Terminated Employees to resolve their respective claims in a streamlined and simplified manner;³⁸
- (b) The OTE Group developed the amendment to the Claims Procedure following close consultation with the Monitor;³⁹
- (c) The amendment to the Claims Procedure is designed to be fair and flexible in resolving claims against the OTE Group;
- (d) The OTE Group and the Monitor believe that the amendment to the Claims Procedure Order and its prescribed timelines are reasonable and allow for sufficient time for Terminated Employees to accept or dispute an Employee Restructuring Claim;⁴⁰

³⁶ *Payless Shoesource Canada Inc. and Payless Shoesource Canada GP Inc.*, (April 24, 2019) [CV-19-00614629-00CL](#) (Order) at paras 18-23; see also *Metro 360 General Partnership*, (September 16, 2020) [CV-20-00642783-00CL](#) (Order) at paras 15-25.

³⁷ Fifth Report, *supra* note 3 at [para 43](#).

³⁸ Seventh Hill Affidavit, *supra* note 1 at [para 34](#).

³⁹ *Ibid* at [para 35](#).

⁴⁰ Fifth Report, *supra* note 3 at [para 47](#).

- (e) The amendment to the Claims Procedure is designed to assist the OTE Group in assessing the universe of claims against it and the potential distribution to creditors to continue to make informed decisions regarding its options within this proceeding; and
- (f) The Monitor is supportive and recommends that this relief be granted.⁴¹

D. Should the CRO Motion be granted?

36. The OTE Group supports the Enhanced Powers Motion and thus contends that the CRO Motion should not be granted. The appointment of a CRO in the present circumstances is unnecessary and duplicative for the following reasons:

- (a) The Monitor, which already enjoys expanded investigatory powers, as granted at the outset of these proceedings, has the requisite background knowledge, expertise and independence to continue to restructure the OTE Group and carry out the proposed Amended Bid Process;
- (b) The Monitor is seeking enhanced powers enabling it to operate the business of the OTE Group as an independent court-appointed officer; and
- (c) Concerns over the expertise and independence of Scott Hill as expressed by Page and 265 in the CRO Motion are ameliorated by both the impending resignation of Scott Hill as director and officer of OTE GP and the enhanced powers of the Monitor, should such relief be granted.

37. This Court has noted the following “fundamentals” when considering the appointment and role of a CRO in the context of a potential sale of assets in a CCAA proceeding:

- (a) fairness to all creditors is a pre-requisite to a sale process and no one unsecured creditor should receive a secret benefit or advantage over other unsecured creditors;

⁴¹ Seventh Hill Affidavit, *supra* note 1 at [para 35](#).

- (b) the sale process must be seen to be fair and transparent; and
- (c) the sale process ought to be determined by the court after considering the advice of the monitor, the position of the insolvent company and the positions of the creditors.⁴²

38. These fundamental considerations are accounted for in the Amended Bid Process. The CRO Motion states that the OTE Group would determine the acceptability of binding offers for the OTE Group assets and claims that the proposed sale process, as was the case then, favoured a bidder working in coordination with Scott Hill. The Amended Bid Process has been revised in accordance with input received from various stakeholders, including Royal Bank of Canada, a secured lender of the OTE Group. The Amended Bid Process also reduces the OTE Group's involvement with the process, including the selection of a successful bidder, and is fair, reasonable and transparent.⁴³

39. The Quebec Superior Court has also commented on the appointment of a CRO in circumstances where there is concern about the debtor company's management and their ability to conduct a restructuring process, noting:

The author Janis Sarra perfectly summarizes the circumstances that lead to the appointment of a CRO:

In the past two decades, there has been the growing use of chief restructuring officers (CRO) in CCAA workouts, frequently appointed in the initial stay order. This development is a governance response to creditor concerns that directors and officers that may have skills appropriate to oversight of financially healthy corporations may not have the skills or expertise to deal with a turnaround situation.⁴⁴

⁴² *Re Ivaco Inc.*, 2004 CarswellOnt 2397, 3 C.B.R. (5th) 33 at paras 15 and 16.

⁴³ Supplemental Report, *supra* note 3 at Appendix "C".

⁴⁴ *Pascan Aviation inc. (Arrangement relatif à)*, 2015 QCCS 4227 at para 57.

40. Not only is Scott Hill prepared to step down as officer and director of the OTE Group, but the Monitor is seeking enhanced powers in order to allow it to take any and all steps it considers necessary to proceed with an orderly restructuring or liquidation of the OTE Group. Thus, the concerns expressed by Page and 265 in the CRO Motion are no longer applicable.

PART IV – RELIEF SOUGHT

41. The OTE Group respectfully requests the granting of relief substantially in the form contained in its Amended Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED as of the date first written above.

Samantha Hans on behalf of Steven Graff

S. Graff / M. Henderson / T. Dolny / S. Hans

**SCHEDULE “A”
LIST OF AUTHORITIES**

1	<i>9354-9186 Québec Inc. v. Callidus Capital Corp.</i> , 2020 SCC 10
2	<i>Lydian International Limited</i> , 2020 ONSC 7979
3	<i>U.S. Steel Canada Inc. (Re)</i> , 2017 ONSC 1967
4	<i>Cline Mining Corp. (Re)</i> , 2015 ONSC 622
5	<i>Target Canada Co. (Re)</i> , 2015 ONSC 7574
6	<i>Laurentian University of Sudbury</i> , 2022 ONSC 2927 (May 18, 2022) CV-21-656040-00CL (Endorsement)
7	<i>Laurentian University of Sudbury</i> , 2022 ONSC 5850
8	<i>Re Toys “R” US (Canada) Ltd.</i> , 2018 ONSC 609
9	<i>Timminco Limited (Re)</i> , 2014 ONSC 3393
10	<i>Mountain Equipment Co-Operative and 1314625 Ontario Limited</i> (November 27, 2020) No. S209201 (Order)
11	<i>Mountain Equipment Co-Operative (Re)</i> , 2020 BCSC 2037
12	<i>Just Energy Group Inc. et al.</i> , (September 15, 2021) CV-21-00658423-00CL (Order)
14	<i>Payless Shoesource Canada Inc. and Payless Shoesource Canada GP Inc.</i> , (April 24, 2019) CV-19-00614629-00CL (Order)
15	<i>Metro 360 General Partnership</i> , (September 16, 2020) CV-20-00642783-00CL (Order)
16	<i>Re Ivaco Inc.</i> , 2004 CarswellOnt 2397 , 3 C.B.R. (5th) 33
17	<i>Pascan Aviation inc. (Arrangement relatif à)</i> , 2015 QCCS 4227

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act R.S.C., 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

(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

(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.

...

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

(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.

...

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF ORIGINAL TRADERS ENERGY LTD. and 2496750 ONTARIO
INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**FACTUM OF THE APPLICANTS
(Returnable October 12, 2023)**

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