



TDB Restructuring Limited
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Court File No.: CV-23-00703933-00CL

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES LISTED IN
SCHEDULE A ATTACHED HERETO**

Applicants

OCTOBER 1, 2024

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1.0 INTRODUCTION

1. On August 25, 2023, Quality Rugs of Canada Limited and the other companies listed in Schedule A attached hereto (collectively referred to herein as “**QSG**” or the “**Applicants**” or the “**Companies**”) sought and obtained an initial order (the “**Initial Order**”), under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Companies’ proceedings pursuant to the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:
 - (a) appointed RSM Canada Limited (“**RSM**”) as monitor (in such capacity, the **Monitor**);
 - (b) granted a Stay of Proceedings against the Companies and Directors and Officers (as those terms are defined in the Initial Order) for the period to and including September 5, 2023 (the “**Stay Period**”);
 - (c) approved a debtor-in-possession credit facility (the “**DIP Facility**”) from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the “**DIP Lender**”) pursuant to which, among other things, the DIP Lender would provide an initial amount of up to \$3,500,000 in accordance with the Cash Flow Forecast (as defined in the Monitor’s First Report) to be advanced during the initial 10 days of the CCAA; and
 - (d) granted the Administration Charge, Directors’ Charge, DIP Lenders’ Charge, Financial Advisor’s Charge and Lien Charge (all defined in the Initial Order).

A copy of the Initial Order is attached hereto as **Appendix “A”**.

3. On September 5, 2023, the Initial Order was amended and restated (the “**ARIO**”), which, *inter alia*: (i) extended the Stay Period to October 31, 2023; and (ii) provided for borrowings under the DIP Facility to be increased to but not exceed \$7 million, unless permitted by further order of the Court. A copy of the ARIO is attached hereto as **Appendix “B”**.
4. On February 1, 2024, the name RSM Canada Limited (“**RCL**”) was changed to TDB Restructuring Limited (“**TDB**”). On March 1, 2024, the Court granted an order (the “**Omnibus Order**”) substituting the name TDB for RCL. A copy of the Omnibus Order is attached hereto

- as **Appendix “C”**. Accordingly, references herein to the Monitor shall mean references to TDB, in its capacity as the Court-appointed Monitor of the Applicants.
5. On October 30, 2023, the Monitor was informed by the potential purchaser of QSG’s assets that the transaction would not be proceeding. The Monitor issued its Third Report dated October 30, 2023 (the **“Third Report”**).
 6. On October 31, 2023, the Court issued an Endorsement (the **“October 31st Endorsement”**) (i) appointing the Fuller Landau Group Inc. (**“FLGI”**) as receiver (the **“Receiver”**) over the assets and undertakings of QSG on the basis of a “bare bones” receivership order to be submitted to the Court, and (ii) extended the stay of proceedings in the CCAA Proceedings until November 24, 2023 pending a hearing to address various transition issues.
 7. On November 2, 2023, the Court issued a further Endorsement (the **“November 2nd Endorsement”**), which clarified certain issues relating to priority of the various Court-ordered charges.
 8. On November 8, 2023, the Court issued Orders dated October 31, 2023: (i) extending the Stay Period in the CCAA Proceedings to November 24, 2023 and narrowing the mandate of the Monitor (the **“Stay Extension Order”**); and (ii) formally appointing the Receiver and setting out the powers and duties of the Receiver (the **“Receivership Order”**).
 9. On November 24, 2023, the Court issued a more fulsome receivership order in the receivership proceedings and an order in these proceedings approving the Fourth Report of the Monitor dated November 17, 2023 (the **“Fourth Report”**), approving the fees and disbursements of the Monitor and its counsel to the dates outlined in the Fourth Report, and extending the Stay Period until further order of the Court, largely to facilitate the narrow mandate of the Monitor to provide assistance in connection with certain ongoing litigation arising out of these CCAA Proceedings.
 10. On December 7, 2023, a hearing was conducted to deal with a request from a group of suppliers to QSG (the **“Suppliers”**) for the creation of a charge to protect their interests, in priority to all of the Charges other than the Administration Charge and the Receiver’s Charge (the **“Priority Dispute”**).
 11. On December 11, 2023, Justice Penny issued an Endorsement (the **“December 11th Endorsement”**) arising from the December 7, 2023 hearing, specifically requesting input from the Monitor on an issue impacting the request of the Suppliers for a priority charge. A copy of the December 11th Endorsement is attached hereto as **Appendix “D”**.

12. On December 15, 2023, the Monitor issued its fifth report (the “**Fifth Report**”), the purpose of which was to provide the Court with information pertaining to the fact that the word “trust” was deleted from the charging language found in the CCAA Model Initial Order. A copy of the Fifth Report, without appendices, is attached hereto as **Appendix “E”**.
13. On January 4, 2024, the Monitor filed its written submissions (the “**Monitor’s January 2024 Submission**”) in relation to the removal of the word “trust” from paragraph 47 of the ARIO. A copy of the Monitor’s January 2024 Submission is attached hereto as **Appendix “F”**.
14. Following the delivery of those materials, Justice Penny released an endorsement on January 16, 2024, summarizing the additional materials filed by the Monitor and by other parties, and noting that “the issues raised by the Monitor and the charge beneficiaries are really more about rectification than interpretation” of the Initial Order and the ARIO. Justice Penny then invited those charge beneficiary parties to bring a motion to that effect within 10 Business Days if they wished to pursue that relief.
15. Thereafter, on January 30, 2024, each of Ironbridge, the former directors and A&M served and filed motions seeking rectification to read the word “trusts” into paragraph 47 of each of the Initial Order and the ARIO (among other relief). On February 14, 2024, the Suppliers filed materials opposing those motions.
16. On March 22, 2024, the Monitor filed a further submission (the “**Monitor’s March 2024 Submission**”) in relation to the Priority Dispute. A copy of the Monitor’s Submission is attached hereto as **Appendix “G”**.
17. Thereafter, on April 25, 2024, a full day hearing was conducted in respect of the Priority Dispute and, on July 5, 2024, Justice Penny released his endorsement (the “**July 5, 2024 Endorsement**”), in which he granted the relief and order sought by Ironbridge, the former directors and A&M in relation to their Rule 59.06 motions and dismissed the Suppliers’ motion for priority over them. A copy of the July 5, 2024 Endorsement is attached hereto as **Appendix “H”**.
18. Copies of the various materials pertaining to the CCAA Proceedings are available on the Monitor’s website at <https://tdbadvisory.ca/insolvency-case/quality-sterling-group/> (the “**Monitor’s Website**”).

1.1 Purpose of the Sixth Report to Court

19. The purpose of this sixth report to Court (the “**Sixth Report**”) is to:
- a) provide the Court with information relating to the activities of the Monitor and its counsel since the Monitor’s issuance of the Fifth Report; and
 - b) request that the Court grant an order (the “**Monitor Discharge Order**”):
 - i. approving the Monitor’s Fifth Report and Sixth Report and the activities and conduct of the Monitor described therein;
 - ii. approving the fees and disbursements of the Monitor and its counsel as described in this Sixth Report, including the estimated fees and disbursements of the Monitor and its counsel, as detailed in the affidavit of Arif Dhanani sworn October 1, 2024 (the “**Dhanani Affidavit**”) and in the affidavit of Robert Chadwick sworn October 1, 2024 (the “**Chadwick Affidavit**”);
 - iii. discharging TDB Restructuring Limited as the Monitor upon filing with the Court the Monitor’s Certificate (as defined herein); and
 - iv. granting a release to the Monitor and its counsel (the “**Released Parties**”) to be effective upon the discharge of the Monitor.

1.2 Terms of Reference

20. In preparing this Sixth Report and making the comments herein, the Monitor has relied upon information from third-party sources (collectively, the “**Information**”). Certain of the information contained in the Sixth Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance in respect of the Information.
21. Unless otherwise stated, all dollar amounts contained in the Sixth Report are expressed in Canadian dollars.

2.0 MONITOR'S ACTIVITIES

22. Since the appointment of the Receiver, the Monitor's role has been limited to assisting the various stakeholders and professionals with the transition from the CCAA administration to the receivership administration and responding to questions and requests for information from the various parties, including the Court.
23. A summary of the Monitor's activities since its last report, are set out below:
- a) attending various calls and meetings with counsel to the Monitor, the Receiver, the DIP Lender, the Applicants, A&M, Waygar Capital and the Suppliers;
 - b) completing and filing with the Court the Monitor's Fifth and Sixth Reports;
 - c) completing and filing with the Court the Monitor's January 2024 Submission and March 2024 Submission;
 - d) facilitating the provision of information and responding to questions from the Court, the Receiver, the DIP Lender, the Applicants, A&M, Waygar Capital and the Suppliers;
 - e) transferring to the Receiver the holdback amounts held by the Monitor in respect of the members of LiUNA Local 183 and the Carpenters' Regional Council of the United Brotherhood of Carpenters and Joiners of America;
 - f) closing the various bank accounts opened by the Monitor for: (i) the LiUNA Local 183 holdback; (ii) the Carpenters' Regional Council of the United Brotherhood of Carpenters and Joiners of America holdback; (iii) trust account opened for holding the proceeds of sale of the business of the Applicants to Ironbridge Equity Partners; and (iv) trust account for lien claimants holdbacks received;
 - g) posting various documents to the Monitor's Website in accordance with the Court's e-Service Protocol;
 - h) attending a case conference on November 20, 2023;
 - i) reviewing materials filed with the Court and served by the DIP Lender, Waygar Capital, the Applicants, A&M and the Suppliers;
 - j) attending a November 24, 2023 Court hearing;

- k) preparing for and attending a pre-case conference call and case conference held on December 18, 2023;
- l) attending the Priority Dispute hearing on April 25, 2024; and
- m) attending to all other administrative matters with respect to the CCAA administration, including supervision, all meetings, telephone and virtual attendances and written and verbal correspondence to facilitate the forgoing.

3.0 PROPOSED DISCHARGE OF THE MONITOR

- 24. Subject to the Court's approval, upon receiving payment of the full amount of all fees of the Monitor and its legal counsel approved in connection with this hearing, the Monitor intends to serve upon the service list a certificate (the "**Monitor's Certificate**") confirming that all the fees and disbursements of the Monitor and its counsel have been paid.
- 25. The proposed Monitor Discharge Order provides that, upon serving the Monitor's Certificate on the service list, the Monitor will be discharged from its duties as Monitor, but will continue to have the benefit of any of the rights, approvals, releases, and protections in favour of the Monitor under the CCAA, any orders issued in these CCAA Proceedings or at law, including in connection with any actions taken by the Monitor with respect to the Applicants or these CCAA Proceedings.
- 26. On the basis that the Receiver has been appointed and will carry out, complete or address in its role as Receiver any matters that are ancillary or incidental to these CCAA Proceedings after the discharge of the Monitor, the Monitor is not asking for the authority to deal with such matters. Furthermore, the Monitor understands that, because the CCAA Proceedings may be useful to the Receiver or the estate(s) of the Applicants as a vehicle for other transactions or distributions in the future, FLGI intends to suggest that it be appointed as the monitor in these CCAA Proceedings to take effect after the discharge of the Monitor under the proposed Monitor Discharge Order.
- 27. The Monitor proposes that upon the filing of the Monitor's Certificate, the Monitor and its affiliates, officers, directors, employees, legal counsel and agents (collectively, the "**Released Parties**" and each a "**Released Party**") be forever released and discharged from any and all claims that any Person may have or be entitled to assert against the Released Parties, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, dealing or other

occurrence in any way relating to, arising out of, or in respect of, these CCAA proceedings or with respect to their respective conduct in these CCAA proceedings (collectively, the “**Released Claims**”), that any such Released Claims be irrevocably and forever released, stayed, extinguished and forever barred, and that the Released Parties shall have no liability in respect thereof, provided that the Released Claims shall not include any claim or liability arising out of any gross negligence or wilful misconduct on the part of the applicable Released Party.

4.0 PROFESSIONAL FEES

28. The Monitor and its legal counsel, Goodmans LLP (“**Goodmans**”), have maintained detailed records of their time and costs in connection with their engagement in support of the Applicants’ application under the CCAA. Pursuant to paragraph 36 of the ARIO, the Monitor and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants from time to time as part of the costs of the CCAA Proceedings.
29. The fees and disbursements of the Monitor for the period from August 3, 2023 to November 12, 2023 and the fees and disbursements of Goodmans for the period from August 18, 2023 to November 15, 2023 were approved pursuant to an Order of the Court dated November 24, 2023. The full amount of all of the Monitor’s fees through November 12, 2023 and all but \$26,530.67 of the Goodmans’ fees for the period through November 15, 2023, have been paid either by the Applicants or through the retainers held or formerly held by the Monitor and by Goodmans.
30. The total fees and disbursements of the Monitor for the period of November 13, 2023 to September 30, 2024 (the “**Monitor’s Fee Period**”) amount to fees of \$32,407.50 and disbursements of \$0, plus HST of \$4,212.98 for a total of \$36,620.48 (the “**Monitor’s Fees and Disbursements**”). The time spent by the Monitor during the Monitor’s Fee Period is more particularly described in the Dhanani Affidavit attached hereto as **Appendix “I”**.
31. The total fees and disbursements of Goodmans for the period of November 16, 2023 to September 30, 2024 (the “**Goodmans’ Fee Period**”), amount to \$106,023.00 in fees and \$701.21 in disbursements, plus HST of \$13,874.15 for a total of \$120,598.36 (the “**Goodmans’ Fees and Disbursements**”). The time spent by Goodmans during the Goodmans’ Fee Period is more particularly described in the Chadwick Affidavit attached hereto as **Appendix “J”**.

32. The Monitor respectfully submits that the Monitor's Fees and Disbursements as set out in the Dhanani Affidavit and the Goodmans Fees and Disbursements as set out in the Chadwick Affidavit are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the ARIO.
33. The Monitor and its counsel anticipate that some further time will be required to address any ancillary matters required by the various stakeholders and the Court, including attendance at the Monitor's discharge hearing (the "**Remaining Tasks and Duties**"). The Remaining Tasks and Duties, inclusive of HST, are estimated to be approximately \$11,300 for the Monitor and \$22,600 for the Monitor's counsel. If approved by this Honourable Court, the Monitor proposes that the fees for these Remaining Tasks and Duties will be invoiced prior to the filing of the Monitor's Certificate and paid by the Receiver pursuant to the Administrative Charge over the property of the Applicants.
34. Accordingly, the Monitor seeks the approval of the Monitor's Fees and Disbursements and the Goodmans Fees and Disbursements, including the estimates noted above for completion of the Remaining Tasks and Duties.
35. The Monitor also seeks the approval of the Reports and the activities of the Monitor described herein.

5.0 CONCLUSION AND RECOMMENDATION

36. Based on the foregoing and for the reasons stated in the Sixth Report, the Monitor respectfully recommends that the Court grant the Monitor Discharge Order in the form sought by the Monitor and the relief granted therein.

All of which is respectfully submitted to this Court as of this 1st day of October 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as
CCAA Monitor of the Quality Sterling Group and not in its personal
or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

APPENDIX A

Court File No. CV-23-00703933-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 25TH
MR JUSTICE PENNY) DAY OF AUGUST, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit"), the supplemental affidavit of John Pacione sworn August 17, 2023, the second supplemental affidavit of John Pacione sworn August 22, 2023, the Application Record and the Supplementary Application Record filed by Waygar Capital Inc. ("Waygar"), including the affidavit of Don Rogers sworn July 24, 2023, the

supplementary affidavit of Don Rogers sworn August 3, 2023, the pre-filing report of Fuller Landau Group Inc., dated July 25, 2023, the supplement to the pre-filing report of Fuller Landau Group Inc., dated August 3, 2023, the second supplement to the pre-filing report of the Fuller Landau Group Inc., dated August 16, 2023, the pre-filing report of RSM Canada Limited, dated August 3, 2023, the supplemental pre-filing report of RSM Canada Limited dated August 17, 2023, the second supplemental pre-filing report of RSM Canada Limited dated August 25, 2023 and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge Equity Partners (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

1. THIS COURT ORDERS that the time for service of the Applicants’ Notice of Application and the Application Record and the Supplementary Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. [intentionally deleted].

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of

this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or if agreed to between the Applicants, Waygar and Ironbridge, provided that Waygar's approval rights shall terminate upon the closing of the transaction contemplated by the Asset Purchase Agreement, to replace it with another substantially similar cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5A. THIS COURT ORDERS that, notwithstanding paragraph 5 hereof or the provision of any documents under which the Cash Management System operates, any disbursement of funds which may have been deposited into or accrued in the Blocked Account (as defined in the Affidavit of Don Rogers sworn July 24, 2023) shall be made only on the consent of the Monitor (as herein defined), and without the need for the consent of Waygar or its advisors, provided that the Monitor shall only approve the disbursement if the Monitor is satisfied, acting reasonably, that such disbursement is necessary to comply with any payment contemplated to be made under

this Order, including payments for suppliers of goods and services to the Applicants in the ordinary course of business and consistent with the Cash Flow Projections.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i)

employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of August 4th, 2023; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents and the DIP Term Sheet (each as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including September 5, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are

permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any

person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof (including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court. Upon delivering such Notices of Lien, the Lien Claims will be considered preserved and perfected and no further steps need be taken by the Lien Claimant.

20. THIS COURT ORDERS that, upon serving a Lien Notice, the Lien Claimant shall be entitled to a charge over any Property of the Applicants relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value and in accordance with the priority that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge"), and shall rank in priority in accordance with the priority afforded to such Charge at law.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and approve reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party

from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or

performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. THIS COURT ORDERS that the Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit

of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (f) [intentionally deleted];
- (g) [intentionally deleted];
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the

Canadian Environmental Protection Act, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel

to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. For clarity, in no circumstances shall Waygar be responsible for the Financial Advisor's monthly Work Fee (as that term is defined in the A&M Engagement Letter), including, without limiting the foregoing, by way of payment from the proceeds of sale of the Applicants' assets (including accounts receivable collections).

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the "DIP Facility") from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed \$3,500,000 unless permitted by further Order of this Court.

40. THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 25, 2023 (the “DIP Term Sheet”), filed, and the definitive documentation to be entered into pursuant thereto.

41. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order

41A. THIS COURT ORDERS that the Applicants shall deposit all Advances (as defined in the DIP Term Sheet) into a bank account designed by the Borrower (the “Borrower’s Account”) and utilized by the Borrower in accordance with the terms of the DIP Term sheet and other Definitive Documents.

42. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender’s Charge") on the Property, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings made on August 4, 2023. The DIP Lender’s Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, may immediately exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

44. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, and the DIP Lender's Charge, as among them, shall be as follows:

First – the DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time:

Second – the Administration Charge (to a maximum amount of \$750,000);

Third – the Directors' Charge (to a maximum amount of \$600,000);

Fourth – the DIP Lender's Charge (to a maximum of \$3,500,000); and

Fifth – the Financial Advisor’s Charge (to a maximum of \$950,000).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge, the Financial Advisor’s Charge, the DIP Lender’s Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except (a) for any Person who is a “secured creditor” as defined in the CCAA that has not been served with the Notice of Application for this Order, and (b) for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

48. THIS COURT ORDERS that the Applicants shall be entitled, at the Comeback Hearing, on notice to those Persons likely to be affected thereby, to seek priority of the Charges ahead of any Encumbrance over which the Charges may not have obtained priority pursuant to this Order.

49. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

50. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Charges") thereunder shall not otherwise be limited or impaired in any way by (a) the

pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

51. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

52. THIS COURT ORDERS that service of the Applicants' Application Record and Supplementary Application Record, together with written confirmation of the date of such hearings, to any Person in respect of this Order constitutes notice of the Comeback Hearing.

53. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner

prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, 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, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

54. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

55. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

56. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants’ creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be

received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

57. THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender's Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants are directed to identify and segregate into a separate bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

58. THIS COURT ORDERS that nothing herein impacts or detracts from the provisions of the Order of this Court made on August 4, 2023 in these proceedings and in the Waygar application (the "August 4 Order"); provided, however, that upon the filing with this Court of a certificate of the Monitor confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order has been paid in full net of the amount of \$707,000, the Interim Lender's Charge in favour of Waygar in the August 4 Order shall be finally discharged and no longer enforceable.

59. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

60. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

61. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

62. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

63. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

64. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

Court File No.: CV-23-00703933-00CL

collectively, The Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

INITIAL ORDER

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Lawyer for the Applicants

APPENDIX B

Court File No. CV-23-00703933-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 5TH
MR JUSTICE PENNY) DAY OF SEPTEMBER, 2023

**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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

**AMENDED AND RESTATED INITIAL ORDER
(Amending Initial Order Dated August 25, 2023)**

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Application Record of the Applicants and the Supplementary Application Record of the Applicants, including the affidavit of John Pacione sworn August 3, 2023 and the Exhibits thereto (the "Pacione Affidavit"), the supplemental affidavit of John Pacione sworn August 17, 2023, the second supplemental affidavit of John Pacione sworn August 22, 2023, the affidavit of John Pacione sworn September 2, 2023 and the Exhibits

thereto (the “Third Pacione Affidavit”), the Application Record and the Supplementary Application Record filed by Waygar Capital Inc. (“Waygar”), including the affidavit of Don Rogers sworn July 24, 2023, the supplementary affidavit of Don Rogers sworn August 3, 2023, the pre-filing report of Fuller Landau Group Inc., dated July 25, 2023, the supplement to the pre-filing report of Fuller Landau Group Inc., dated August 3, 2023, the second supplement to the pre-filing report of the Fuller Landau Group Inc., dated August 16, 2023, the pre-filing report of RSM Canada Limited, dated August 3, 2023, the supplemental pre-filing report of RSM Canada Limited dated August 17, 2023, the second supplemental pre-filing report of RSM Canada Limited dated August 25, 2023, the first report of RSM Canada Limited as the Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”), and the consent of RSM Canada Limited to act as the Monitor, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, counsel for Waygar, counsel for Ironbridge Equity Partners (“Ironbridge”), counsel for Mohawk Carpet Distribution, Inc. (“Mohawk”), and counsel for RSM Canada Limited, no other parties having been served or appearing,

SERVICE

1. THIS COURT ORDERS that the time for service of the Applicants’ Notice of Motion and the Motion Record and the Supplementary Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicants shall be entitled to utilize the cash management system currently in place as described in the Pacione Affidavit or if agreed to between the Applicants, Waygar and Ironbridge, provided that Waygar's approval rights shall terminate upon the closing of the transaction contemplated by the Asset Purchase Agreement, to replace it with another substantially similar cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as the provider of the Cash Management System, an unaffected creditor under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. THIS COURT ORDERS that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date

of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

9. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA and the DIP Term Sheet, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of August 4, 2023; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. THIS COURT ORDERS that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents and the DIP Term Sheet (each as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$250,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord

shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

14. THIS COURT ORDERS that until and including October 31, 2023, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the entities named in Schedule "A" hereto (the "Protected Parties"), the Monitor, the Financial Advisor (as hereinafter defined), or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Protected Parties, the Monitor, or the Financial Advisor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicants or the Protected Parties, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, the Cash Management System or other banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

TREATMENT OF LIEN CLAIMS

18. THIS COURT ORDERS that, without limiting the generality of paragraphs 14 to 17 hereof, the rights of any person who has supplied services and/or materials to the Applicants to preserve and perfect a lien under the *Construction Act* (Ontario) or any applicable provincial equivalent (the "Provincial Lien Legislation") in respect of a project or improvement to which one of the Applicants is a contracting party (the "Lien Claims") be and are hereby stayed and any person seeking to preserve, perfect or otherwise enforce such a claim shall be required to comply with the process and seek the rights and remedies set out in paragraphs 18 to 21 hereof subject to further Order of the Court.

19. THIS COURT ORDERS that any person who wishes to assert a Lien Claim (a "Lien Claimant") shall serve a notice of such Lien Claim setting out the amount and particulars thereof

(including without limitation the improvement in question) to (a) the Monitor at arif.dhanani@rsmcanada.com, with a copy Goodmans LLP, counsel to the Monitor at: jlatham@goodmans.ca, and (b) the Applicants, care of cbesant@grllp.com, in each case within the timeframes prescribed by the applicable Provincial Lien Legislation (a "Lien Notice") or such other time frame as may be ordered by the Court. Upon delivering such Notices of Lien, the Lien Claims will be considered preserved and perfected and no further steps need be taken by the Lien Claimant.

20. THIS COURT ORDERS that, upon serving a Lien Notice, subject to paragraph 21, the Lien Claimant shall be entitled to a charge over any Property of the Applicants, other than the Borrower's Account, relating to the project or improvement which is the subject of such Lien Claim, equivalent to the value and in accordance with the priority that the Lien Claimant would otherwise be entitled to as claim a lien under the applicable Provincial Lien Legislation (the "Lien Charge"), and shall rank in priority in accordance with the priority afforded to such Charge at law.

20A. THIS COURT ORDERS that, subject to paragraph 21, any Lien Claim preserved by any person in respect of a project in which the Applicants are a contracting party, which has not been bonded off as of the date of this order, is hereby vacated on terms that any person having such a Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 19 of this order on the date of preservation of such Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 20 of this order (as may be subsequently amended), provided that the vacating and preservation of such Lien Claims pursuant to this paragraph shall not be deemed to cure any default triggered by the filing of a lien under any contract with any owner or contracting party of the Applicants.

21. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA and elsewhere in this Order, is hereby authorized and empowered to review the Lien Notices and approve reduce or disallow the Lien Claims set out therein, or refer such matter for determination by the Court, on notice to the applicable Lien Claimant. Any such Lien Claimant shall have 10 days to give notice to the Monitor and the Applicants that it intends

seek a review by the Court of the decision of the Monitor on a motion before a judge of this Court.

22. THIS COURT ORDERS that nothing in paragraphs 18 to 21 hereof shall be construed as limiting or prejudicing the rights of the Monitor, the Applicants or any other interested party from challenging: (a) the validity or timeliness of a Lien Notice; (b) the validity or quantum of a Lien Claim under the applicable Provincial Lien Legislation, except for failure to preserve a lien by registration; (c) a Lien Claimant's entitlement to a Lien Charge under paragraph 20 of this Order; or (d) the priority of a Lien Charge under this Order.

23. THIS COURT ORDERS that, in connection with the matters in paragraphs 18 to 21 of this Order, the Monitor (i) shall have all of the protections given to it by the CCAA, this Order and any other orders of the Court in the CCAA Proceedings, (ii) shall incur no liability or obligation as a result of carrying out matters in connection with paragraphs 18 to 22 of this Order, (iii) shall be entitled to rely on the books and records of the Applicants and any information provided by the Applicants, all without independent investigation, (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information, and (v) may seek such assistance as may be required to carry out matters in connection with paragraphs 18 to 22 of this Order from the Applicants or any of their affiliates.

NON-DEROGATION OF RIGHTS

24. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants or the Protected Parties with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. THIS COURT ORDERS that the Applicants shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$600,000, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 45 and 47 herein.

28. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 26 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

29. THIS COURT ORDERS that the agreement dated as of February 1, 2023, engaging Alvarez & Marsal Canada Securities ULC (the "Financial Advisor") as financial advisor to the Applicants (the "A&M Engagement Letter"), and the retention of the Financial Advisor under the terms thereof are hereby approved, including, without limitation, the Success Fee (as the term is defined in the A&M Engagement Letter). The Financial Advisor shall be entitled to the benefit of and is hereby granted a charge (the "Financial Advisor's Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$950,000, as security for the Success Fee. The Financial Advisor's Charge shall have the priority set out in paragraphs 45 and 47 herein.

APPOINTMENT OF MONITOR

30. THIS COURT ORDERS that RSM Canada Limited (the "Monitor") is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (c) assist the Applicants, to the extent required by the Applicants, in its dissemination, of information to creditors of the Applicants, including Waygar and its financial advisor;
- (d) assist the Applicants, to the extent required by the Applicants, in its dissemination, to the DIP Lender (as herein defined) and its counsel of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (e) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than weekly, or as otherwise agreed to by the DIP Lender;
- (f) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

32. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph or in paragraph 31 hereof. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

35. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

36. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Financial Advisor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a weekly basis, and the Financial Advisor on a monthly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$65,000, \$60,000 and \$50,000, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time. For clarity, in no circumstances shall Waygar be responsible for the Financial Advisor's monthly Work Fee (as that term is defined in the A&M Engagement Letter), including, without limiting the foregoing, by way of payment from the proceeds of sale of the Applicants' assets (including accounts receivable collections).

37. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

38. THIS COURT ORDERS that the Monitor, counsel to the Monitor, the Applicants' counsel and the Financial Advisor (in respect of their monthly fees and expenses as set out in the A&M Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, other than the Borrower's Account, which charge shall not exceed an aggregate amount of \$750,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, and, in the case of the Financial Advisor, pursuant to the A&M Engagement Letter, for the period from

and after August 18, 2023 in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 45 and 47 hereof.

DIP FINANCING

39. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility (the “DIP Facility”) from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the "DIP Lender") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such DIP Facility shall not exceed \$7,000,000 unless permitted by further Order of this Court.

40. THIS COURT ORDERS THAT such DIP Facility shall be on the terms and subject to the conditions set forth in the DIP Term Sheet between the Applicants and the DIP Lender dated August 25, 2023 (the “DIP Term Sheet”), filed, and the definitive documentation to be entered into pursuant thereto.

41. THIS COURT ORDERS that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order

41A. THIS COURT ORDERS that the Applicants shall deposit all Advances (as defined in the DIP Term Sheet) into a bank account designed by the Borrower (the “Borrower’s Account”) and utilized by the Borrower in accordance with the terms of the DIP Term sheet and other Definitive Documents.

42. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, including the Borrower's Account, which DIP Lender's Charge shall not secure an obligation that existed before the first Order in these proceedings made on August 4, 2023. The DIP Lender's Charge shall have the priority set out in paragraphs 45 and 47 hereof.

43. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, may immediately exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

44. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

45. THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, and the DIP Lender's Charge , as among them, shall be as follows:

First – the DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time;

Second – the Administration Charge (to a maximum amount of \$750,000);

Third – the Directors' Charge (to a maximum amount of \$600,000);

Fourth – the DIP Lender's Charge (to a maximum of \$7,000,000); and

Fifth – the Financial Advisor's Charge (to a maximum of \$950,000).

46. THIS COURT ORDERS that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the Financial Advisor's Charge, the DIP Lender's Charge or the Lien Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

47. THIS COURT ORDERS that each of the Charges shall constitute a charge on the Property and the Borrower's Account, as applicable, and such Charges (except for the Lien Charge, which is dealt with in paragraph 20) shall rank in priority to all other security interests, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person, notwithstanding the order of perfection or attachment, except for any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.

48. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants

also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

49. THIS COURT ORDERS that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

(c) the payments made by the Applicants pursuant to this Order and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

50. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

51. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1000, 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, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

52. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL ‘<<http://www.rsmcanada.com/quality-sterling-group>>’ (the “Monitor’s Website”).

53. THIS COURT ORDERS that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in these proceedings (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website, provided that the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

54. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

55. THIS COURT ORDERS that, notwithstanding anything in this Order or the August 4 Order (as herein defined), including any language granting priority charges over the Property of the Applicants, the issue as to priority as among the Charges (including the Interim Lender's Charge in the August 4 Order) and the security held by Mohawk, including any purchase money security interest, shall be deferred to the Comeback Hearing, or as may otherwise be agreed to by the parties. The Applicants are directed to identify and segregate into a separate bank account any proceeds received from and after August 4, 2023 in respect of goods in the possession of the Applicants as of or after August 4, 2023 and supplied by Mohawk.

56. THIS COURT ORDERS and the Interim Lender's Charge in favour of Waygar made pursuant to the August 4 Order is fully discharged and no longer enforceable as the Monitor has filed with this Court a certificate, confirming that the Interim Financing provided by Waygar pursuant to the August 4 Order was paid in full net of the amount of \$707,000.

57. THIS COURT ORDERS that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.


58. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

59. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

60. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

61. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



A handwritten signature in blue ink, appearing to read "Perry J.", is written over a horizontal line.

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

Court File No.: CV-23-00703933-00CL

collectively, The Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

Gardiner Roberts LLP
Bay Adelaide Centre
22 Adelaide Street West, Suite 3600
Toronto, ON M5H 4E3

Christopher Besant (LSO#248820)
Email: cbesant@grllp.com
Tel: (416) 865 4022

Lawyer for the Applicants

APPENDIX C

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) FRIDAY, THE 1ST
)
JUSTICE CONWAY) DAY OF MARCH, 2024
)

B E T W E E N:

TDB RESTRUCTURING LIMITED

Applicant

and

RSM CANADA OPERATIONS ULC

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure*

SUBSTITUTION ORDER

THIS APPLICATION made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

ON READING the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

BIA MANDATES

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

RECEIVERSHIP PROCEEDINGS

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

CCAA PROCEEDINGS

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

SUBSTITUTED MANDATES

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

ACCOUNTS

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of

this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

GENERAL

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

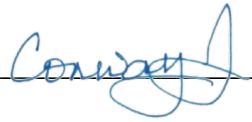
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist TDB Restructuring Limited in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to TDB Restructuring Limited as may be necessary or desirable to give effect to this Order, or to assist TDB Restructuring Limited and its agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.

A handwritten signature in blue ink, appearing to read 'Conway J.', is written over a horizontal line.

Schedule "A": BIA Mandates

Bankruptcies

| | Name | Estate Number |
|-----|---|----------------------|
| 1. | Carrington Homes Limited | 31-457618 |
| 2. | Fernicola, George | 31-457619 |
| 3. | D. Mady Investments Inc. | 31-2281994 |
| 4. | Eco Energy Home Services Inc. | 31-2502463 |
| 5. | Ontario HVAC & Water Inc. | 31-2613545 |
| 6. | 2305992 Ontario Inc. | 31-2655918 |
| 7. | Fernwood Developments (Ontario) Corporation | 31-2661061 |
| 8. | Legal Print and Copy Incorporated | 31-2884436 |
| 9. | Commerce Copy Incorporated | 31-2884438 |
| 10. | TDI-Dynamic Canada, ULC | 31-2903815 |
| 11. | Limestone Labs Limited | 31-2907613 |
| 12. | 2465409 Ontario Inc. | 31-2939766 |
| 13. | Creative Wealth Media Finance Corp. | 31-3003083 |
| 14. | Knight-Pro Inc. | 31-3013900 |
| 15. | Ulmer, Blair | 32-159136 |

Division 1 Proposals

| | Name | Estate Number |
|----|--------------------------------|----------------------|
| 1. | Vaughn Mills Packaging Ltd. | 31-2895096 |
| 2. | RLogistics Limited Partnership | 31-3040679 |
| 3. | RLogistics Inc. | 31-3042209 |
| 4. | 1696308 Ontario Inc. | 31-3042213 |

Schedule "B": Receivership Proceedings

| Name | Court / OSB Number |
|--|---------------------------|
| 1. Z. Desjardins Holdings Inc. | CV-23-00706607-00CL |
| 2. 485, 501 and 511 Ontario Street South, Milton, ON | CV-23-00696349-00CL |
| 3. Eco Energy Home Services Inc. | CV-19-614122-00CL |
| 4. 3070 Ellesmere Developments Inc. | CV-19-00627187-00CL |
| 5. Fernwood Developments Ontario Corporation | CV-20-00635523-00CL |
| 6. Utilecredit Corp. | CV-20-00636417 |
| 7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON | CV-20-00651299-00CL |
| 8. Greenvilla (Sutton) Investment Limited (private receivership) | 31-459273 |
| 9. 2088556 Ontario Inc. (private receivership) | 31-459274 |
| 10. 935860 Ontario Limited (private receivership) | 31-459275 |
| 11. Areacor Inc. | CV-22-00674747-00CL |
| 12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership) | 31-459498 |
| 13. 12252856 Canada Inc. | CV-22-00691528-00CL |
| 14. Harry Sherman Crowe Housing Co-operative Inc. | CV-22-00688248-00CL |
| 15. Richmond Hill Re-Dev Corporation | CV-23-00695238-00CL |
| 16. Stateview Homes (Hampton Heights) Inc. | CV-23-00700356-00CL |
| 17. 142 Queenston Street, St. Catharines, ON | CV-23-00705617-00CL |
| 18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON | CV-23-00701672-00CL |
| 19. 311 Conacher Drive, Kingston, ON | CV-23-00701672-00CL |
| 20. Real Property owned by King David Inc. | CV-23-00710411-00CL |
| 21. CBJ Developments Inc. et al. | CV-23-00707989-00CL |
| 22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4 | 31-459784 |

Schedule "C": CCAA Proceedings

| Name | Court Number |
|--|---------------------|
| 1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contact Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc. | CV-23-00703933-00CL |

Schedule "D": Estate Trustee During Litigation Proceedings

| Name | Court Number |
|---|------------------------|
| 1. The Estate of Sarah (Sue) Turk * | 01-3188/14 |
| 2. The Estate of Sarah (Sue) Turk * | 05-35/14 |
| 3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i> | 05-100/17 05-265/17 |
| 4. The Estate of Peter Trezzi | 01-4647/16 |
| 5. The Estate of Florence Maud Anderson * | 05-159/19 |
| 6. Estate of Murray Burke | 2988/19 |
| 7. Estate of Robert James Cornish | CV- 23-00693852-00ES |
| 8. Estate of Anne Takaki * | CV-22-00011105-00ES |
| 9. Estate of John Takaki * | CV-22-00011105-00ES |
| 10. Estate of James Frederick Kay ** | 06-006/14 |
| 11. Klaczkowski Family Trust ** | CV-21-00659498-00ES |
| 12. Estate of Ethel Ailene Cork ** | CV-23-00710309-00ES |
| 13. Estate of Justin Milton Cork ** | CV-23-00710291-00ES |

* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

** In the name of Bryan A. Tannenbaum only.

TDB RESTRUCTURING LIMITED

and

RSM CANADA OPERATIONS ULC

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

O R D E R

CHAITONS LLP

Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (LSUC #54100A)

Tel: 416-218-1161

Email: maya @chaitons.com

Lawyers for the Applicant

APPENDIX D



SUPERIOR COURT OF JUSTICE

ENDORSEMENT

COURT FILE NO.: CV-23-00703933-00CL

DATE: Dec 07, 2023

NO. ON LIST: 1

TITLE OF PROCEEDING: **QUALITY RUGS OF CANADA LIMITED v. WAYGAR CAPITAL INC.,
AS AGENT FOR NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P. et al**

BEFORE: **JUSTICE PENNY**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|--|--------------------------------|
| Kenneth Kraft | Receiver | kenneth.kraft@dentons.com |
| Sara-Ann Wilson | | sara.wilson@dentons.com |
| Ken Pearl | The Fuller Landau Group Inc. (the Receiver) | kpearl@fullerllp.com |
| Matilda Lici | Waygar Capital Inc., as agent for Ninepoint Canadian Senior Debt Master Fund L.P. (Applicant) | mlici@airdberlis.com |
| Chris Besant | Lawyer to certain former Directors & Officers of Quality Rugs of Canada Limited | cbesant@grllp.com |
| Haddon Murray | Torlys Inc; Metropolitan Hardwood Floors (Eastern) Inc.; Lauzon – Planchers De Bois Exclusifs Inc.; Ceratec Inc.; and Boa- Franc SENC/GP | haddon.murray@gowlingwlg.com |
| Joe Latham | CCAA Monitor | jlatham@goodmans.ca |
| Bryan Tannenbaum | RSM Canada Limited (CCAA Monitor) | bryan.tannenbaum@rsmcanada.com |
| Arif Dhanani | | arif.dhanani@rsmcanada.com |
| Michael Farace | GG Eight Cumberland Inc. | Michael.Farace@devrylaw.ca |
| | | |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
| | | |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|------------------------------------|---|---|
| Gerard Borean | Lawyer for Ciot Creditor | gborean@parenteborean.com |
| Devon Goyo | | dgoyo@parenteborean.com |
| Derek Rici Natalie Renner | Ironbridge Equity Partners Management Limited | dricci@dwpv.com nrenner@dwpv.com |
| Andrew Winton | Alvarez & Marsal Canada Securities ULC. | awinton@lolg.ca |
| Demetrios Yiokaris | LIUNA Local 183 | dyiokaris@kmlaw.ca |
| Michael Mandarino Daniel Wright | United Brotherhood of Carpenters and Joiners of America | mmandarino@rousseauazzuca.com dwright@rousseauazzuca.com |
| Eric Dwyer | CDS Distribution Inc. | edwyer@brazeauseller.com |
| Danny Nunes | Fuzion Flooring | danny.nunes@dlapiper.com |
| | | |

ENDORSEMENT OF JUSTICE PENNY

[1] This motion is brought in relation to concurrent CCAA and receivership proceedings in relation to QSG, one of Canada’s largest flooring contractors on large office and condominium construction projects. At the time of its CCAA filing, QSG was providing flooring contracting services to around 100 construction projects in Canada, mostly in Toronto.

[2] Various Suppliers of flooring material to QSG in respect of projects in Alberta, British Columbia and Ontario, move for an order:

- (a) declaring that certain funds owing to the Suppliers on account of improvements constitute trust funds;
- (b) granting a super-priority charge (a “trust and lien charge” or “TLC”) on all the property of QSG to secure amounts owing regarding: (i) any proven lien claim to the extent of any holdback; and, (ii) any proven trust claim that existed as of August 4, 2023;
- (c) ordering that the trust and lien charge ranks in priority to all charges or security interests attaching to QSG’s property with the exception of two prior court-ordered charges, the Administration charge and the Receiver’s charge; and
- (d) ordering the Receiver to keep accounts of all amounts received so that the funds can be traced on a project-by-project basis.

[3] Certain Suppliers, but not all, also seek an order that the Receiver retain all holdback funds received from any project in a separate account, to be paid out in respect of proven claims.

[4] Suppliers to QSG at numerous projects are owed pre-filing amounts for the supply of materials which are unpaid. They assert lien and trust claims under provincial law. Since the CCAA filing, work has continued at these projects but Suppliers have been paid on a COD basis. During the CCAA proceedings, it was proposed that Suppliers' pre-filing claims would be dealt with through a claims process within the CCAA proceedings. Weeks of negotiation between the stakeholders did not produce a consensus, and no agreement was ever reached on the terms and conditions of that process.

[5] To put the current motion in context, a brief explanation of the background is required.

Background

[6] On August 25, 2023 I made an initial order under the CCAA which, among other things, imposed a stay of all proceedings against QSG. An amended and restated initial order (ARIO) was made on September 5, 2023. QSG hoped to conclude a sale transaction under which Ironbridge would acquire QSG's business. However, by late October, Ironbridge terminated all negotiations. This left QSG with no choice but to submit to the alternative relief, sought by its principal secured creditor, Waygar, for the appointment of a receiver. I made the initial receivership order on October 31, 2023 and granted an amended receivership order on November 24, 2023. The Monitor, although not yet discharged, now has only a support and transitional role.

[7] By far the largest asset of QSG is its accounts receivable. In order to maximize realization of this asset, both the Monitor under the CCAA and now the Receiver concluded that all viable projects need to be completed. Since QSG is insolvent, cash to finance project completion has to come from ongoing accounts receivable for ongoing work done or from some other source. Under the CCAA, the projected shortfall in cash flow was funded by Ironbridge as a DIP lender, in relation to which it was granted a DIP lenders' charge. The charges granted in the initial order and the ARIO are, in order of priority: 1) the Administration charge; 2) the D&O charge; and 3) the DIP lenders' charge. The committed DIP facility of \$5 million was fully drawn down and is, therefore, no longer available. Ironbridge, having withdrawn from its proposed purchase, is not prepared to advance further funds. Neither Waygar, nor anyone else, is prepared to advance further funds either. Accordingly, for the Receiver to pursue its value-maximizing strategy, it must fund the expense of completing projects entirely from ongoing accounts receivable. All ongoing post-filing supply of flooring materials to the projects continues to be on a COD basis.

The Suppliers' Motion

[8] The Suppliers say their pre-filing accounts for delivery of materials to QSG projects created a trust (for example, by virtue of s. 8 of Ontario's *Construction Act*) which was imposed on the owner's payment obligation to pay QSG, and the payments themselves, for those

improvements. However, post-filing, QSG did not use progress payments from owners to pay its pre-filing liabilities to Suppliers on those specific projects. Rather, QSG utilized the payments to fund the cost of ongoing deliveries of materials and labour to all its projects, without discrimination as to the source of the funds. In the normal course, this would have given rise to lien and trust claims, and related proceedings. However, due to the CCAA stay, the Suppliers could not pursue those remedies and, due to the passage of time and the difficulty of tracing payments from one owner to materials purchased for projects of other owners, these remedies are realistically no longer available in any event.

[9] The receivership order establishes a claims process to determine the Suppliers' lien and trust claims. The deadline for filing such claims is December 21. The purpose of the Suppliers' motion is to secure, for all proven lien and trust claims, a charge against net realizations ultimately made in the course of the Receiver's asset realizations (and certain related collateral relief). The scope of the Suppliers' motion changed since its initial inception. By the time of oral argument, no stakeholder seriously challenged the concept of a charge to protect the Suppliers' proven claims. The areas of disagreement essentially came down to:

- 1) the scope of the charge;
- 2) whether the Receiver should, as it had requested, have access to holdbacks that may be paid in order to finance its ongoing realization efforts (some of the Suppliers are willing to agree to this, with appropriate protections; others are not); and,
- 3) the priority to be afforded the trust and lien charge vis-à-vis the other existing priorities.

Should A Trust and Lien Charge Be Granted?

[10] I agree with the Suppliers that their rights under provincial construction lien legislation have been suspended by the CCAA and receivership proceedings, to their detriment. Enforcement rights they would otherwise have had were not available to them. As Mr. Murray has submitted, the use of accounts receivable from specific projects to finance ongoing operations on other projects has had the effect of making the Suppliers, to the extent of their unpaid pre-filing invoices, involuntary, unsecured DIP lenders.

[11] It was always contemplated that a "replacement" remedy would be available to the Suppliers within the CCAA proceedings. Negotiations were ongoing when the proposed sale, which was the basis for the proposed CCAA restructuring, was terminated. Now, the Receiver is faced with the same problem QSG and the Monitor had; ongoing accounts receivable are required to pay for ongoing supply of labour and materials to finish all viable projects, in the expectation that this is the best way to maximize realizations for the benefit of all stakeholders. Suppliers with proven lien and trust claims have a legitimate interest in the priority of ultimate distributions from the Receiver's realizations. They should not be put (to the extent now possible), in relation to realizations on accounts receivable, for example, in any worse position than they would have been in had they been permitted to assert lien and trust claims in the ordinary course.

[12] I therefore agree with the Suppliers that an appropriate remedy, in the circumstances, is to order a trust and lien charge (TLC) in favour of the Suppliers' proven trust and lien claims. As noted earlier, no one seriously opposed this relief in concept.

Scope of the Charge

[13] The Suppliers' proposed order granting the TLC makes it clear that the charge is only in relation to *proven* claims. This is appropriate because, of course, even in the ordinary course the Suppliers would not be granted a remedy in the absence of proven claims. It is premature at this point for the court to be making any declarations about whether certain funds are or are not subject to a trust. The claims process will determine whether there are proven claims. I am in no position to say, on this record, that there are or are not proven trust claims. The provincial statutes say what they say. Whether the Suppliers' evidence will bring them within the scope of that legislation is not before me on this motion. I therefore decline to grant any declaratory relief at this stage.

[14] As I understand it, the concern of some stakeholders, forcefully articulated by Waygar, is that the Suppliers should only receive the priorities (or equivalent relief) they would have had under the existing legislative structure. They should not receive any remedy in these proceedings that would put them in a better position than they would have been under the applicable legislation.

[15] While there was little discussion of the details of the Suppliers' proposed TLC order, one area flagged by Waygar was that the proposed order would purport to grant the Suppliers a charge over all of the "property" of QSG. This, Waygar submits, would be overreaching because, under the trust provisions in the legislation, the trust applies only to the accounts receivable owing, and the payments made, to QSG from the owner, not to "any" or "all" of QSG's property.

[16] I tend to agree with Waygar's point but, because there was so little focus on the specific details of the proposed order itself, I prefer to leave that issue to the parties to negotiate with the benefit of the court's direction on the more threshold, substantive issues.

Ability to Utilize the Holdbacks

[17] The issue here is that holdbacks (typically 10%) are required to be withheld by the owners on all payments, pending final completion. The owners do not release these funds until they are satisfied that there are no claims from anywhere in the construction "pyramid"; they are cautious because owners can be found liable to lien claimants for holdback funds that were wrongly paid directly to the contractor, if it turns out those funds did not make it into the pockets of the relevant lien claimant.

[18] Some Suppliers take the view that the holdbacks are sacrosanct and, under no circumstances, should they be diverted to other purposes. The Suppliers, like other stakeholders, are not guaranteed that the Receiver's strategy is going to pan out; there is always a risk (hopefully small) that, at the end of the day, the efforts to work out the projects will not produce

sufficient net realizations to pay all the Suppliers' claims. Thus, some Suppliers are of the opinion that the holdbacks are an existing, secure pot of funds that should not be put at risk at all.

[19] As the argument on this issue unfolded, it seemed to me it is somewhat of a red herring. The Receiver is not asking for an order that owners disgorge holdbacks before project completion or in the face of outstanding claims. As a practical matter, owners will not pay holdbacks in the face of outstanding claims. The claims procedure calls for all claims to be submitted by December 21, 2023. Thus, by that date the Receiver will know which projects are subject to claims and which are not. Suppliers are only entitled to holdbacks in respect of projects to which they have provided improvements. The reality is that the Receiver will almost certainly never have access to holdbacks in respect of projects which are subject to lien and trust claims. I take the view that if, somehow, the Receiver were to come into possession of holdback payments regarding projects subject to claims, the Receiver should hold and preserve these funds in a separate account and should not knowingly utilize these funds, absent further order of the court, to pay the general, ongoing costs of completing other projects. But, as I have said, this seems an entirely unlikely scenario in any event. In short, the Receiver should not utilize any holdback funds for general purposes unless it is clear that there are no lien claimants against the project for which the holdback has been paid.

The Relative Priority of the TLC in Relation to the D&O Charge and the DIP Lenders' Charge

[20] The Suppliers propose that the TLC rank second, only behind the Administration charge and the Receiver's charge. They argue that the use of accounts receivable, paid by owners in respect of unpaid pre-filing Supplier improvements, to fund ongoing operations with other owners and projects, and the failure to transfer those payments directly to the Suppliers to those projects, was a breach of trust. They further argue that, as trust funds, these accounts receivable do not constitute "property" of QSG. Thus, the Suppliers argue, the D&O charge and the DIP lenders' charge over the property of QSG cannot fall upon the trust funds, which are not QSG's property.

[21] The applicable law clearly provides that construction-related trusts under provincial law can survive in an insolvency, although the provisions of provincial law do not *necessarily* prevail. The relationship between the two may engage the paramountcy doctrine, which, in turn, depends on whether, in the particular circumstances of each case, there is an operational conflict between the dictates of federal law (the CCAA and orders made pursuant thereto) and provincial law (such as s. 8 of the *Construction Act*). In this case, the D&Os and the DIP lender say there is an operational conflict because the orders of this court created a charge in their favour (which was acted upon to their detriment) and that it would be contrary to the purposes of the CCAA to interfere with that priority after the fact to give effect to a superior priority for subsequently proven claims under provincial law.

[22] One of the most significant arguments made by the Suppliers in opposition to the D&Os and the DIP lender on this point is that there is no operational conflict, and no reasonable reliance, because the Initial Order and the ARIO did not include “trusts” in the list of QSG’s “property” to which the D&Os’ and DIP lenders’ charges would apply. This was a conscious choice, say the Suppliers, because the language of the Commercial List Model Order does include the word “trusts” in that list. Someone consciously decided to leave it out of the relevant orders imposing the charges in this case. This, they say, completely eliminates the basis for arguing there is any operational conflict and that there was any reasonable reliance on the form of the orders made.

[23] Unfortunately, however, this argument, that the Initial Order and the ARIO excluded “trusts” from the reach of the D&O and DIP lenders’ charge, surfaced for the first time in the Suppliers’ reply factum, para. 11. As a result, the record lacks any evidence about what is now a critical point in the most important, disputed issue on this motion. Such evidence might have addressed, for example, the circumstances giving rise to this deletion of the word “trust”, the intended business purpose of the deletion, who was involved in the negotiation of this issue and the drafting, who had notice of it, whether this divergence from the Model Order was specifically brought to the attention of other stakeholders and the court, etc. I would have, in the ordinary course, also expected to hear from my “eyes and ears”, the Monitor and its counsel, on this issue because they were directly involved at the time. Further, because it was raised for the first time in reply, I do not feel it was properly addressed in written and oral submissions on the motion.

[24] Accordingly, I am not prepared to deal with this issue on the present record. I will require supplementary evidence from those directly involved, input from the Monitor and supplementary short written submissions (not to exceed five pages each, restricted to the specific issue I have identified) from those parties who filed material on this issue in the first instance.

Conclusion

[25] I would ask the Receiver to attempt to mediate an orderly timetable and date for this additional work to be done. If a case conference is required, one should be arranged as soon as possible. At the moment, I am unsure whether another attendance for further oral submissions will be required. I will decide this question after reading the additional material and hearing, perhaps again through the Receiver, the parties’ views on whether there should be additional oral submissions.

[26] The balance of my determinations set out above shall be effective as of the release of this endorsement.

[27] Finally, I would add that I am not specifying any specific provision of information by the Receiver to the stakeholders in my endorsement at this time. The Receiver has expressed a willingness to provide relevant information. Indeed, the Receiver concedes that providing information of the kind identified by the moving parties is part of its obligation to the court in

any event. It makes sense that that the Receiver should be able to account for all amounts received so that the funds can be traced on a project-by-project basis. I will leave it to the parties to negotiate further whether there are specific items that ought to be included in the ultimate order that will result from this motion and my determinations of the principal issues.

A handwritten signature in blue ink, appearing to read "Penny J." with a period at the end. The signature is stylized and cursive.

Penny J.

APPENDIX E

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO**

Applicants

**FIFTH REPORT TO THE COURT OF
RSM CANADA LIMITED, IN ITS CAPACITY AS MONITOR OF THE APPLICANTS**

DECEMBER 15, 2023

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I. INTRODUCTION

1. On August 25, 2023, Quality Rugs of Canada Limited and the other companies listed in Schedule A attached hereto (collectively referred to herein as “**QSG**” or the “**Applicants**” or the “**Companies**”) sought and obtained an initial order (the “**Initial Order**”), under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Companies’ proceedings pursuant to the CCAA are referred to herein as the “**CCAA Proceedings**”.
2. The Initial Order, among other things:
 - (a) appointed RSM Canada Limited (“**RSM**”) as monitor (in such capacity, the **Monitor**);
 - (b) granted a Stay of Proceedings against the Companies and Directors and Officers (as those terms are defined in the Initial Order) for the period to and including September 5, 2023 (the “**Stay Period**”);
 - (c) approved a debtor-in-possession credit facility (the “**DIP Facility**”) from Ironbridge Equity Partners IV LP and Ironbridge Equity Partners (International) IV, LP (collectively, the “**DIP Lender**”) pursuant to which, among other things, the DIP Lender would provide an initial amount of up to \$3,500,000 in accordance with the Cash Flow Forecast (as defined in the Monitor’s First Report) to be advanced during the initial 10 days of the CCAA; and
 - (d) granted the Administration Charge, Directors’ Charge, DIP Lenders’ Charge, Financial Advisor’s Charge and Lien Charge (all defined in the Initial Order).

A copy of the Initial Order is attached hereto as **Appendix “A”**.

3. On September 5, 2023, the Initial Order was amended and restated (the “**ARIO**”), which, *inter alia*: (i) extended the Stay Period to October 31, 2023; and (ii) provided for borrowings under the DIP Facility to be increased to but not exceed

\$7 million, unless permitted by further order of the Court. A copy of the ARIO is attached hereto as **Appendix “B”**.

4. On October 30, 2023, the Monitor was informed by the potential purchaser of QSG’s assets that the transaction would not be proceeding. The Monitor issued its Third Report dated October 30, 2023 (the “**Third Report**”).
5. On October 31, 2023, the Court issued an Endorsement (the “**October 31st Endorsement**”) (i) appointing the Fuller Landau Group Inc. (“**FLGI**”) as receiver (the “**Receiver**”) over the assets and undertakings of QSG on the basis of a “bare bones” receivership order to be submitted to the Court, and (ii) extended the stay of proceedings in the CCAA Proceedings until November 24, 2023 pending a hearing to address various transition issues.
6. On November 2, 2023, the Court issued a further Endorsement (the “**November 2nd Endorsement**”), which clarified certain issues relating to priority of the various Court-ordered charges.
7. On November 8, 2023, the Court issued Orders dated October 31, 2023: (i) extending the Stay Period in the CCAA Proceedings to November 24, 2023 and narrowing the mandate of the Monitor (the “**Stay Extension Order**”); and (ii) formally appointing the Receiver and setting out the powers and duties of the Receiver (the “**Receivership Order**”).
8. On November 24, 2023, the Court issued a more fulsome receivership order in the receivership proceedings and an order in these proceedings approving the Fourth Report of the Monitor dated November 17, 2023 (the “**Fourth Report**”), approving the fees and disbursements of the Monitor and its counsel to the dates outlined in the Fourth Report, and extending the Stay Period until further order of the Court, largely to facilitate the narrow mandate of the Monitor to provide assistance in connection with certain ongoing litigation arising out of these Proceedings.
9. On December 7, 2023, a hearing was conducted to deal with a request from a group of suppliers to QSG (the “**Suppliers**”) for the creation of a charge to protect

their interests, in priority to all of the Charges other than the Administration Charge and the Receiver's Charge.

10. On December 11, 2023, Justice Penny issued an Endorsement (the "**December 11th Endorsement**") arising from the December 7 hearing, specifically requesting input from the Monitor on an issue impacting the request of the Suppliers for a priority charge. A copy of the December 11th Endorsement is attached hereto as **Appendix "C"**.
11. Copies of the various materials pertaining to the CCAA Proceedings are available on the Monitor's website at <http://www.rsmcanada.com/quality-sterling-group> (the "**Monitor's Website**").

Purpose of Report

12. The purpose of this fifth report of the Monitor (the "**Fifth Report**") is to provide the Court with information pertaining to the fact that the word "trust" was deleted from the charging language found in the CCAA Model Initial Order. In paragraph 23 of the December 11th Endorsement, Justice Penny noted that the argument made by the Suppliers that the exclusion of the word "trusts" from paragraph 47 of the Initial Order and of the ARIO "surfaced for the first time in the Suppliers' reply factum". As a result, Justice Penny noted that the record lacked evidence of "for example, the circumstances giving rise to this deletion of the word "trusts", the intended business purpose of the deletion, who was involved in the negotiation of this issue and the drafting, who had notice of it, whether this divergence from the Model Order was specifically brought to the attention of other stakeholders and the Court, etc."
13. In paragraph 24 of the December 11th Endorsement, Justice Penny specifically stated that he would require input from the Monitor on this issue.

Terms of Reference

14. In preparing the Fifth Report and making the comments herein, the Monitor has relied upon its own records and those of its counsel, as well as discussions with

counsel to Ironbridge Equity Partners Management Limited (“**Ironbridge**”), the Suppliers, QSG and the Receiver (collectively, the “**Information**”).

15. To the extent that any of the Information may have been provided by other parties or was obtained from documents filed with the Court in this matter, the Monitor has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of any of the Information which may be financial in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the *Chartered Professional Accountants Canada Handbook*.
16. Capitalized terms not otherwise defined herein are as defined in the pre-filing reports of RSM, the First Report, the Second Report, the Third Report, the Fourth Report, the various Orders of the Court and other documentation filed in respect of the CCAA Proceedings, which can be found on the Monitor’s Website.
17. Unless otherwise stated, all dollar amounts contained in the Fourth Report are expressed in Canadian dollars.

II. EVENTS PRIOR TO AUGUST 4 HEARING

18. It is important to remember the context of these proceedings from the very outset. They began with competing CCAA applications, and the Company did not begin to draft its own CCAA materials until after Waygar Capital Inc. (“**Waygar**”) had served a CCAA application returnable on the original August 4, 2023 hearing date. The Company served its competing Notice of Application and the original affidavit of John Pacione late on August 3, 2023 by way of separate emails. At approximately 6:45 pm on August 3, 2023, the fulsome Application Record of QSG was served, including a draft of the proposed CCAA Initial Order and a blackline to the Model Order.
19. The Monitor and its counsel saw the first draft of a CCAA initial order from counsel for QSG on August 1, 2023. The draft initial order provided by QSG’s counsel had not removed the word “trusts” from the relevant charging language; however, the

draft order needed work in many respects. Given the significant work required for QSG's counsel to complete its CCAA application materials and to continue discussions with Ironbridge and Waygar, counsel to the Monitor was asked to review and revise the draft initial order.

20. The Monitor's counsel was relatively new to the matter, with little factual background; however, the Monitor and its counsel were aware of a few simple facts. First, it quickly became clear that there would be no request for a DIP loan at the August 4th hearing. Second, the Company had approximately \$6 million in its blocked bank account which it was hoping to access for operations and to fund professional fees. Third, given what was now a public fight with no locked up proposed purchaser or DIP lender, the Company was concerned to not upset its suppliers generally.
21. The draft initial order provided to the Monitor did not make any provision for a lien regularization approach. The first thing that the Monitor did was consider other simple alternatives, notably the case involving FirstOnSite from 2016. A copy of the Amended and Restated Initial Order in the FirstOnSite case is attached hereto as **Appendix "D"**. Accordingly, the draft initial order was edited to contemplate suppliers being denied the right to lien owners' property, but to rather file notices of lien with the Monitor and QSG, and to be given a lien charge.
22. The draft initial order provided to the Monitor also included very generic DIP loan provisions, which were removed from the draft in advance of the August 4, 2023 hearing (the "**August 4th Hearing**"). Instead, the only charges which were included in the draft initial order for the August 4th Hearing were an Administration Charge, a Directors' Charge and a charge in favour of Alvarez & Marsal for its success fee.
23. As part of these amendments to the draft initial order, recognizing that QSG had approximately \$6 million in its blocked account, mindful of the desire to be seen to be working with the suppliers, and recognizing that QSG would have to return later for approval of DIP financing, assuming that its application was successful, what is now paragraph 47 of the draft order was amended to (i) remove the word "trusts"; (ii) add the usual proviso protecting secured creditors who had not been served;

and (iii) add language from paragraph 51 of the FirstOnSite Amended and Restated Initial Order regarding suppliers.

24. Prior to the service of the QSG CCAA Application Record, the draft initial order had not been shared with anyone other than QSG and the Monitor, and counsel for QSG had provided few comments on the draft. These provisions were not the result of any negotiations or discussions with either Ironbridge or the Suppliers (who were not yet active in the case). Rather, this was a simple form of draft order prepared in the hope of the QSG application being successful on August 4, 2023, with the expectation that the \$6 million or some component of it would be available to QSG. Effectively, this form of draft initial order was intended to be merely a bridge to getting a firm deal with Ironbridge by the time that the Comeback Hearing would have taken place.
25. Attached hereto as **Appendix “E”** are copies of the draft initial order which was served on August 3, 2023, as well as a blackline to the Model Order.
26. Late on the afternoon of August 3, 2023, prior to the August 4th Hearing, QSG and the Monitor learned that Waygar had swept from the blocked account all of the approximately \$6 million that QSG had planned to use for its operations. The expected availability of those funds had been a significant part of the decision to remove the word “trusts” from the draft CCAA initial order in securing the 3 charges noted above pending any Comeback Hearing.

III. EVENTS BETWEEN AUGUST 4 HEARING AND AUGUST 25 HEARING

27. At the outset of the August 4th Hearing, it was clear that Justice Penny did not have sufficient evidence, briefing materials or time to deal with the competing CCAA applications, and the parties agreed to a two (2) week interim stay to provide time for them to either advance a deal with Ironbridge or to litigate the competing applications. Neither the Waygar CCAA application nor the QSG CCAA application was argued that day, and no one discussed or walked through any of the draft orders filed by either party in support of their applications.

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28. Rather, following guidance from Justice Penny, the parties agreed upon the August 4, 2023 order (the “**August 4th Order**”) to provide a two (2) week stay of proceedings to protect the Company and to approve limited interim financing from Waygar. That order was expressly not a CCAA initial order, and no formal court officer was appointed thereunder, but both RSM and FLGI had rights to information to assist the parties.
 29. Negotiations between QSG, Waygar and Ironbridge ensued. Those negotiations were not completed by August 18, 2023. Accordingly, by order dated August 18, 2023, the terms of the August 4th Order were extended through August 23, 2023. Once again, on August 23, 2023, the matter was extended by further order to August 25, 2023.
 30. Throughout most of this time, the discussions revolved around the business terms of the transaction, including the DIP financing terms. RSM and its counsel were not actively involved in most of those discussions, but were involved in reviewing the terms of the proposed DIP financing as it was evolving. With little to no funding available for the professionals, very little time was spent considering or advancing the draft CCAA initial order in the absence of an agreed upon business deal.
 31. Finally, on August 23, 2023 there was sufficient movement on the potential deal with Ironbridge that drafts of the letter of intent (“**LOI**”) and DIP term sheet began to be reviewed and commented on in earnest. On the afternoon of August 24, 2023, QSG’s counsel sent a revised draft of the initial order to the Monitor and its counsel for review, containing relatively few edits to the prior version which had included the possibility of a DIP loan.
 32. The first time that the Monitor’s counsel shared the draft CCAA initial order with Ironbridge’s counsel for comment was on August 24, 2023. Limited comments were received from them and were reflected in the draft initial order. None of those comments dealt with the word “trusts” or what is now paragraph 47. However, the focus at that time was still on finalizing the broader deal documents and, in particular, the LOI and certain arrangements between the principals of QSG and each of Ironbridge and Waygar.

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33. Discussions on open points continued well into the evening and, at 1:53 am on August 25, 2023, QSG's counsel emailed the Service List to confirm the Zoom particulars for the hearing which was scheduled for 10:00 am, to advise that there were "some issues still requiring confirmation between the parties in the morning" which needed to be settled before the hearing could proceed, and attaching a draft of the initial order, but not a blackline to the Model Order. Attached hereto as **Appendix "F"** is a copy of this email from QSG's counsel, as well as the form of draft initial order which had been attached to that email.

IV. THE AUGUST 25 HEARING

34. Before the hearing on August 25, 2023 was scheduled to begin, there were a great many emails and telephone calls to try to confirm that all of the business terms of the deals between QSG, Ironbridge and Waygar had been settled and all documents executed, so that the QSG CCAA application could proceed effectively on consent. In the absence of signed documents, many of the court materials could not be finalized, including the Second Supplemental Pre-Filing Report of the Monitor.
35. At 10:00 am on August 25, 2023, the hearing began and, by agreement among all parties, the hearing was stood down until 11:00 am to allow matters to be concluded. When the hearing resumed at 11:00 am, the parties still were not in a position to file materials with signed documents. However, there was enough comfort with the likelihood of a deal that, at the request of Justice Penny, submissions were made by the Monitor's counsel as to the background and the principal terms of the proposed relief. When those submissions concluded, the matter was once again stood down, this time until 12:30 pm, to allow the documents to hopefully be executed and served.
36. At approximately 12:00 pm, as had been suggested during submissions, the Monitor's counsel sent a draft of the Monitor's Second Supplemental Pre-Filing Report to Justice Penny so that he could review it. The hearing re-convened at 12:30 pm, but again the materials were not all available to proceed. Justice Penny

left the Zoom call, but all other counsel remained on the line and many counsel discussed or made requests for changes or suggested edits to the draft initial order, mostly with respect to issues relating to the lien notice provisions. That process continued for some time.

37. The signed and final version of the Second Supplemental Pre-Filing Report of the Monitor, together with its appendices, was then provided to Justice Penny and the Service List at approximately 1:00 pm.
38. The draft initial order, now bearing comments from certain counsel on the Zoom call, was sent to Justice Penny at 1:15 pm with an email to the effect that the matter was ready to proceed. Attached hereto as **Appendix "G"** is a copy of the email from Monitor's counsel to Justice Penny delivering that draft of the initial order.
39. That same version of the draft initial order, together with a blackline to the version from the prior day, was circulated to the Service List at 1:20 pm. Attached hereto as **Appendix "H"** is an email from Monitor's counsel to the Service List delivering those versions of the draft initial order.
40. The hearing re-convened shortly after 1:15 pm and counsel for the Monitor walked Justice Penny through a blackline of the draft initial order against the Model Order, which blackline had not yet been circulated to the Service List and was shared on the Zoom screen to be reviewed. In light of certain time constraints that day, the review against the Model Order did not highlight every word change from the Model Order, but rather focused on bigger picture edits and why they were made, such as the lien regularization issues. The fact that the word "trusts" was not in paragraph 47 of the draft initial order was not specifically brought to the attention of Justice Penny or otherwise discussed during that review of the Model Order. At the end of that review of the draft initial order, Justice Penny was satisfied and issued the Initial Order.
41. Simply put, the process of finalizing documents and proceeding to seek the Initial Order in this case was an exercise of real time litigation under considerable time constraints and pressure, with the draft initial order being the ongoing subject of

comment even during the hearing. At no time prior to the hearing was a blackline of the draft initial order to the Model Order circulated to the Service List.

42. All of that said, at no point in any of the discussions or negotiations which the Monitor or its counsel had with either Ironbridge or QSG about the DIP Term Sheet was there ever a discussion or agreement that the DIP loan would not have priority over all manner of contractual or statutory security, liens or trusts. Frankly, those discussions were premised on the basis that all of the Charges would seek to have priority over those types of interests.
43. At that point in the Proceedings, without the comfort of the cash in the blocked account which had emboldened counsel for the Monitor and for QSG to remove the word “trusts” from the charging language on August 3, 2023, all of the beneficiaries of the Charges were aware that the principal source of recovery for them under any Charge would be from accounts receivable collections. The word “trusts” should have been re-inserted. There is no reason for that word to have been excluded, and the failure to re-insert it before August 25, 2023 was simply an oversight in the haste of dealing with the matter as it unfolded on August 24 and 25, 2023.
44. The Monitor also wishes to make clear that, at no point in the discussions regarding the form of the draft initial order were any of the Suppliers consulted on issues related to paragraph 47. There were a couple of counsel for suppliers making minor comments on the draft initial order during the Zoom call on August 25, 2023, and counsel for the LiUNA local had asked questions about the continuance of their grievances, but there had been no prior involvement with any of the suppliers on issues related to the priority of the Charges.

V. THE ARIO HEARING

45. After the Initial Order was issued, there were very few comments and concerns raised in regards to the Initial Order. Most of the comments, and particularly from the supplier community, revolved around the lien regularization aspects of the Initial Order and its deficiencies. Accordingly, the Monitor and QSG undertook to

try to negotiate a stand-alone Lien Regularization Order to deal with those claims in a more fulsome way and the manner of seeking to properly protect and/or deal with them.

46. In connection with the DIP and the ranking of the Charges, no changes were suggested to the Initial Order provisions in regard to the word “trusts”. Once again, that was not a decision made in furtherance of the negotiated business deal. Rather, parties appear to have been focused on changes made from the Initial Order to the draft ARIO.
47. Counsel for Ironbridge made a number of requests for edits to the Initial Order, almost all of which were made. One such request was for a change in the concluding language of paragraph 47 of the Initial Order. Exclusion (b) at the end of paragraph 47 provides that the Charges’ priority is modified as against “any claims of any person against the Applicants for amounts owing for services rendered and/or materials supplied that have priority over Encumbrances by statute.” On August 25, 2023, while the Court was being taken through the draft initial order, counsel for Ironbridge requested that the word “Encumbrances” in that passage be changed to the word “Charges”. Since that email was received too late to be effected on August 25, 2023, counsel for the Monitor had advised counsel for Ironbridge that the change would be made before the ARIO hearing. While the changes requested in that email were generally made by counsel for the Monitor on or about August 29, 2023, as a result of confusion, that specific word change did not make its way into the final version of the ARIO which was issued by the Court. Attached hereto as **Appendix “I”** is a copy of an email received from Natalie Renner at 1:37 pm on August 25, 2023, together with her comments on the draft initial order, including a request for this word change.

VI. CONCLUSION

48. The purpose of this Fifth Report is not to make a recommendation to this Honourable Court, but rather to provide the Court with evidence from the Monitor

as to the reason why the word “trusts” was removed from the charging provisions of in the Initial Order and the ARIO.

All of which is respectfully submitted to this Court as of this 15th day of December 2023.

RSM CANADA LIMITED

solely in its capacity as Proposed CCAA
Monitor of the Quality Sterling Group and
not in its personal or corporate capacity



Per: Arif Dhanani, CPA, CA, CIRP, LIT
Vice-President

Schedule “A” – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

APPENDIX F

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO**

Applicants

**WRITTEN SUBMISSIONS OF
RSM CANADA LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

JANUARY 4, 2024

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
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Lawyers for RSM Canada Limited, in its capacity as Monitor of Quality Rugs of Canada and the other companies listed in Schedule A attached hereto, and not in its personal or corporate capacity

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES LISTED IN
SCHEDULE A ATTACHED HERETO**

Applicants

**WRITTEN SUBMISSIONS OF
RSM CANADA LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

1. On December 7, 2023, a hearing was conducted in these proceedings to determine a priority dispute principally between Ironbridge Equity Partners Management Limited (“**Ironbridge**”), in its capacity as the DIP Lender these proceedings, and a group of suppliers to the Applicants (collectively, the “**Suppliers**”). The essence of the hearing was whether the trust claims which the Suppliers wish to assert under the *Construction Act* (or similar legislation in other provinces) would take priority over the DIP Lender’s Charge.

2. On December 11, 2023, Justice Penny issued an endorsement noting, among other things, that the Suppliers had in their reply factum and in oral argument relied on an argument that the Initial Order and the ARIO did not include “trusts” in the list of QSG’s property to which the DIP Lender’s Charge and the other charges would apply. Justice Penny also noted that there was no evidence about why that word was not included in the charging provisions of paragraph 47 of the Initial Order or the ARIO.

3. Accordingly, Justice Penny specifically sought input from the Monitor and its counsel on this issue because of their involvement. In particular, Justice Penny was interested to understand the intentions of the parties and how that word was removed from the form of the Model Order.

4. In response, the Monitor issued its Fifth Report dated December 15, 2023 (the “**Fifth Report**”), recounting the history of what became paragraph 47 of the Initial Order and the ARIO, in light of the manner in which the case unfolded. Thereafter, further evidence was submitted on behalf of Ironbridge, the former directors and officers of the Applicants, Alvarez & Marsal Canada, and the Suppliers.

5. In essence, the removal of the word “trusts” from paragraph 47 of the Initial Order and the ARIO was an oversight due to the manner in which these proceedings evolved between August 4, 2023 and August 25, 2023 and the incredible time pressures faced by all of the stakeholders in trying to respond in real time.

6. The removal of that word was never negotiated with Ironbridge or any other party, and was initially done as what might be considered a temporary measure in reliance on the cash expected to be in the Applicants’ bank accounts, with the issue to be dealt with later on any motion to approve DIP funding.¹ That it was not picked up for the August 25, 2023 hearing is the result of the deal to move forward with Ironbridge developing late, the ensuing rush to finalize documents, and the real time, evolving nature of that hearing.

7. Notably, no blackline to the Model Order was ever provided to the Service List ahead of or during the August 25, 2023 hearing, and the removal of the word “trusts” from paragraph 47 was not brought to the attention of Justice Penny at the hearing.²

8. At no point in any discussions or negotiations which the Monitor or its counsel had with either Ironbridge or QSG was there ever a discussion or agreement that the DIP loan would not have priority over all manner of contractual or statutory security, liens or trusts. Frankly, those discussions were

¹ [Fifth Report of the Monitor](#) dated December 15, 2023 [*Fifth Report*], Paragraph 23 [[E1254:E205](#)].

² [Fifth Report](#), Paragraph 40 [[E1258:E209](#)].

premised on the basis that all of the Charges would seek to have priority over those types of interests.³ At that time, all of the beneficiaries of the Charges were aware that the principal source of recovery for them under any Charge would be collections from accounts receivable. The word “trusts” should have been re-inserted.⁴

9. Very few comments on the Initial Order were received from any parties prior to the Comeback Hearing. Limited comments were made by Ironbridge and all but one (1) were effected. There were also requests for comments from the Suppliers. None of those comments involved the fact that the word “trusts” was missing from the charging language of paragraph 47.⁵

10. As noted in paragraph 45 of the Fifth Report, most of the comments from the supplier community related to their concerns about the lien regularization process and the deficiencies with it in the Initial Order. One of those emails was sent on September 4, 2023 by counsel to the Suppliers to counsel for the Monitor. That email string, including the exchange of emails amongst counsel, is fully set out in Exhibit “A” to the affidavit of John Pacione sworn on December 20, 2023, on behalf of the former officers and directors of the Applicants. The original email from counsel to the Suppliers is also excerpted in the affidavit of Pierre Champagne affirmed on December 20, 2023 (the “**Champagne Affidavit**”).

11. The September 4 email referred to in the Champagne Affidavit specifically addressed 2 paragraphs of the Initial Order relating to lien regularization issues and the approach to liens. The third item in that email referenced the Court of Appeal decisions in *The Guarantee Company of North America v Royal Bank of Canada* and in *Urbancorp Cumberland 2 GP Inc.*, noted that those decisions confirmed that *Construction Act* trusts could survive an insolvency filing, and then asked for confirmation that the

³ [Fifth Report](#), Paragraph 42 [[E1259:E210](#)].

⁴ [Fifth Report](#), Paragraph 43 [[E1259:E210](#)].

⁵ [Fifth Report](#), Paragraphs 45 – 47 [[E1259:E210](#) to [E160:E211](#)].

Applicants were not seeking to frustrate *Construction Act* trusts in the CCAA proceedings. Specifically, the email says “I would like to confirm that nobody is suggesting that the Initial Order does away with *Construction Act* trusts, and that if anyone wants to take the position that a *Construction Act* trust is not applicable they are not going to rely on the ARIO to say that the question is *res judicata*”.

12. The Monitor’s counsel responded to that request in the September 4 email by confirming that there was no intention to do anything to adversely affect the ability of suppliers to assert trust claims, such as they may be. That confirmation was not intended to address priorities as the Champagne Affidavit suggests, but rather was only intended to confirm that trusts could be asserted in the CCAA proceedings

13. The final point raised in the above-referenced September 4 email from counsel for the Suppliers was to acknowledge that the Monitor had advised that it was working on a draft Lien Regularization Order (“**LRO**”) following the Carillion precedent, to ask for a draft thereof and to ask that the process to seek same be expedited. In fact, all of the emails between counsel for the Suppliers and for the Monitor in the chain leading up to the above-referenced September 4 email from the Suppliers’ counsel were directed exclusively at the LRO and how it would be formulated.

14. The response from the Monitor’s counsel to that email in fact clarified that a draft LRO would be circulated as soon as possible. Consistent with the Carillion precedent, any such LRO would ascribe lien or other charge rights in favour of the suppliers, and ascribe a priority thereto. Accordingly, the Monitor’s focus in terms of the priorities of claims was on the drafting of the LRO, and not this email exchange with counsel for the Suppliers.

15. In that regard, it is the Monitor’s position that, since the suppliers to the Applicants have had their lien rights affected by these CCAA proceedings, they should receive the benefit of a charge which provides for the possibility of a tangible recovery to them (subject to them proving their claims). However,

the Monitor is of the view that such a charge should not be in priority to the existing Charges in the Initial Order or the ARIIO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th DAY OF JANUARY, 2024.



GOODMANS LLP

Schedule "A" – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**WRITTEN SUBMISSIONS OF THE
MONITOR**

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Lawyers for RSM Canada Limited, in its
capacity as Monitor of the Applicants

APPENDIX G

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO**

Applicants

**WRITTEN SUBMISSIONS OF
TDB ADVISORY LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

MARCH 22, 2024

GOODMANS LLP
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Fax: (416) 979-1234

Lawyers for TDB Restructuring Limited
(formerly RSM Canada Limited), in its capacity
as Monitor of Quality Rugs of Canada and the
other companies listed in Schedule A attached
hereto, and not in its personal or corporate
capacity

**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 QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES LISTED IN
SCHEDULE A ATTACHED HERETO**

Applicants

**WRITTEN SUBMISSIONS OF
TDB RESTRUCTURING LIMITED, IN ITS CAPACITY AS
MONITOR OF THE APPLICANTS**

Name of Monitor

1. Pursuant to the August 25, 2023 Initial Order in these proceedings and the CCAA, RSM Canada Limited was appointed as monitor (the “**Monitor**”) of the Applicants. On February 1, 2024, the name RSM Canada Limited (“**RCL**”) was changed to TDB Restructuring Limited (“**TDB**”). On March 1, 2024, the Court granted an order (the “**Omnibus Order**”) substituting the name TDB for RCL. A copy of the Omnibus Order is attached as **Appendix “A”** to these submissions. Accordingly, references herein to the Monitor shall mean references to TDB, in its capacity as the Court-appointed Monitor of the Applicants.

Submissions

2. On December 7, 2023, a hearing was conducted in these proceedings to determine a priority dispute principally between Ironbridge Equity Partners Management Limited (“**Ironbridge**”), in its capacity as the DIP Lender these proceedings, and a group of suppliers to the Applicants (collectively, the “**Suppliers**”). The essence of the hearing was whether the trust claims which the Suppliers wish to assert

under the *Construction Act* (or similar legislation in other provinces) would take priority over the DIP Lender's Charge.

3. Justice Penny issued an endorsement dated December 7, 2023 noting, among other things, that the Suppliers had in their reply factum and in oral submissions relied on an argument that the Initial Order and the ARIO did not include "trusts" in the list of QSG's property to which the DIP Lender's Charge and the other charges would apply. Justice Penny also noted that there was no evidence about why that word was not included in the charging provisions of paragraph 47 of the Initial Order or the ARIO.

4. Accordingly, Justice Penny specifically sought input from the Monitor and its counsel on this issue because of their involvement. In particular, Justice Penny was interested to understand the intentions of the parties and how that word was removed from the form of the Model Order.

5. In response, the Monitor issued its Fifth Report dated December 15, 2023 (the "**Fifth Report**"), recounting the history of what became paragraph 47 of the Initial Order and the ARIO, in light of the manner in which the case unfolded. Thereafter, further evidence was submitted on behalf of Ironbridge, the former directors and officers of the Applicants, Alvarez & Marsal Canada ("**A&M**"), and the Suppliers.

6. Following the delivery of those materials, Justice Penny released an endorsement on January 16, 2024, summarizing the additional materials filed, and noting that "the issues raised by the Monitor and the charge beneficiaries are really more about rectification than interpretation" of the Initial Order and the ARIO.¹ Justice Penny then invited those parties to bring motion to that effect within 10 Business Days if they wished to pursue that relief.²

¹ [Paragraph 6, January 16, 2024 endorsement of Justice Penny.](#)

² [Paragraph 8, January 16, 2024 endorsement of Justice Penny.](#)

7. Thereafter, on January 30, 2024, each of Ironbridge, the former directors and A&M served and filed motions seeking rectification to read the word “trusts” into paragraph 47 of the Initial Order and the ARIO (among other relief).

8. On February 14, 2024, the Suppliers filed materials responding to those motions, effectively stating that the Suppliers relied on the lack of the word “trusts” in paragraph 47 of the Initial Order and the ARIO. One of the affidavits so circulated was the Affidavit of Pierre Champagne sworn on December 20, 2023 (the “**Champagne Affidavit**”), to say that the lack of that word together with an email exchange on September 4, 2023 left him to believe that “*Construction Act* trusts would not be subordinated to the court ordered charges”.³

9. The Monitor repeats and relies upon the Fifth Report and its written submissions dated January 4, 2024 (the “**Prior Submissions**”), which are collectively to the effect that the removal of the word “trusts” from paragraph 47 of the Initial Order and the ARIO was an error and was not the result of an intentional decision or a negotiation with Ironbridge or others. Rather, it was the result of circumstances and time pressures identified in the Fifth Report and the Prior Submissions.

10. The Monitor is troubled by the statements made and the positions taken by certain of the Suppliers in connection with this issue.

11. In the Champagne Affidavit, Mr. Champagne relies on an email string from September 4, 2023 to reach a conclusion which the Monitor has previously debunked in both its Fifth Report and the Prior Submissions. In that regard, perhaps the most telling point is the contrast between Mr. Champagne’s statement in paragraph 11 of the Champagne Affidavit (that he took that email and the lack of the word

³ Paragraph 11, Champagne Affidavit [[F1756:F1127](#)].

“trusts” in paragraph 47 of the Initial Order and the ARIO to mean that the Suppliers’ trust claims had priority over the court ordered charges) and two simple, undisputed facts.

12. First, in the Suppliers’ initial motion for the December 7 hearing seeking priority over the DIP lender and other charges, they did not rely on this stated position as the basis for the relief. In fact, the Suppliers did not take this position until they had to respond to a constitutional question regarding the priority of their claims and the DIP. If the Suppliers had, in fact, believed from the outset that their trust claims were not subordinated to the Court ordered charges, they would have clearly relied on that position, and presumably would have sought a declaration that their trust claims were not subordinated to the charges. Instead, the relief they sought was the creation of a Lien and Trust Charge in priority to all charges other than those protecting the Monitor and the Court appointed Receiver.⁴

13. Second, despite literally weeks of negotiations and discussions between counsel for the Company, the Monitor, Ironbridge and the Suppliers over a proposed form of Lien Regularization Order (“LRO”), the Suppliers never once raised this position. While the specific content of those discussions was without prejudice and is not being disclosed here, we know this to be true because, had they at any point made that position known to the Company, Ironbridge or the Monitor, a rectification motion would have been immediately brought. The Monitor would have supported any such motion for rectification for the reasons set out in the Fifth Report and the Prior Submissions.

14. In that regard, the Monitor wishes to remind the Court of its comments in paragraph 18(d) of the Monitor’s Third Report dated October 30, 2023 (the “**Third Report**”). In outlining at a high level what the LRO proposed to do, the Monitor notes that one of the purposes of the proposed LRO was to “create a court ordered charge which would *provide for the possibility of a tangible recovery to be available for lien and trust claimants*, subject to the determination of their claims in the claims process”. Furthermore,

⁴ Amended Notice of Motion of Suppliers dated November 22, 2023[F636:F7].

paragraph 19 of the Third Report stated that negotiations failed over the quantum of the amount to be made available to lien and trust claimants. The combined effect of these statements is that all parties recognized that a charge in favour of the Suppliers' lien and trust claims would have been required in order to provide for tangible recoveries on those claims.

15. In the Monitor's view, had the Suppliers truly believed the positions set forth in the Champagne Affidavit and in their other recent materials, there would have been no need for a charge to secure payment of trust claims. As well, given the Company's clarity with the Court and with stakeholders throughout the CCAA proceedings that it was using cash as and when received to pay for ongoing supplies and services, if the Suppliers truly believed that their trust claims were outside of the Court ordered charges, they would undoubtedly have sought the Court's assistance to prevent incoming funds from being so used.

16. Put another way, had the Suppliers truly believed this position from September 4, 2023 as they suggest, and made that position clear to the Court and all parties from the beginning, the issue would have been raised and dealt with at the outset of the case, not after the DIP loan had been fully advanced by Ironbridge and spent by the Company in an effort to conclude a transaction to assist all parties, including the Suppliers.

17. In conclusion, the Monitor submits that this is a case in which a rectification of the Initial Order and the ARIIO is entirely appropriate. For all of the foregoing reasons, the Monitor respectfully supports the motions brought by each of Ironbridge, the former directors and A&M.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF MARCH, 2024.



GOODMANS LLP

APPENDIX "A"
(see attached)

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM) FRIDAY, THE 1ST
JUSTICE CONWAY) DAY OF MARCH, 2024

B E T W E E N:

TDB RESTRUCTURING LIMITED

Applicant

and

RSM CANADA OPERATIONS ULC

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure*

SUBSTITUTION ORDER

THIS APPLICATION made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

ON READING the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

BIA MANDATES

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

RECEIVERSHIP PROCEEDINGS

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

CCAA PROCEEDINGS

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

SUBSTITUTED MANDATES

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

ACCOUNTS

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of

this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

GENERAL

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

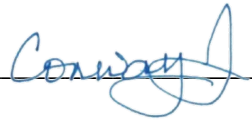
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist TDB Restructuring Limited in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to TDB Restructuring Limited as may be necessary or desirable to give effect to this Order, or to assist TDB Restructuring Limited and its agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.

A handwritten signature in blue ink is written over a horizontal black line. The signature appears to be "Conway J." with a stylized flourish at the end.

Schedule "A": BIA Mandates

Bankruptcies

| | Name | Estate Number |
|-----|---|----------------------|
| 1. | Carrington Homes Limited | 31-457618 |
| 2. | Fernicola, George | 31-457619 |
| 3. | D. Mady Investments Inc. | 31-2281994 |
| 4. | Eco Energy Home Services Inc. | 31-2502463 |
| 5. | Ontario HVAC & Water Inc. | 31-2613545 |
| 6. | 2305992 Ontario Inc. | 31-2655918 |
| 7. | Fernwood Developments (Ontario) Corporation | 31-2661061 |
| 8. | Legal Print and Copy Incorporated | 31-2884436 |
| 9. | Commerce Copy Incorporated | 31-2884438 |
| 10. | TDI-Dynamic Canada, ULC | 31-2903815 |
| 11. | Limestone Labs Limited | 31-2907613 |
| 12. | 2465409 Ontario Inc. | 31-2939766 |
| 13. | Creative Wealth Media Finance Corp. | 31-3003083 |
| 14. | Knight-Pro Inc. | 31-3013900 |
| 15. | Ulmer, Blair | 32-159136 |

Division 1 Proposals

| | Name | Estate Number |
|----|--------------------------------|----------------------|
| 1. | Vaughn Mills Packaging Ltd. | 31-2895096 |
| 2. | RLogistics Limited Partnership | 31-3040679 |
| 3. | RLogistics Inc. | 31-3042209 |
| 4. | 1696308 Ontario Inc. | 31-3042213 |

Schedule "B": Receivership Proceedings

| Name | Court / OSB Number |
|--|---------------------------|
| 1. Z. Desjardins Holdings Inc. | CV-23-00706607-00CL |
| 2. 485, 501 and 511 Ontario Street South, Milton, ON | CV-23-00696349-00CL |
| 3. Eco Energy Home Services Inc. | CV-19-614122-00CL |
| 4. 3070 Ellesmere Developments Inc. | CV-19-00627187-00CL |
| 5. Fernwood Developments Ontario Corporation | CV-20-00635523-00CL |
| 6. Utilecredit Corp. | CV-20-00636417 |
| 7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON | CV-20-00651299-00CL |
| 8. Greenvilla (Sutton) Investment Limited (private receivership) | 31-459273 |
| 9. 2088556 Ontario Inc. (private receivership) | 31-459274 |
| 10. 935860 Ontario Limited (private receivership) | 31-459275 |
| 11. Areacor Inc. | CV-22-00674747-00CL |
| 12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership) | 31-459498 |
| 13. 12252856 Canada Inc. | CV-22-00691528-00CL |
| 14. Harry Sherman Crowe Housing Co-operative Inc. | CV-22-00688248-00CL |
| 15. Richmond Hill Re-Dev Corporation | CV-23-00695238-00CL |
| 16. Stateview Homes (Hampton Heights) Inc. | CV-23-00700356-00CL |
| 17. 142 Queenston Street, St. Catharines, ON | CV-23-00705617-00CL |
| 18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON | CV-23-00701672-00CL |
| 19. 311 Conacher Drive, Kingston, ON | CV-23-00701672-00CL |
| 20. Real Property owned by King David Inc. | CV-23-00710411-00CL |
| 21. CBJ Developments Inc. et al. | CV-23-00707989-00CL |
| 22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4 | 31-459784 |

Schedule "C": CCAA Proceedings

| Name | Court Number |
|--|---------------------|
| 1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contact Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc. | CV-23-00703933-00CL |

Schedule "D": Estate Trustee During Litigation Proceedings

| Name | Court Number |
|---|------------------------|
| 1. The Estate of Sarah (Sue) Turk * | 01-3188/14 |
| 2. The Estate of Sarah (Sue) Turk * | 05-35/14 |
| 3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i> | 05-100/17 05-265/17 |
| 4. The Estate of Peter Trezzi | 01-4647/16 |
| 5. The Estate of Florence Maud Anderson * | 05-159/19 |
| 6. Estate of Murray Burke | 2988/19 |
| 7. Estate of Robert James Cornish | CV- 23-00693852-00ES |
| 8. Estate of Anne Takaki * | CV-22-00011105-00ES |
| 9. Estate of John Takaki * | CV-22-00011105-00ES |
| 10. Estate of James Frederick Kay ** | 06-006/14 |
| 11. Klaczkowski Family Trust ** | CV-21-00659498-00ES |
| 12. Estate of Ethel Ailene Cork ** | CV-23-00710309-00ES |
| 13. Estate of Justin Milton Cork ** | CV-23-00710291-00ES |

* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

** In the name of Bryan A. Tannenbaum only.

TDB RESTRUCTURING LIMITED

and

RSM CANADA OPERATIONS ULC

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

O R D E R

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Lawyers for the Applicant

Schedule "A" – Other Applicants

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF QUALITY RUGS OF CANADA LTD AND THE OTHER COMPANIES
LISTED IN SCHEDULE A ATTACHED HERETO

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**WRITTEN SUBMISSIONS OF THE
MONITOR**

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APPENDIX H

CITATION: Waygar Capital Inc. v Quality Rugs of Canada Limited, 2024 ONSC 2486
COURT FILE NO.: CV-23-00703292-00CL
CV-23-00703933-00CL
DATE: 20240705

SUPERIOR COURT OF JUSTICE – ONTARIO

COMMERCIAL LIST

RE: WAYGAR CAPITAL INC., as agent for NINEPOINT CANADIAN SENIOR DEBT MASTER FUND L.P., Applicant

AND

QUALITY RUGS OF CANADA LIMITED, MALVERN CONTRACT INTERIORS LIMITED, WESTON HARDWOOD DESIGN CENTRE INC., ONTARIO FLOORING LTD., TIMELINE FLOORS INC., AND QUALITY COMMERCIAL CARPET CORPORATION, Respondents

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 WITH RESPECT TO QUALITY RUGS OF CANADA LIMITED AND OTHER COMPANIES.

BEFORE: Penny J.

COUNSEL: See attached participant list

HEARD: April 25, 2024

ENDORSEMENT

Overview

- [1] The Quality Sterling group of companies (“QSG”), which is the subject of these proceedings, operates as a flooring contractor serving the residential and commercial construction markets. In August 2023, it was the largest flooring contractor in Canada, with operations in Ontario, Alberta and British Columbia.
- [2] QSG sought and was granted the protection of a stay, and other relief, under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. A proposed transaction which might have preserved QSG as an ongoing business could not ultimately be concluded. A receiver was appointed on application by QSG's senior lender.
- [3] These proceedings have affected the rights of various suppliers to QSG's many projects (the Suppliers). Enforcement of their prefiling lien and trust claims has been stayed. Since

the commencement of these insolvency proceedings, QSG (under the supervision of the Monitor) and then the Receiver, have paid for the continued supply of flooring material and installation services for QSG's projects on a cash on delivery basis.

[4] The Suppliers assert trust claims against QSG's accounts receivable; in Ontario, this is based on s. 8 of the *Construction Act*. However, as I will explain in more detail below, QSG, and then the Receiver, have found it necessary to use funds received through payment of accounts receivable to fund ongoing operations. Thus, funds that were otherwise potentially impressed with a statutory trust have been used during the CCAA and receivership proceedings to fund QSG's ongoing operations with a view to maximizing benefit for creditors generally.

[5] In this context, the Suppliers sought what was styled a "Lien and Trust Regularization Order" ("LTRO") that would recognize their trust rights and cure the substantive prejudice caused by the court-ordered stays. They sought an order:

(a) declaring that all funds owing to or received by QSG on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of Suppliers with a proven trust claim;

(b) granting super-priority trust and lien charges (TLC) over all of the QSG's property to secure all amounts owing in respect of a:

(i) a lien claim proven through the claims process to the extent of any applicable holdback; and

(ii) any trust claim that would have constituted a proven trust claim as of August 4, 2023, to the extent that QSG converted trust funds over the course of the CCAA proceeding; and

(c) ordering that the trust fund and TLCs are subject to the Administration Charge and Receiver's Charge previously granted in these proceedings, but rank in priority to all other security interests, including the DIP Lender's Charge which was also previously granted in these proceedings.

[6] In an endorsement of December 7, 2023, I granted the Suppliers' request for an order creating the TLC over the Suppliers' proven trust and lien claims. No one seriously opposed this relief, in concept at least. On the question of the relative priority of the TLC in relation to several other existing charges granted under prior orders of this court (that is, a DIP Lender's Charge, a Financial Advisor's Charge and a D&O Charge), there was significant controversy. This controversy involved the relationship between orders made by the Superior Court of Justice under the CCAA and rights under provincial legislation such as s. 8 of the *Construction Act*, and ultimately, the application of the doctrine of federal paramountcy.

[7] I requested additional submissions on this point. These were received in January 2024. This led to a further motion, under Rule 59.06(1) of the Rules of Civil Procedure, by the DIP Lender (Ironbridge), the Financial Advisor (Alvarez) and the directors and officers of the

Quality Sterling Group (D&Os) to vary the language of the Initial Order and the ARIO. This motion was argued on April 24, 2024.

- [8] These reasons, therefore, deal both with the April 24, 2024 motion to vary and the relative priorities issue still outstanding from the Suppliers' December 7, 2023 motion.
- [9] For reasons I will explain below, the motion to vary the Initial Order and the ARIO is granted. The Suppliers' motion for an order ranking the TLC priority ahead of the DIP Lender's Charge, the Financial Advisor's Charge and the D&Os Charge is dismissed. In the unique circumstances of this case, the TLC shall have a super-priority charge over all charges and debts *other than*: the Administration and the Receiver's Charge; the DIP Lender's Charge; the Financial Advisor's Charge; and the D&O Charge.¹

Background

CCAA and Receivership Proceedings

- [10] QSG's primary lender was Waygar Capital Inc, as agent for Ninepoint Canadian Senior Debt Master Fund LP. Waygar provided QSG with a revolving working capital loan on a borrowing base calculation prescribed in the credit agreement. As of August 1, 2023 the outstanding indebtedness was over \$50 million. It is important, for the purpose of these particular motions, that the Waygar credit agreement specifically excludes the holdback and trust funds that are the subject of the proposed TLC from the borrowing base.
- [11] On August 3, 2023, Waygar and QSG brought competing CCAA applications, and Waygar brought a back-up receivership application, all in respect of QSG. It is also important for this motion that, on the same day, relying on enforcement provisions in its credit agreement, Waygar "swept" available cash in certain bank accounts held by QSG. The cash taken by Waygar from QSG's accounts involved about \$6 million.
- [12] On August 4, 2023, I granted QSG a stay of proceedings to provide QSG and Waygar with time to either litigate or negotiate a resolution. After successful negotiations, QSG, Waygar, Ironbridge Equity Partners IV, LP and Ironbridge Equity Partners (International) IV, LP (the "DIP Lender" or "Ironbridge") agreed that the DIP Lender would advance funds to facilitate the CCAA proceeding in connection with a bid by Ironbridge to purchase the assets of QSG (the "Proposed Transaction"). The purchase price for the Proposed Transaction included a cash component with QSG funding its operations through the CCAA proceedings from two sources: a \$5 million DIP loan and QSG's accounts

¹ I should emphasize that the result in this case was driven by the "unique circumstances" of this case which include the timing and manner in which the Suppliers' arguments were raised. The circumstances giving rise to the Suppliers particular conundrum are not commonly faced in CCAA or other insolvency proceedings. This is because it is more often the owner or developer, rather than a contractor a form of "middleman", who is the applicant seeking protection from their creditors. By concluding that an operational conflict exists in this case by virtue of the Charges granted by the court on August 25 and September 5, 2023, I am not saying anything about whether, had the full weight of the Suppliers' substantive arguments been made at or before the comeback hearing considering approval of the DIP and other Charges, those Charges would have been granted at all, or in the form that they were. That issue must be left for another day, to be argued on other facts and circumstances.

receivable. If the accounts receivable of QSG were not available to pay the obligations of QSG as they generally became due during the CCAA proceedings, the DIP financing required would have been well in excess of \$10 million.

[13] On August 25, 2023, I granted QSG an Initial Order under the CCAA:

(a) continuing the stay of proceedings and providing other customary protections under the CCAA;

(b) appointing RSM Canada Limited as Monitor;

(c) staying the rights of suppliers of services and/or materials to QSG, including the Suppliers, from seeking to preserve, perfect or otherwise enforce any lien claim available to them in accordance with the usual protocols under applicable provincial lien legislation, including the *Construction Act*, and requiring that they instead deliver a notice of such lien claim to the Monitor;

(d) ordering a super-priority charge over all of the property of QSG, including:

(i) a lien charge in respect of all lien claims proven in the CCAA proceeding; and

(ii) a DIP Lender's Charge in connection with a debtor-in-possession facility from the DIP Lender to fund QSG's day-to-day operations pending the completion of the Proposed Transaction, on the terms set out in the DIP facility loan agreement (the "DIP Loan").

[14] The Initial Order was amended and restated after a comeback hearing on September 5, 2023 (the "ARIO"). The ARIO, among other things:

(a) continued the stay with respect to the enforcement of lien rights set out in the Initial Order;

(b) ordered that any lien claim that had been preserved by registration against the owner's property be vacated and deemed the claimant to have filed a notice of their lien claim with the Monitor;

(c) ordered that any lien claimant who delivered a timely notice of its lien claim was deemed to have preserved and perfected its lien for the purpose of provincial lien legislation;

(d) removed the lien charge as a super-priority charge (it was always contemplated that this would be replaced with a lien regularization order ("LRO") to be negotiated); and

(e) confirmed revised super-priority charges granted under the Initial Order in the following amounts:

First – the DIP Lender's Charge but only to the extent of the assets in the Borrower's Account at any time from time to time;

Second – the Administration Charge (to a maximum amount of \$750,000);

Third – the Directors’ Charge (to a maximum amount of \$600,000);

Fourth – the DIP Lender’s Charge (to a maximum of \$7,000,000 – this represented two tranches, an initial \$5 million, and a possible additional \$2 million); and

Fifth – the Financial Advisor’s Charge (to a maximum of \$950,000).

- [15] By September 23, 2023, the entire initial \$5 million DIP facility had been drawn down. The preconditions for the advance of the additional \$2 million of DIP financing were never met. This left QSG’s accounts receivable as the only source of QSG’s operating funds.
- [16] The plan for restructuring QSG under the CCAA revolved around the successful completion of the Proposed Transaction. On October 30, 2023, the DIP Lender informed the Monitor that it was not prepared to proceed with the Proposed Transaction. At this point, there was no resolution of the still to be negotiated lien regularization order.
- [17] The Waygar receivership application was reinstated. On October 31, 2023, I appointed Fuller Landau LLP as receiver and manager of the property, assets and undertakings of QSG.
- [18] It is recognized by all stakeholders (and not in dispute) that QSG’s only material asset is its accounts receivable. It has also been recognized since at least the inception of the receivership that, in construction projects such as the ones involved here, developers are reluctant to pay accounts receivable if the ability of a contractor to complete and warrant its work is in doubt. The Receiver has recognized (it is again common ground) that in the absence of any additional “new” money (which was not forthcoming after the termination of the Proposed Transaction), the Receiver would need to use existing accounts receivable, as they are paid, to finance QSG’s ongoing operations and the ongoing receivership including realizing on the balance of QSG’s main asset, its accounts receivable.

Issues

- [19] There are two inter-related issues raised by the parties’ arguments advanced in the Suppliers’ motion for a super-priority:
- (1) should the motions by the DIP Lender, the Financial Advisor and the D&Os to vary the Initial Order and the ARIO be granted; and
 - (2) assuming the Initial Order and ARIO *purport* to establish a super priority over provincial statutory trusts, is that super-priority valid and operative in the face of rights created by provincial statutory trusts?
- [20] As these two issues are interwoven, I will address them together, more or less following the chronological events which gave rise to them.

Background and Legal Framework of the Issues and Arguments

- [21] Insolvency law relies on provincial property law because the proprietary and contractual rights that are regulated by the bankruptcy process are usually created by virtue of provincial law. The *Construction Act*, for example, acts as one source of these proprietary and contractual rights by instituting a regime of liens, holdbacks and trusts. It is well established that the property rights created by the *Construction Act* are, on their face, constitutionally valid and do not operationally conflict with the BIA or the CCAA: *The Guarantee Company of North America v Royal Bank of Canada*, 2019 ONCA 9 at para. 3; *Re Urbancorp Cumberland 2 GP Inc*, 2020 ONCA 197 at paras. 33 and 34. This is, in essence, because s. 8(1) is not in pith and substance legislation in relation to bankruptcy. Rather, the priority-creating effects of s. 8(1) are purely incidental to a broader purpose of the legislation to “protect the rights and interests of those engaged in the construction industry and to avoid the unjust enrichment of those higher up the construction pyramid”. The s. 8(1) trust was therefore the proper subject-matter of provincial legislation: *GCNA*, at paras. 30 and 32.
- [22] Sections 7-13 of the *Construction Act* protect the interests of subcontractors and suppliers by impressing funds owing to or received by those to whom they have supplied their services or materials with a trust. Section 8 of the *Construction Act* provides that:
- 8(1) All amounts,
- a) owing to a contractor or subcontractor, whether or not due or payable; or
- (b) received by a contractor or subcontractor,
- on account of the contract or subcontract price of an improvement constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by the contractor or subcontractor.
- (2) The contractor or subcontractor is the trustee of the trust fund created by subsection (1) and the contractor or subcontractor shall not appropriate or convert any part of the fund to the contractor’s or subcontractor’s own use or to any use inconsistent with the trust until all subcontractors and other persons who supply services or materials to the improvement are paid all amounts related to the improvement owed to them by the contractor or subcontractor.
- [23] There are four elements required to establish a s. 8 trust, each of which the Suppliers say they will likely satisfy in the claims process. Suppliers must establish that:
- (a) QSG is a contractor or subcontractor;
- (b) the Suppliers supplied services or materials to projects on which QSG is a contractor or subcontractor;

(c) QSG has received or is owed monies on account of its contract price for those projects; and

(d) QSG owes money to the Suppliers for the services or materials supplied in respect of those projects.

[24] During the stay period QSG (and then the Receiver) used recovery of accounts receivable to fund operational expenses. This had the effect of depriving Suppliers of substantive property rights because trust funds were used up such that they are no longer traceable and lien rights have expired. The negotiated LRO never materialized during the CCAA proceedings and the receivership order ended the possibility of an LRO. It was in these circumstances that the Suppliers sought the TLC. And it was, essentially, on this basis that, subject to the dispute over the priority of the TLC in relation to the existing court-ordered super-priorities under the CCAA, no stakeholder opposed, and the court granted, the TLC.

Whether the TLC Should be Given Priority over the Existing Court-Ordered Charges

[25] The Suppliers submit that the TLC should rank ahead of all other charges against the property of QSG except for the Administration Charge and Receiver's Charge. This is because the receivables covered by the s. 8 trust and holdback regime are not the property of QSG. QSG's use of the trust funds was just as critical to QSG's operations as the DIP Financing. The trust funds made up the difference between the amount of DIP financing that Ironbridge was willing to advance, and the further funding required to continue operations which Ironbridge was not willing to advance. To the extent that Suppliers are able to establish that the now dissipated accounts receivable were subject to s. 8 trusts, QSG's use of the trust funds as supplementary operational funding forced the Suppliers to be involuntary DIP lenders. But for the interference with the Suppliers' rights, QSG would not have had access to this property. Parties were aware of and had the opportunity to structure their affairs having regard to the Suppliers' trust rights. Amounts for work done on projects which were held by or owed to a contractor in the circumstances were trust funds and consequently could not be the property of the contractor until after all Suppliers had been paid. Accordingly, no security interests from lenders can attach to this property. Specifically, the Suppliers argue that Ironbridge knew or ought to have known that its security could not attach to trust funds under s. 8 and, to the extent that it did, this was an issue on which the Suppliers had reserved their rights. At the time of its DIP loan advances, Ironbridge knew or ought to have known about the potential impact the Suppliers' claims to trust funds and priority could have on its security.

Analysis

[26] To the extent the Suppliers argue that s. 8 trusts necessarily trump super-priorities granted under s. 11.2 of the CCAA, I am unable to accept their argument. While it is true that s. 8 trusts survive insolvency proceedings, it is equally clear that priorities created by provincial legislation may conflict with the court-ordered priority of a DIP charge under section 11.2. In that circumstance, there is an operational conflict and the court-ordered priority under the CCAA prevails to the extent of the conflict.

- [27] In *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, the Supreme Court unanimously concluded that a DIP charge supersedes a provincial statutory trust based on the doctrine of federal paramountcy: paras. 55-60. As in *Indalex*, here QSG would not have been able to engage in any restructuring efforts without DIP financing. In granting the DIP Charge, I concluded, among other things, that the CCAA's purpose would be frustrated without the DIP Charge because the Applicants could not progress with any restructuring efforts without additional funds, which would not be forthcoming without a super-priority charge to protect "new money" advances.
- [28] Similarly, in *Comstock*, the debtor required DIP financing to continue its operations during its restructuring process and the DIP lender would not have advanced funds without the super-priority given by its DIP charge. Justice Morawetz (as he then was) concluded that it was appropriate for the DIP charge to take priority over the construction lien and trust claimants. In doing so, the Chief Justice accepted the reasoning of the applicants in that case that "*Indalex* is the correct resolution of the priority issue on the grounds of paramountcy in circumstances where, but for the granting of priority over a statutory deemed trust in favour of the DIP lender, the DIP financing would not be advanced and the distressed companies and its stakeholders would see an immediate halt to the restructuring": *Comstock Canada Ltd. (Re)*, 2013 ONSC 475 at para. 54.
- [29] Finally, In *Urbancorp*, Justice Zarnett, writing for a unanimous panel, discussed the relative priority of statutory trusts arising under the former *Construction Lien Act*. While a statutory trust under provincial law may remain effective in an insolvency, it may not be effective if doing so would conflict with an order under the CCAA establishing a specific superior priority. This is because paramountcy would require that the trust be considered inoperative, in whole or in part, to the extent of the conflict: *Urbancorp*, at para. 45.
- [30] In the present case, the Suppliers rely on *Urbancorp* (and *GCNA*) as support for the proposition that "property rights created by the *Construction Act* are constitutionally valid and do not operationally conflict with the BIA or the CCAA". As noted earlier, I agree with the Suppliers that the two statutes do not conflict on their face, and do not necessarily give rise to any operational conflict. However, the unanimous court in *Urbancorp* went on to conclude, based in part on the Supreme Court's decision in *Indalex*, that "a provincial trust can lose its effect under the CCAA to the extent the doctrine of paramountcy requires that result". In reaching this conclusion, Justice Zarnett explained that "charges may be created under the CCAA which, as a matter of paramountcy, will take priority over a provincial statutory trust". More particularly, "paramountcy renders the provincial trust inoperative only to the extent required to deal with the conflict, that is, by yielding priority to the DIP Financing Charge. The trust does not become wholly inoperative": *Urbancorp*, at para. 70.²

² The factum of *Ames Tile and Stone Ltd.* supported the submissions made by the Ontario Suppliers in general and focused on the specific provisions of the Alberta and B.C. legislation. While there are differences, especially between s. 8 of the *Construction Act* and the Alberta regime. I am not convinced that these differences change the essential point. The CCAA court has the authority to order super-priority charges and, when such priorities charges

- [31] Ironbridge, Alvarez and the D&Os argue that this is exactly their situation. The Charges were required to give effect to the purposes of the CCAA. They created stability and ensured that funds for the necessary contributions of the professionals, financiers and the D&Os were protected. Without the Charges, there could be no restructuring and recovery of accounts receivable would be impaired. The Orders issued under the federal CCAA, to the extent they primed s. 8 rights under the provincial *Construction Act*, created an operational conflict to which the doctrine of paramountcy applied.
- [32] It was in the context of the parties joining issue on this point that the specific language of the Initial Order and the ARIO became the focus of competing submissions before the court. Was there in fact an operational conflict? In their reply factum on the original December 7, 2023 motion, the Suppliers raised, for the first time, the argument that the relevant provision of the Initial Order (dated August 25, 2023, para. 47) and the ARIO (dated September 5, 2023, para. 47) did not purport to prime trusts at all, because the Model Order language respecting super-priority over “trusts” was deleted from those Orders. The Suppliers took the position that because the court’s Orders made under the CCAA did not purport to grant express priority to the Charges over the Suppliers’ trust claims (as distinct from the standard language of the Model Order), there was no operational conflict.
- [33] It was this dispute, and the manner in which it arose, which gave rise to my order seeking further submissions on this point and, ultimately, to the motions brought by Ironbridge. Alvarez and the D&Os to amend or vary the Initial Order and ARIO under Rule 59.06 of the Rules of Civil Procedure. The Rule 59.06 motions were argued on April 24, 2024.

The Motion to Vary

- [34] The Commercial List CCAA Initial Order Form provides, in para. 40, that various court-ordered charges shall rank in priority to all other security interests including, among other things, “trusts”:

THIS COURT ORDERS that each of the Directors’ Charge, the Administration Charge and the DIP Lender’s Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

- [35] The Initial Order issued in this case, on August 25, 2023, and the ARIO issued on September 5, 2023, omitted the word “trusts” from the comparable paragraph (para. 47) in those Orders. The reason this happened was due to a mistake, the details of which are set out in the Monitor’s Fifth Report. In that Report, the Monitor explains that:

- the QSG application took place in the context of competing CCAA applications by QSG and Waygar. It was “real time” litigation in which circumstance evolved and

conflict with those established by provincial legislation, the provincial priorities, while not invalid, are rendered inoperative to the extent of the conflict.

changed rapidly. The Monitor and its counsel became involved in the CCAA proceedings on August 1

- initially, it was assumed that there would be no request for DIP financing or a related charge. QSG had about \$6 million in a blocked account which it expected to use to fund operations and professional fees during the CCAA proceedings. In para. 23 of its Report, the Monitor states:

As part of these amendments to the draft initial order, recognizing that QSG had approximately \$6 million in its blocked account, mindful of the desire to be seen to be working with the suppliers, and recognizing that QSG would have to return later for approval of DIP financing, assuming that its application was successful, what is now paragraph 47 of the draft order was amended to (i) remove the word “trusts”; (ii) add the usual proviso protecting secured creditors who had not been served; and (iii) add language from paragraph 51 of the FirstOnSite Amended and Restated Initial Order regarding suppliers [the replacement of liens with a “lien charge” within the CCAA proceedings].

- prior to the service of the QSG CCAA application record, the draft initial order had not been shared with anyone other than QSG and the Monitor. These provisions were not the result of any negotiations or discussions with either Ironbridge or the Suppliers (who were not yet active in the case). Rather, this was a simple form of draft order prepared in the hope of the QSG application being successful on August 4, 2023, with the expectation that the \$6 million would be available to QSG to fund operations. This form of draft initial order was intended to be merely a bridge to getting a firm deal with Ironbridge by the time of the comeback hearing
- on the afternoon of August 3, 2023, just prior to the first hearing on August 4, QSG and the Monitor learned that Waygar had “swept” from the blocked account all of the \$6 million cash that QSG had planned to use for its post-filing operations. The expected availability of those funds had been a significant part of the decision to remove the word “trusts” from the draft CCAA initial order. However, throughout the negotiations which followed, no one ever picked up on the fact that the word “trusts” had been removed and that, in light of the changed circumstances (the “loss” of \$6 million cash for use in operations and the now urgent need for DIP financing among them), it should be put back in the Initial Order and ARIO
- the competing applications were adjourned at the suggestion of the court on August 4 with a minimal stay and “status quo” order. Neither of the two CCAA applications was argued that day, and no one discussed or walked through any of the draft orders filed by either party in support of their applications
- negotiations between QSG, Waygar and Ironbridge ensued. Those negotiations were not completed by the August 18, 2023 return date. Accordingly, the terms of

the August 4th Order were extended to August 23, 2023. On August 23, 2023, the matter was again extended to August 25, 2023

- throughout this period, the focus was on the business terms of a possible DIP financing; very little time was spent considering or advancing the draft CCAA initial order that would be required in the absence agreement on the terms of a business deal
- discussions on open business and drafting points were still continuing after 1:00 AM on August 25. Details still remained to be ironed out by 10:00 AM, the appointed time for the hearing. The matter was stood down until 11:00. At 11:00 AM, a final deal was still not in place but limited submissions were made in the expectation that the proposed deal would be finalized shortly. The matter was again stood down until 12:30 PM
- the initial draft order was sent to the court and to the service list shortly after 1:00 PM. The hearing reconvened at 1:15. Counsel for the Monitor walked the court through the proposed draft order. There was no blackline from the Model Order; the removal of the word “trust” was not highlighted, was not brought to the attention of the court and was not discussed in any way. The draft order was issued in that form without, as it happened, the word “trusts” in para. 47
- at no point in any of the discussions or negotiations which the Monitor or its counsel had with either Ironbridge or QSG about the DIP term sheet was there ever a discussion or agreement that the DIP loan would not have priority over all manner of contractual or statutory security, liens or trusts. Those negotiations were indeed premised on the assumption that all of the Charges would have priority over statutory security, liens and trusts
- at that point in the proceedings, all of the beneficiaries of the Charges were aware that the principal source of recovery under any Charge would be from accounts receivable collections; the accounts receivable over which the Suppliers purported to claim a trust interest under s. 8. The word “trusts” should have been re-inserted but no one picked it up. There was, after August 4, no reason for that word to have been excised and the failure to re-insert it before August 25, 2023 was simply an oversight in the haste of dealing with the matter as it unfolded toward August 24 and 25, 2023
- at no point in the discussions regarding the form of the draft initial order were any of the Suppliers consulted on issues related to para. 47. There had been no prior involvement with any of the Suppliers on issues related to the priority of the Charges
- the oversight regarding the deletion of the word “trusts” from para. 47 continued throughout the ongoing proceedings, such that no one noticed the absence of the word “trusts” from para 47 before September 5, 2024, when the ARIO was issued with numerous amendments to the Initial Order (but no correction of the missing

“trusts” in para. 47). Indeed, it was not noticed until December 2023, when the Suppliers raised it in their reply factum on the Suppliers’ motion for the TLC.

- [36] The evidence from the DIP Lender, which has not been challenged, is that it agreed to provide the DIP Financing on the condition that it receive a super-priority charge over all of the property of QSG, including its accounts receivable. There was never a proposal raised, discussed, or agreed upon with the DIP Lender that would have seen the DIP Charge rank behind any lien or trust claims of the Suppliers. Had such a position been advanced, the DIP Lender would not have agreed to provide the DIP Financing before obtaining specific relief confirming the super-priority of the DIP Charge vis-à-vis any lien and trust claims. If that specific relief could not be obtained, the DIP Lenders would not have advanced the DIP Financing.
- [37] The evidence of counsel to Ironbridge is that no one ever brought the deletion of the word “trusts” from the Model Order, or its absence from the Initial order or the ARIO, to their attention and they did not notice that it was missing. Nor were they ever privy to any discussion of why that word had been removed or the reasons for doing so. They saw no blackline to the Model Order or, if they did, the removal of the word “trusts” did not come to their attention.
- [38] Similar evidence, also unchallenged, was advanced by Alvarez and by the D&Os.
- [39] In short, on the evidence, the first time anyone noticed the absence of the word “trusts” from para. 47 of the Initial Order and the ARIO was when the Suppliers raised this point in their reply factum on the December 7, 2023 priority motion.

Rule 59.06

- [40] Rule 59.06(1) provides a mechanism for varying any order of this court in two circumstances: first, where the order embodies “an accidental slip or omission”; and second, where the order requires amendment in any particular “on which the court did not adjudicate”. The Rule provides:

59.06(1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.

The Arguments

- [41] The moving parties submit that the deletion of the word “trusts” (and the inclusion of a closing proviso in each version of para. 47) was unequivocally the product of an “accidental slip or omission”: first, by the Monitor and QSG (who without notice changed the language of the CCAA Orders and then failed to correct these changes when they should have done so); and, subsequently, by the DIP Lenders and other parties (who failed to notice and rectify these earlier errors, or at the very least, bring them to the parties, and the court’s, attention).

- [42] They also submit that because these errors were not immediately recognized, they failed to draw the salient parts of para. 47 to the attention of the court. Because the court was never made aware that the two CCAA Orders diverged from the standard provisions of the Model Order or what the reasons for that divergence were, the court never adjudicated upon either the appropriateness or the legal implications of these elements of the CCAA Orders.
- [43] The moving parties also rely on the broad jurisdiction of the CCAA court under s. 11 to make any order that the court considers appropriate in the circumstances.
- [44] The Suppliers argue that there was no slip or omission. The Applicants and the beneficiaries of the Charges put forward the order they wanted and it was endorsed by the court. They say the “intention” of the court was to issue the Initial Order and the ARIO in the form they were submitted. The fact that these orders diverged from the Model Order without explanation is not relevant because the Model Order is not binding on the court and should, in any event, be tailored to the circumstances of each case.
- [45] The Suppliers also argue that the court did adjudicate on the issue of priorities when it issued the Initial Order and the ARIO. It granted a trust “carve out” from the typical super-priorities granted for charges of this kind due to the unique circumstances of this case. They also submit that this branch of the rule is limited to the rare case where the judge “forgot” to adjudicate on an issue that was raised at the hearing, which is not this case.
- [46] The Suppliers argue, in any event, that the moving parties’ conduct “disfavours” granting the remedy sought. They say that the moving parties’ errors, though inadvertent, were objectively unreasonable. Each of the moving parties has provided evidence that the priority of their charge was critical to them, yet they failed to review, or appreciate, the language of the Orders in the thirty days between the Application Record being served and the return of the ARIO. Even if there was a failure of adjudication, the Suppliers point out that they would still be entitled to their day in court on the point. However, the priorities of their trusts are now moot because the passage of time and the difficulty of tracing payments from one owner to materials purchased for projects of other owners. The Suppliers’ trust and lien remedies are realistically no longer available. The moving parties should not be allowed to retroactively create a paramountcy conflict when the Suppliers’ position has already been prejudiced by the use of the trust funds over which they claim the TLC.
- [47] Finally, the Suppliers argue that they detrimentally relied on the alleged “carve out” by not bringing forward the full panoply of their arguments to challenge the ARIO. This would have been on the basis that no charge should or could be granted on QSG’s accounts receivable because they were subject to a trust and were, therefore, not QSG’s property available to act as security against QSG’s obligations to other creditors. The egg cannot be unscrambled. It cannot now be known what the court might have done at the comeback hearing had the Suppliers actively opposed the DIP and other Charges on this basis.
- [48] On the issue of the discretion under s. 11, the Suppliers argue that the discretion granted under s. 11 must be used in a manner consistent with the purpose of the CCAA. There is

no restructuring purpose to retroactively granting the moving parties a priority over the construction trusts at this juncture in the proceeding.

- [49] In addition, a variation under s. 11 would be, on the same basis as argued above, procedurally unfair. While efficiency and speed are important considerations under the CCAA, so are due process, respect for the interests of stakeholders and the important consideration that justice must be seen to be done through the observance of fair principles and processes.

Analysis

- [50] The evidence clearly demonstrates that the sole source of the flaws in the Initial Order and the ARIO was a series of lapses by and miscommunications among counsel for the Monitor and the parties. The Rule 59.06 jurisprudence is replete with cases in which this court has exercised its remedial powers under Rule 59.06 to rectify errors and gaps in orders that are attributable exclusively to mistakes committed by parties or their counsel. Orders of the court should reflect the true intentions of the court. The court retains jurisdiction to amend an order where it does not reflect the court's intention.
- [51] Here, the removal of the word "trusts" from para. 47 of the Orders was never specifically brought to my attention or the attention of the parties. I accept that this was due to the inadvertence of the Monitor and the parties and their counsel. I accept that the true intention of the relevant parties at the time was that the Charges, and in particular the DIP Charge, would have a priority over all other charges and obligations, including QSG's accounts receivable. This is clear from contemporaneous documents at the time, such as the term sheet which expressly provides that any advance of DIP financing by Ironbridge is conditional on a court-ordered super-priority charge over all the assets and undertaking of QSG, including accounts receivable. It is also consistent with the other "Charge" provisions of the two Orders.
- [52] It was well known throughout these proceedings that QSG's accounts receivable were by far its most material asset. The DIP Financing provided to QSG was urgently needed. That financing allowed QSG to continue to operate and to pay ordinary course disbursements, including to the Suppliers, on a post-filing COD basis. Crucially, as I have found in the course of several other motions in these proceedings, the payment of ongoing ordinary course disbursements was key to advancing and completing projects and, thus, generating positive account receivable collections. Without the DIP Financing, QSG could not have continued in business and could not have realized on tens of millions of dollars of outstanding accounts receivable.
- [53] The unchallenged evidence is that Ironbridge agreed to provide the DIP Financing on the condition that it receive a super-priority charge over all of the property of QSG, including its accounts receivable. There was never a proposal raised, discussed, or agreed upon with the DIP Lender that would have seen the DIP Charge rank behind any lien or trust claims of the Suppliers. Had any such position been raised, the DIP Lender unequivocally would not have agreed to provide the DIP Financing before obtaining specific relief expressly confirming the super-priority of the DIP Charge vis-à-vis any lien and trust claims. If that

specific relief could not be obtained, the DIP Lenders would not have advanced the DIP Financing.

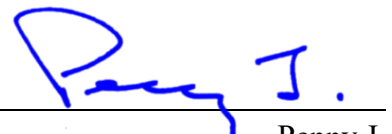
- [54] This was their *bona fide* understanding and, based on the evidence filed and submissions made to me at the time, it was my understanding as well.
- [55] It was my intention, when the Initial Order and the ARIO were granted that, consistent with the Supreme Court's observations in *Canada v. Canada North Group Inc.*, 2021 SCC 30, *per Cote J.* at paras 30-31, the DIP Lender was to receive a super-priority charge over all the debtor's property, including, in this case, the all important QSG accounts receivable.
- [56] I find, in the circumstances, that the errors which lead to the removal of the word "trusts" in para. 47 of the Orders constitute an accidental slip or omission within the meaning of Rule 59.06. I also find that these errors gave rise to a situation in which the issue now in dispute did not come to the court's attention and thus, was not subject to adjudication.
- [57] In questions of this kind, the issues of prejudice, and relative prejudice, often arises and they do so here. Relief under Rule 59.06 may be denied if it would inflict genuine prejudice on one of the parties.
- [58] The party claiming prejudice must provide evidence that it actually relied on the order to its detriment or did something on the strength of the order that would make it unfair to revisit the issue. Bald or purely speculative assertions of prejudice will not suffice. The court must investigate whether an opportunity has actually been foregone or whether a change in position has actually taken place in reliance on the order. The court must also consider whether refusing to grant an amendment will cause countervailing prejudice to the party that is seeking to rectify the order. The latter form of prejudice may "tip the balance" in favour of granting the requested amendment.
- [59] The Suppliers contend that they "reasonably relied" on the existing ARIO and purportedly raised their current position with the Monitor and QSG on September 4, 2024. However, the Suppliers did not raise the position they now adopt with the DIP Lenders or the court at that time. The communication they rely on does not address the specific point now in contention at all. In fact, the Suppliers failed to raise this point at any time prior to delivering their reply factum for the December 2023 motion, four months after the ARIO, on December 5, 2024. To the extent that the Suppliers' supporting affidavits address reliance at all, they merely make bald statements that they "relied" on the provisions of the Initial Order and ARIO as approved, with no specific evidence of how they relied, or setting out facts establishing that the alleged reliance was in any way "detrimental" to their position in these proceedings. The Suppliers have not identified any genuine, legally cognizable prejudice that they will face if the requested amendments are made to correct the errors in the two Orders.
- [60] The evidence supports the conclusion that the DIP Financing (which was not possible without the DIP Charge) provided a positive benefit to the Suppliers on many QSG projects. The Receiver reported that, from August to October 2023, almost \$9 million was

paid to Suppliers on a COD basis. This was possible through a combination of paid accounts receivable and the \$5 million made available by Ironbridge.

- [61] I am unable to accept the Suppliers argument that they “lost the opportunity” to argue their position before the DIP Charge was approved. There is no evidence that the Suppliers were ready to make all these arguments but held off doing so in specific reliance on the absence of the word “trusts” in para. 47. The evidence is that, had these issues been raised, the DIP Lenders would have opposed. Had the Suppliers advanced these arguments and prevailed, no DIP Financing would have been advanced. Without the DIP Financing, the CCAA initiative would have failed and QSG would have been forced to liquidate, to the detriment of all stakeholders. Ongoing recovery of accounts receivable would have suffered.
- [62] By contrast, failure to rectify the accidental slip or omission would give rise to significant prejudice to the DIP Lender, which advanced \$5 million of “new” money, enhancing the possibility of a going concern transaction and, even more importantly as things turned out, enhancing the CCAA and post-CCAA receivership efforts to collect accounts receivable for the benefit of all stakeholders. The new money provided by Ironbridge benefited the process and, in doing so, benefited the Suppliers themselves. While less acute, the D&Os would also be prejudiced because they stayed on in their roles, relying on the protection of their Charge, and also enhanced ongoing operations and the collection of accounts receivable.
- [63] Based on these findings, I conclude that the provisions of Rule 59.06 apply and that the relief sought in the moving parties’ notices of motion should be granted. III.
- [64] Given my conclusion on the Rule 59.06 motion, I find it unnecessary to address the alternative argument regarding the general discretion of the court under s. 11 of the CCAA.

Conclusion

- [65] For all these reasons, I grant the order sought by the moving parties in the Rule 59.06 motion. The Initial Order and the ARIO shall be amended and reissued in accordance with the grant of that relief. The Suppliers’ motion, to the extent of seeking a priority for the TLC ahead of the DIP Charge, the Directors’ Charge and the Financial Advisor’s Charge, is dismissed on the basis that, by virtue of federal paramountcy, the CCAA Orders prevail. I have already granted the Suppliers partial relief in my endorsement of December 11, 2023.
- [66] Outstanding issues related to the implementation of the results of both my decision of December 11, 2023 and this decision shall be addressed at a case conference to be convened at the parties’ convenience when it becomes appropriate to do so.


Penny J.

Date: July 5, 2024

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APPENDIX I

**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
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES
LISTED IN SCHEDULE "A" HERETO**

(collectively, the "**Applicants**")

**AFFIDAVIT OF ARIF DHANANI
(Sworn October 1, 2024)**

I, Arif Dhanani, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a Managing Director of TDB Restructuring Limited ("**TDB**"), the Court appointed Monitor in these proceedings (the "**Monitor**"). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and, whereso stated, I verily believe it to be true.
2. RSM Canada Limited ("**RCL**") was appointed as Monitor pursuant to the Initial Order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on August 25, 2023. The Monitor retained Goodmans LLP as its counsel in these proceedings.
3. On February 1, 2024, the name RCL was changed to TDB. On March 1, 2024, the Court issued an order (the "**Omnibus Order**") substituting the name TDB in place of RCL. A copy of the Omnibus Order is appended as Appendix F to the Sixth Report of the Monitor.
4. Pursuant to paragraph 36 of the Initial Order, the Monitor and its legal counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the date of the Initial Order, by the Applicants as part of the proceedings. Pursuant to paragraph 37 of the Initial Order, the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are referred to the Court.
5. Attached hereto and marked as Exhibit "A" to this my Affidavit is a summary of the invoices rendered by the Monitor (the "**Monitor's Accounts**") in respect of these proceedings for the period from November 13, 2023 to September 30, 2024 (the "**Monitor's Application Period**"), together with copies of the Monitor's Accounts.

6. The Monitor expended a total of 62.3 hours in connection with this matter during the Monitor's Application Period, giving rise to fees and disbursements totalling **\$36,620.48**, comprised of fees of **\$32,407.50**, disbursements of **\$0**, and HST of **\$4,212.98**.

7. Attached hereto and marked as Exhibit "B" to this my Affidavit is a summary of the hours incurred and standard hourly rates of the Monitor's personnel involved in this matter.

8. To the best of my knowledge, the Monitor's rates and disbursements are consistent with those in the market for these types of matters and the hourly billing rates charged by the Monitor are comparable to the rates charged by the Monitor for services rendered in similar proceedings. TDB has had its rates and disbursements, including the rates of various professionals who provided services in these proceedings, approved by this Court in respect of similar services provided in a number of insolvency and restructuring files.

9. As set out in the Sixth Report, the Monitor is seeking approval of its estimated fees of up to \$3,500 inclusive of HST to complete its administration of the CCAA Proceeding.

10. The Monitor is therefore seeking at this time approval of the Court for its fees, including HST, set out above of \$36,620.48, plus the Monitor's estimate to complete its administration of the CCAA Proceeding of up to \$11,300.00, including HST for a total of \$47,920.48.

11. The Monitor currently has remaining in its retainer account a total of \$35,786.54, which can serve to pay a portion of the fees set out above of \$47,920.48, if the Court approves the Monitor's fees. Should the Court approve the Monitor's fees, the remaining fees of the Monitor to be paid by the Receiver total \$12,133.94 inclusive of HST.

12. This Affidavit is sworn in connection with a motion for an Order to approve the Monitor's fees and disbursements, and those of its legal counsel, in connection with these proceedings, approved by this Court and for no improper purpose.

SWORN BEFORE ME over videoconference on this 1st day of October, 2024. The affiant was located in the Town of Toronto, in the Province of Ontario and the Commissioner was located in the City of Toronto, Province of Ontario.



A Commissioner for taking affidavits
Name: Erik Axell
LSO#: 853450



ARIF DHANANI

**THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF ARIF DHANANI
SWORN BEFORE ME THIS 1ST DAY OF OCTOBER, 2024**

Erik Apell

Commissioner for Taking Affidavits



GST/HST: 80784 1440 RT 0001

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To Quality Rugs of Canada Limited
505 Cityview Blvd.
Woodbridge, ON L4H 0Z4

Attn: Mr. Joseph Pacione

Date December 1, 2023

Client File 8734196
Invoice 15
No. CI-10171099

For professional services rendered for the period November 13, 2023 to November 30, 2023 in connection with the engagement letter dated February 2, 2023.

| Date | Professional | Description |
|------------|--------------|---|
| 11/13/2023 | Arif Dhanani | Attend Zoom call with all counsel and Receiver; call with J. Latham of Goodmans LLP ("Goodmans"); emails amongst D. Nishimura/ B. Tannenbaum re finalization of invoices to be sent to Goodmans for inclusion in court report; review of email exchanges between Goodmans and K. Kraft of Dentons Canada LLP ("Dentons") re lien claimants submissions, addition to Caselines. |
| 11/14/2023 | Arif Dhanani | Review of email from J. Latham re timing of meeting with Davies Ward Phillips & Vineberg LLP ("Davies") and respond thereto; compile Monitor's invoices for taxation and send copies of same to Goodmans; update RSM and Goodmans' fee summaries for inclusion in fee affidavits and send same to Goodmans; call with Goodmans and Davies; call with K. Pearl of Fuller Landau LLP; complete summary of hours and rates per request from Goodmans and send same to E. Axell of Goodmans; review emails from C. Besant of Gardiner Roberts LLP in relation to information sought by counsel to the lien claimants. |
| 11/15/2023 | Arif Dhanani | Call with J. Latham and E. Axell re questions from lien claimants and Davies, discussion of responses to lien claimants' questions; draft response to lien claimants question #3 and send same to Goodmans; draft responses to Davies questions and send same to Goodmans; review Goodmans amendments to lien claimants responses and comment further on same; review Goodmans comments on responses to Davies and comment further on same; review final version of responses to Davies' questions in email from Goodmans to Davies. |
| 11/16/2023 | Arif Dhanani | Review email from J. Latham to H. Murray (for lien claimants) re responses to lien claimant questions; review of email from J. Latham to S. Graff of Aird & Berlis LLP and N. Renner, among others, re responses to lien claimant questions; review of email from Dentons re message to the court and review of Davies reply to same; review and respond to email from K. Pearl re Union |

| Date | Professional | Description |
|------------|------------------|---|
| | | holdback amounts and transfer of same; review of emails sent by C. Besant on behalf of directors; review of emails amongst Gowling WLG, Davies, Ironbridge, A. Winton, Goodmans; review of redactions by Goodmans to Monitor's invoices; email to J. Latham re Fourth Report. |
| 11/17/2023 | Bryan Tannenbaum | Review various emails regarding affidavit of fees; receipt and review of Receiver's Motion Record (including its first report). |
| 11/17/2023 | Arif Dhanani | Calls with J. Latham re Monitor's Fourth Report; review of amendments made to report by Goodmans and incorporate same, as appropriate; make additional changes to report, finalize and execute same; attend on Teams call with E. Axell to swear Dhanani Affidavit; assemble appendices to report, attach to report and send to Goodmans for service; review Receiver's notice of motion and Receiver's First Report; review of motion record of Alvarez & Marsal Canada ULC. |
| 11/18/2023 | Arif Dhanani | Review and respond to question from Davies re timing of full draw on DIP facility; saving various court materials and email to D. Nishimura to post same on the Monitor's website. |
| 11/19/2023 | Donna Nishimura | Post documents to the client webpage on the R&R website. |
| 11/20/2023 | Bryan Tannenbaum | Attend case conference with J. Penny. |
| 11/20/2023 | Arif Dhanani | Attend case conference; sort through documents to be posted on Monitor's website and email to D. Nishimura re same; review and respond to email from J. Latham re court attendances; review Caselines updates. |
| 11/20/2023 | Donna Nishimura | Post documents to the client webpage on the R&R website. |
| 11/21/2023 | Arif Dhanani | Review of affidavit of R. Weinstock in relation to GG Eight Cumberland's motion to lift stay; review responding motion record of the DIP Lender (to lien claimants' motion). |
| 11/24/2023 | Arif Dhanani | Review emails from counsel for various parties and court submissions by various parties (Receiver, Directors, other); call with J. Latham; attend Court hearing; respond to email from Atradius Collections with information on CCAA proceedings and receivership administration; review of Monitor's revised Order; email to K. Pearl (Receiver) requesting banking information for transfer of Union holdback funds, once the Court issues the requested Monitor's Order; post-hearing call with J. Latham; initiate wire of \$95,028.00 and \$95,083.41 for Carpenters' Union and LiUNA amounts in accordance with instructions from the Receiver; complete supporting documentation for wires and send to B. Tannenbaum for wire approval; email to Receiver and Receiver's counsel with wire confirmations and request to confirm receipt; email to D. Nishimura with Endorsement and Orders of the Court to be posted to the Monitor's website. |
| 11/24/2023 | Bryan Tannenbaum | Attend Court; receipt and review of Court Orders and Endorsement. |
| 11/24/2023 | Donna Nishimura | Post documents to the client webpage on the R&R website. |
| 11/27/2023 | Arif Dhanani | Review of Suppliers' Factum; review of Factum of Ames Tile & Stone. |
| 11/30/2023 | Arif Dhanani | Review of email from Alectra Utilities. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|----------------------|--------------------|-------------|---------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | President | 3.8 | \$ 625 | \$ 2,375.00 |
| Arif N. Dhanani, CPA, CA, CIRP, LIT | Vice President | 20.5 | \$ 485 | 9,942.50 |
| Donna Nishimura | Estate Administrator | 2.0 | \$ 110 | 220.00 |
| Total hours and professional fees | | <u>26.3</u> | | \$ 12,537.50 |
| HST @ 13% | | | | 1,629.88 |
| Total payable | | | | \$ 14,167.38 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.



GST/HST: 80784 1440 RT 0001

RSM CANADA LIMITED
Licensed Insolvency Trustee
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To Quality Rugs of Canada Limited
505 Cityview Blvd.
Woodbridge, ON L4H 0Z4

Attn: Mr. Joseph Pacione

Date February 18, 2024

Client File 8734196
Invoice 16
No. CI-10273395

For professional services rendered for the period December 1, 2023 to January 31, 2024 in connection with the engagement letter dated February 2, 2023.

| Date | Professional | Description |
|------------|-----------------|---|
| 12/5/2023 | Arif Dhanani | Review of factum of the DIP Lenders. |
| 12/11/2023 | Arif Dhanani | Review of December 7, 2023 Endorsement of the Court; call with J. Latham of Goodmans LLP ("Goodmans") in this regard. |
| 12/15/2023 | Arif Dhanani | Review of draft Fifth Report of the Monitor; make amendments thereto and comment on same; calls with J. Latham; assemble appendices for report; finalize and execute report and send same to Goodmans with appendices for service. |
| 12/17/2023 | Donna Nishimura | Post document to the client webpage on the R&R website. |
| 12/18/2023 | Arif Dhanani | Reviewing various emails amongst counsel re submission of additional evidence, scheduling pre-case conference call, scheduling conference call, attending pre-case conference call; attending case conference with counsel and J. Penny; update meeting with B. Tannenbaum; post-case conference call with J. Latham. |
| 12/19/2023 | Donna Nishimura | Post document to the client webpage on the R&R website. |
| 12/21/2023 | Arif Dhanani | Review of affidavit of P. Champagne; calls with J. Latham re same. |
| 1/4/2024 | Arif Dhanani | Review of written submissions of the Monitor sent by J. Latham and comment on same; email to J. Latham in this regard; call with J. Latham to discuss submissions; further calls and emails with J. Latham to finalize submissions. |
| 1/16/2024 | Arif Dhanani | Review of Endorsements of the Court issued on January 16, 2024; emails to/from J. Latham. |
| 1/31/2024 | Arif Dhanani | Review of notices of motion of the DIP Lender and former directors and officers of Quality Sterling Group; discussion with J. Latham re same. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|----------------------|--------------|-------------|--------------------|
| Arif N. Dhanani, CPA, CA, CIRP, LIT | Vice President | 10.2 | \$ 485 | \$ 4,947.00 |
| Donna Nishimura | Estate Administrator | 0.4 | \$ 110 | 44.00 |
| Total hours and professional fees | | 10.6 | | \$ 4,991.00 |
| HST @ 13% | | | | 648.83 |
| Total payable | | | | \$ 5,639.83 |

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.



To Quality Rugs of Canada Limited
505 Cityview Blvd.
Woodbridge, ON L4H 0Z4

Attn: Mr. Joseph Pacione

Date August 14, 2024

Client File 31-001
Account # TDB #1
No. 2408007

TDB Restructuring Limited
Licensed Insolvency Trustee

11 King St. W., Suite 700
Toronto, ON M5H 4C7

info@tdbadvisory.ca
416-575-4440
416-915-6228

tdbadvisory.ca

For professional services rendered for the period February 1, 2024 to July 31, 2024 in connection with the engagement letter dated February 2, 2023.

| Date | Professional | Description |
|-----------|---------------------|--|
| 2/10/2024 | Anne Baptiste | Prepare bank reconciliation. |
| 2/14/2024 | Arif Dhanani | Review four (4) draft letters to Bank of Montreal to close Monitor's bank accounts and sign same. |
| 2/14/2024 | Jennifer Hornbostel | Prepare 4 letters to close the trust accounts. |
| 2/15/2024 | Arif Dhanani | Review email from A. Rosen of AIG, forwarded by B. Tannenbaum; respond to A. Rosen re appointment of receiver by the Court, change in Monitor's role and no need to file a proof of claim with the Monitor. |
| 2/15/2024 | Jennifer Hornbostel | Send letters to Bank of Montreal to close trust accounts. |
| 2/19/2024 | Anne Baptiste | Post disbursement. |
| 2/28/2024 | Arif Dhanani | Review of emails between Gowling WLG and Davies Ward Phillips & Vineberg LLP forwarded by J. Latham of Goodmans LLP; email to J. Latham re non-receipt of emails and materials due to incorrect email addresses and request access to Caselines with new email address. |
| 3/15/2024 | Anne Baptiste | Prepare bank reconciliation - retainer account, as it relates to Quality Sterling Group. |
| 3/19/2024 | Arif Dhanani | Call with J. Latham and B. Tannenbaum re submissions to be made to court on rectification hearing. |
| 3/19/2024 | Bryan Tannenbaum | Teams call with J. Latham and A. Dhanani re April 25, 2024 court hearing. |
| 3/20/2024 | Anne Baptiste | Prepare bank reconciliation. |
| 3/20/2024 | Arif Dhanani | Review affidavits and reports and motion for rectification. |
| 3/21/2024 | Arif Dhanani | Review of voicemail from J. Latham re status of Monitor's submissions; email to J. Latham to schedule call to discuss same; call with J. Latham and B. Tannenbaum re submissions. |
| 3/22/2024 | Arif Dhanani | Review of draft submissions to the Court received from J. Latham and comment on same; email to B. Tannenbaum in this regard with request for any further comments; email to J. Latham with comments; call with J. Latham regarding his further amended draft submissions; review of further amended draft submissions and email to J. Latham in this regard. |

| Date | Professional | Description |
|-------------|---------------------|---|
| 3/25/2024 | Arif Dhanani | Review Factum of Alvarez & Marsal; review factum of the DIP Lenders. |
| 4/1/2024 | Jennifer Hornbostel | Close out bank accounts in Ascend. |
| 4/19/2024 | Arif Dhanani | Email to J. Latham re attendance in Court on April 25, 2024; review of factum of suppliers. |
| 4/24/2024 | Arif Dhanani | Call with J. Latham re April 25, 2024 hearing on priorities. |
| 4/25/2024 | Arif Dhanani | Attend in court for priority hearing; post hearing discussion with J. Latham. |
| 5/1/2024 | Arif Dhanani | Review of notice of assessment from BC Ministry of Finance for Timeline Floors Inc. and forward same to the Receiver. |
| 5/7/2024 | Arif Dhanani | Review of most recent invoice from Goodmans; email to J. Latham re timing for taxation and discharge of the Monitor; review of email chain from Goodmans re costs; review of Receiver's fourth report and statement of receipts and disbursements therein; reply to email from Goodmans re costs. |
| 6/9/2024 | Anne Baptiste | Prepare bank reconciliation. |
| 7/5/2024 | Arif Dhanani | Review of decision of J. Penny re priority dispute. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|----------------------|--------------------|-------------|--------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | Managing Director | 0.3 | \$ 695 | \$ 208.50 |
| Arif N. Dhanani, CPA, CA, CIRP, LIT | Managing Director | 13.1 | \$ 625 | 8,187.50 |
| Anne Baptiste/Jennifer Hornbostel | Estate Administrator | 1.9 | \$ 150 | 285.00 |
| Total hours and professional fees | | <u>15.3</u> | | \$ 8,681.00 |
| HST @ 13% | | | | 1,128.53 |
| Total payable | | | | \$ 9,809.53 |



To Quality Rugs of Canada Limited
 505 Cityview Blvd.
 Woodbridge, ON L4H 0Z4

TDB Restructuring Limited
 Licensed Insolvency Trustee

11 King St. W., Suite 700
 Toronto, ON M5H 4C7

info@tdbadvisory.ca
 416-575-4440
 416-915-6228

tdbadvisory.ca

Attn: Mr. Joseph Pacione

Date September 30, 2024

Client File 31-001
Account # TDB #2
No. 2409027

For professional services rendered for the period February 1, 2024 to September 30, 2024 in connection with the engagement letter dated February 2, 2023.

| Date | Professional | Description |
|-----------|------------------|---|
| 8/14/2024 | Arif Dhanani | Emails to/from and call with J. Latham of Goodmans LLP re sixth report of the Monitor; review of Monitor's fifth report and various Court materials; commence drafting sixth report of the Monitor. |
| 8/15/2024 | Arif Dhanani | Continue drafting sixth report of the Monitor, including reviewing various correspondence, court documents, and emails. |
| 8/16/2024 | Donna Nishimura | Post documents to the client webpage on the TDB website. |
| 8/16/2024 | Arif Dhanani | Complete initial draft of Monitor's sixth report; email to B. Tannenbaum in this regard; review of response from B. Tannenbaum, make changes to draft and send same to J. Latham. |
| 8/19/2024 | Arif Dhanani | Review comments made by J. Latham to Monitor's sixth report, accept changes, as appropriate, and make additional changes; review draft notice of motion and order sent by J. Latham, comment on same and send same to J. Latham; email to K. Kraft of Dentons LLP requesting update on discussions with Aird & Berlis LLP and status of motion to Net pay out DIP loan. |
| 8/20/2024 | Arif Dhanani | Review changes made to Notice of Motion and Monitor's Discharge Order made by J. Latham, accept changes and make further comments thereon. |
| 8/20/2024 | Bryan Tannenbaum | Review Monitor's draft sixth report. |
| 8/21/2024 | Arif Dhanani | Draft Monitor's fee affidavit, fee summary and assemble invoices to date. |
| 8/23/2024 | Arif Dhanani | Assemble appendices for Monitor's sixth report; review email from K. Kraft re Aird & Berlis email and reply thereto from J. Latham. |
| 8/28/2024 | Arif Dhanani | Review of email from J. Latham to K. Kraft and reply from K. Kraft with proposed language for Monitor's Discharge Order. |
| 9/3/2024 | Arif Dhanani | Review of email exchanges between J. Latham and K. Kraft. |
| 9/30/2024 | Arif Dhanani | Review of email chain between K. Kraft and J. Penny forwarded by J. Latham re hearing; email to D. Nishimura re direction on finalization of September invoice and accrual for time to be billed in October. |
| | | To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing. |

FEE SUMMARY

| Professional | Level | Hours | Rate | Fees |
|--|----------------------|--------------------|-------------|--------------------|
| Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT | Managing Director | 0.4 | \$ 695 | \$ 278.00 |
| Arif N. Dhanani, CPA, CA, CIRP, LIT | Managing Director | 9.4 | \$ 625 | 5,875.00 |
| Donna Nishimura | Estate Administrator | 0.3 | \$ 150 | 45.00 |
| Total hours and professional fees | | <u>10.1</u> | | \$ 6,198.00 |
| HST @ 13% | | | | 805.74 |
| Total payable | | | | \$ 7,003.74 |

GST/HST: 80784 1440 RT0001

**THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF ARIF DHANANI
SWORN BEFORE ME THIS 1ST DAY OF OCTOBER, 2024**

Erik Apell

Commissioner for Taking Affidavits

IN THE MATTER OF THE CCAA PROCEEDING OF QUALITY STERLING GROUP
 FEE SUMMARY OF THE MONITOR
 FOR THE PERIOD FROM NOVEMBER 13, 2023 to SEPTEMBER 30, 2024

| Invoice No. | Billing Period | Total Fees | Disbursements | HST | Hours | Average Hourly Rate | Total |
|-------------|--|---------------------|---------------|--------------------|--------------|---------------------|---------------------|
| RSM #15 | November 13, 2023 to November 30, 2023 | \$ 12,537.50 | - | 1,629.88 | 26.30 | \$ 476.71 | \$ 14,167.38 |
| RSM #16 | December 1, 2023 to January 31, 2024 | 4,991.00 | - | 648.83 | 10.60 | \$ 470.85 | 5,639.83 |
| TDB #1 | February 1, 2024 to July 31, 2024 | 8,681.00 | - | 1,128.53 | 15.30 | \$ 567.39 | 9,809.53 |
| TDB #2 | August 1, 2024 to September 30, 2024 | 6,198.00 | - | 805.74 | 10.10 | \$ 613.66 | 7,003.74 |
| | Total | \$ 32,407.50 | \$ - | \$ 4,212.98 | 62.30 | \$ 520.18 | \$ 36,620.48 |

Schedule “A” – Other Applicants

A.1 OSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

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

Court File No: CV-23-00703933-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
QUALITY RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**AFFIDAVIT OF ARIF DHANANI
(sworn October 1, 2024)**

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Joseph Latham LSO#: 32326A
jlatham@goodmans.ca

Erik Axell LSO#: 853450
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Monitor, TDB Restructuring
Limited

APPENDIX J

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 QUALITY RUGS OF CANADA
LIMITED AND THE OTHER COMPANIES LISTED IN
SCHEDULE "A" HERETO

(collectively, the "**Applicants**")

AFFIDAVIT OF ROBERT J. CHADWICK
(Sworn October 1, 2024)

I, Robert J. Chadwick, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am a partner with the law firm of Goodmans LLP ("**Goodmans**"), which is counsel to TDB Restructuring Limited ("**TDB**") in its capacity as court-appointed monitor (the "**Monitor**") of the Applicants in the within proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**"). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true.

2. RSM Canada Limited ("**RCL**") was appointed as Monitor pursuant to the Initial Order (as amended and restated, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on August 25, 2023. The Monitor retained Goodmans LLP as its counsel in these proceedings.

3. On February 1, 2024, the name RCL was changed to TDB. On March 1, 2024, the Court issued an order (the "**Omnibus Order**") substituting the name TDB in place of RCL. A copy of

the Omnibus Order is appended as Appendix F to the Sixth Report of the Monitor.

4. Pursuant to paragraph 36 of the Initial Order, the Monitor and its legal counsel are to be paid their reasonable fees and disbursements, in each case at their standard rates and charges by the Applicants as part of the proceedings. Pursuant to paragraph 37 of the Initial Order, the Monitor and its legal counsel are required to pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are referred to the Court.

5. Pursuant to an Order of this Court dated November 24, 2023, the fees and disbursements of Goodmans, in its capacity as counsel to the Monitor, for the period from August 18, 2023 to November 15, 2023, (the “**Previous Application Period**”) in the total amount of \$644,922.73 (inclusive of taxes), were approved.

6. In respect of the Previous Application Period, Goodmans was paid a total of \$558,392.06, with \$86,530.67 billed and unpaid at the time of the November 24, 2023 hearing, and Goodmans had a retainer of \$60,000 on hand (the “**Retainer**”). Goodmans has applied the Retainer to the \$86,530.67, which now leaves Goodmans with \$26,530.67 presently billed and unpaid in respect of fees previously approved for the Previous Application Period.

7. With respect to this motion, attached hereto as Exhibit “A” are true copies of the accounts (the “**Goodmans Accounts**”) rendered by Goodmans to the Monitor prior to and during the course of the Applicant’s CCAA proceedings, being the period between November 16, 2023 and September 30, 2024, inclusive (the “**Application Period**”).

8. Attached hereto as Exhibit “B” is a schedule summarizing the Goodmans Accounts in respect of the Application Period. As shown in the summary, Goodmans incurred fees and

disbursements during the Application Period totalling \$120,598.36, comprised of fees of \$106,023.00, costs of \$701.21 and taxes of \$13,874.15.

9. The Goodmans Accounts were issued to the Monitor at Goodmans' standard rates and charges for the professionals involved. Attached hereto as Exhibit "C" is a schedule summarizing billing rates of each of the professionals at Goodmans that rendered services to the Monitor during the Application Period, the hours worked by each such individual, and the average hourly rates for the file.

10. I believe that the total hours, fees and disbursements incurred by Goodmans during the Application Period are reasonable and appropriate in the circumstances.

11. As set out in the Sixth Report, the Monitor is seeking approval of Goodmans' estimated fees of up to \$22,600 inclusive of HST to complete the Monitor's administration of the CCAA Proceeding (the "**Remaining Tasks and Duties**").

12. The Monitor is therefore seeking at this time approval of the Court for Goodmans' fees and disbursements, including HST, set out above of \$120,598.36, plus the Goodmans' estimate to complete the Remaining Tasks and Duties of up to \$22,600, including HST, for a total of \$143,198.36.

13. This Affidavit is sworn in connection with a motion by the Monitor for, among other things, the approval of the fees and disbursements of the Monitor and its legal counsel in connection with these proceedings and for no improper purpose.

SWORN BEFORE ME over videoconference on this 1st day of October, 2024. The affiant was located in the City of Toronto, in the Province of Ontario and the Commissioner was located in the City of Toronto, Province of Ontario

Erik Axell

A Commissioner for taking affidavits
Name: Erik Axell
LSO # 853450



ROBERT J. CHADWICK

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF ROBERT J. CHADWICK
SWORN BEFORE ME THIS 1st DAY OF OCTOBER, 2024

Erik Apell

Commissioner for Taking Affidavits



Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

RSM Canada Limited
700 - 11 King St W
Toronto M4H 4C7
Canada

November 27, 2023

Our File No. XECC 231911
Invoice No. 805266

Attention: Bryan Tannenbaum

Re: Project Magic

To our professional services rendered in connection with the above noted matter:

| Date | TKID | Hours | Description |
|----------|------|-------|--|
| 11/16/23 | EAX | 4.80 | Reviewing and revising Notice of Motion and Draft Order; compiling exhibits for Monitor's Fourth Report; drafting Fee Affidavits. |
| 11/16/23 | LJL | 3.30 | Emails with Receiver re: union reserve funds and approach; multiple emails among multiple counsel for various parties re: scheduling issues and re: relief to be sought; emails re: case conference to assist with scheduling; emails re: claim notice issued under D&O policy; reviewing draft affidavits and invoices for fee approval materials; receipt and review of updated Fourth Report; reviewing and commenting on draft notice of motion and order. |
| 11/17/23 | EAX | 8.90 | Reviewing and revising Notice of Motion, Draft Order, Fee Affidavits, Monitor's Fourth Report; compiling exhibits for Monitor's Fourth Report; preparing, compiling, and serving Motion Record. |
| 11/17/23 | LJL | 4.30 | Emails re: November 20 case conference; reviewing and revising drafts of notice of motion and order; emails with E. Axell re: same; finalizing fee affidavits; detailed review of and revisions to draft Fourth Report; sharing with A. Dhanani and E. Axell; emails with Receiver's counsel to try to coordinate relief; reviewing and commenting on further version of draft Fourth Report; receipt and review of motion materials from Receiver, from Alvarez, and from directors; reviewing and finalizing drafts of NOM, Order and Fourth Report; communications with E. Axell re: final motion record and service of same; receipt of service email. |
| 11/20/23 | EAX | 0.80 | Attending case conference; filing Motion Record re: approval of Monitor reports and fees. |
| 11/20/23 | LJL | 1.00 | Attending case conference re: scheduling; emails with Receiver and counsel re: security opinion. |
| 11/21/23 | LJL | 0.50 | Discussions with E. Axell re: amendment to draft order to preserve stay to protect Monitor; emails with Receiver's counsel re: same. |

Invoice No. 805266
Our File No. XECC 231911

Page 2
November 27, 2023

| Date | TKID | Hours | Description |
|----------|------|-------|---|
| 11/22/23 | LJL | 0.60 | Emails re: attendees; emails re: revisions to draft Monitor order requested by Union counsel; emails with multiple counsel re: same. |
| 11/23/23 | EAX | 1.20 | Reviewing and revising Draft Order and arranging service of same. |
| 11/23/23 | LJL | 1.80 | Receipt and brief review of D&O motion; receipt and review of multiple further versions of revised receivership order and multiple emails with counsel to address minor edits re: same; reviewing and editing draft order for Monitor re: extension of stay for Monitor; circulating to service list. |
| 11/24/23 | LJL | 2.50 | Reviewing materials for hearing and ensuring all on Caselines; preparing for and attending motion to approve Monitor's reports and fees, as well as issue orders in the receivership; editing draft order further to following submissions; circulating revised order; receipt and review of signed orders and endorsement; emails and calls with A. Dhanani re: transfer of Union reserve funds to Receiver. |

Total Fees **\$25,225.00**

Summary of Professional Fees

| TKID | Timekeeper | Billed Hours | Billed Rate | Billed Amount |
|------|----------------|--------------|-------------|---------------|
| LJL | Latham, Joseph | 14.00 | 1,185.00 | 16,590.00 |
| EAX | Axell, Erik | 15.70 | 550.00 | 8,635.00 |

Total Fees **\$25,225.00**

Total Fees On This Invoice \$25,225.00
ON HST @ 13.0% \$3,279.25
Total On This Invoice (CAD) **\$28,504.25**

THIS IS OUR ACCOUNT HEREIN
GOODMANS LLP

E. & O. E.
RJC /

This invoice may not reflect all time and disbursements incurred on this matter to date. It is payable upon receipt and in accordance with Section 33 of the Solicitors Act (Ontario), interest will be charged at the rate of 1.50% per annum on unpaid fees, charges or disbursements calculated one month from the date this invoice is delivered.



Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

STATEMENT OF ACCOUNTS RECEIVABLE
(Does not include current invoice amount)

| Invoice Date | Invoice # | Billed Fees | Billed Costs | Tax | Paid/Credits | Balance Due |
|--|-----------|-------------|--------------|------------|--------------|--------------------|
| 10/30/23 | 804006 | \$22,539.50 | \$1,092.00 | \$3,072.10 | \$0.00 | \$26,703.60 |
| 11/16/23 | 804959 | \$52,926.00 | \$18.31 | \$6,882.76 | \$0.00 | \$59,827.07 |
| Total Outstanding Invoice (CAD) | | | | | | \$86,530.67 |

Remittance information:

CAD Electronic Wire Payment or EFT (not e-Transfer):

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account Name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Bank ID (for EFT payments): 0004
Transit: 12162 Swift code: TDOMCATTOR
CAD account: 0552488

USD Electronic Wire Payment:

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Transit: 12162
USD account: 7359751 Swift code: TDOMCATTOR
Intermediary Bank: Bank of America, New York, NY, USA
ABA: 026009593 Swift code: BOFAUS3NXXX

Email payment details, including invoice #, matter # and amount paid, to: collections@goodmans.ca

Cheques or Bank draft payable to: Goodmans LLP

Send to: Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Please enclose remittance copy including invoice #, matter # and amount paid.



Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

RSM Canada Limited
700 - 11 King St W
Toronto M4H 4C7
Canada

January 15, 2024

Our File No. XECC 231911
Invoice No. 807749

Attention: Bryan Tannenbaum

Re: Project Magic

To our professional services rendered in connection with the above noted matter:

| Date | TKID | Hours | Description |
|----------|------|-------|--|
| 11/27/23 | LJL | 0.30 | Receipt of facta from lien claimants and brief review. |
| 12/04/23 | LJL | 0.50 | Receipt and brief review of Receiver's Second Report, revised notice of motion from suppliers and factum of DIP Lender; call to K. Kraft to discuss approach to attendance on December 7 and re: approach to administrative matters. |
| 12/05/23 | LJL | 0.20 | Emails with Justice Penny and K. Kraft re: not appearing on December 7. |
| 12/11/23 | LJL | 2.40 | Receipt and review of endorsement from Justice Penny; emails with K. Kraft re: same; emails and conference call with all counsel who had made submissions on December 7 to discuss endorsement and need to prepare report to respond; reviewing email records re: history of issue with paragraph 47 of Initial Order and ARIO; emails and calls with A. Dhanani and E. Axell; emails with QSG counsel to discuss. |
| 12/12/23 | LJL | 1.70 | Telephone call with QSG counsel re: history of removal of "trusts" and related issues; exchange of telephone calls with K. Kraft re: same and re: discussion with QSG counsel; telephone calls with A. Dhanani and B. Tannenbaum re: question posed, results of initial review of emails and approach to framing report. |
| 12/13/23 | LJL | 2.00 | Reviewing historic emails regarding Initial Order and ARIO and negotiations or discussions concerning same; separate telephone calls with counsel for Ironbridge and counsel for Suppliers re: their perspective of how the issues around paragraph 47 were framed in court and to outline the expected approach of the Monitor in the report to be prepared. |
| 12/14/23 | LJL | 7.00 | Detailed review of December 11 endorsement; detailed review of served reports and of emails and other records relating to history of revisions to CCAA Initial Order and ARIO; discussions with A. Dhanani re: same; drafting, reviewing and revising Fifth Report of Monitor to describe genesis of removal of "trusts" from paragraph 47 of ARIO; discussions with E. Axell re: supporting documents and |

| Date | TKID | Hours | Description |
|----------|------|-------|--|
| | | | emails; sharing draft report with A. Dhanani. |
| 12/15/23 | EAX | 1.30 | Drafting email to service list re: Monitor's Fifth Report; serving and filing Monitor's Fifth Report. |
| 12/15/23 | LJL | 3.40 | Multiple emails and calls with A. Dhanani re: draft of Fifth Report; detailed review of revisions from A. Dhanani; reviewing and revising draft report and sending to A. Dhanani; receipt of signed report and reviewing before serving; service of Fifth Report on Service List. |
| 12/18/23 | LJL | 2.80 | Emails and telephone calls with various counsel re: filing of additional materials and scheduling call with all counsel re: same; conference call with counsel re: materials to be filed; case conference with Justice Penny re: same; telephone calls with A. Dhanani re: same. |
| 12/19/23 | LJL | 1.20 | Emails and calls with various counsel re: materials to supplement Monitor's Fifth Report; receipt and review of affidavits from Ironbridge, Alvarez & Marsal and the former directors. |
| 12/20/23 | LJL | 1.20 | Multiple emails re: new materials served; reviewing affidavit from suppliers; email with A. Dhanani seeking to discuss same. |
| 12/21/23 | LJL | 1.80 | Reviewing prior Monitor reports and affidavit from suppliers; discussions with Monitor and counsel re: supplier affidavit; email to K. Kraft. |
| 01/03/24 | LJL | 3.80 | Reviewing endorsement, filed materials and emails; drafting and revising written submissions of Monitor; emails and telephone calls with A. Dhanani re: same; emails with Receiver's counsel. |
| 01/04/24 | EAX | 1.90 | Reviewing and updating Monitor's written submissions with caseline references; filing Monitor's written submissions with the court. |
| 01/04/24 | LJL | 3.40 | Reviewing comments on draft submissions; telephone call with A. Dhanani re: same; revising multiple drafts of submissions; multiple emails and calls with A. Dhanani re: same; finalizing and issuing same; multiple emails with H. Murray re: same; emails with Receiver's counsel re: submissions. |
| 01/05/24 | LJL | 0.40 | Receipt and brief review of submissions of various parties. |

Total Fees **\$39,950.50**

Summary of Professional Fees

| TKID | Timekeeper | Billed Hours | Billed Rate | Billed Amount |
|------|----------------|--------------|-------------|---------------|
| LJL | Latham, Joseph | 32.10 | 1,185.00 | 38,038.50 |
| EAX | Axell, Erik | 3.20 | 590.00 | 1,912.00 |

Total Fees **\$39,950.50**

Invoice No. 807749
Our File No. XECC 231911

Page 3
January 15, 2024

Disbursements

| Description | Amount |
|----------------------------|-----------------|
| Filing Fee - Motion | 339.00 |
| Parking/ Cab / Mileage | 23.21 |
| Total Disbursements | \$362.21 |

| | |
|-------------------------------------|--------------------|
| Total Fees On This Invoice | \$39,950.50 |
| ON HST @ 13.0% | \$5,193.56 |
| Taxable Disbursements | \$362.21 |
| Total Disbursements On This Invoice | \$362.21 |
| ON HST @ 13.0% | \$47.09 |
| Total On This Invoice (CAD) | \$45,553.36 |

THIS IS OUR ACCOUNT HEREIN
GOODMANS LLP

E. & O. E.
RJC /

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STATEMENT OF ACCOUNTS RECEIVABLE
(Does not include current invoice amount)

| Invoice Date | Invoice # | Billed Fees | Billed Costs | Tax | Paid/Credits | Balance Due |
|--|-----------|-------------|--------------|------------|--------------|---------------------|
| 10/30/23 | 804006 | \$22,539.50 | \$1,092.00 | \$3,072.10 | \$0.00 | \$26,703.60 |
| 11/16/23 | 804959 | \$52,926.00 | \$18.31 | \$6,882.76 | \$0.00 | \$59,827.07 |
| 11/27/23 | 805266 | \$25,225.00 | \$0.00 | \$3,279.25 | \$0.00 | \$28,504.25 |
| Total Outstanding Invoice (CAD) | | | | | | \$115,034.92 |

Remittance information:

CAD Electronic Wire Payment or EFT (not e-Transfer):

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account Name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Bank ID (for EFT payments): 0004
Transit: 12162 Swift code: TDOMCATTOR
CAD account: 0552488

USD Electronic Wire Payment:

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Transit: 12162
USD account: 7359751 Swift code: TDOMCATTOR
Intermediary Bank: Bank of America, New York, NY, USA
ABA: 026009593 Swift code: BOFAUS3NXXX

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Send to: Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Please enclose remittance copy including invoice #, matter # and amount paid.



Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

TDB Restructuring Limited
700 - 11 King St W
Toronto M4H 4C7
Canada

May 6, 2024

Our File No. XECC 231911
Invoice No. 813692

Attention: Bryan Tannenbaum

Re: Project Magic

To our professional services rendered in connection with the above noted matter:

| Date | TKID | Hours | Description |
|----------|------|-------|---|
| 01/16/24 | LJL | 0.40 | Receipt and review of endorsement from Justice Penny; emails with RSM re: same. |
| 01/30/24 | LJL | 0.30 | Receipt and brief review of motion materials form Ironbridge, directors and Alvarez & Marsal. |
| 02/26/24 | LJL | 0.30 | Emails with K. Kraft re: status of hearing; telephone call with D. Ricci to understand their proposal re: process. |
| 02/29/24 | LJL | 0.20 | Emails re: confirmed hearing date. |
| 03/01/24 | LJL | 0.20 | Multiple emails re: court scheduling issues. |
| 03/19/24 | LJL | 0.60 | Call with N. Renner re: filing deadline and status; email and call with clients re: same and to confirm instructions. |
| 03/20/24 | LJL | 2.30 | Reviewing affidavits and reports and motion for rectification; drafting and revising form of submissions for Monitor; emails and call with A. Dhanani re: same. |
| 03/21/24 | LJL | 1.40 | Reviewing and commenting on draft submissions; discussions with N. Renner and A. Winton re: their expected facta; conference call with B. Tanenbaum and A. Dhanani re: draft submissions and requesting fulsome comments thereon. |
| 03/22/24 | LJL | 1.70 | Reviewing and revising draft submissions; emails and calls with A. Dhanani re: same; finalizing submissions for service; receipt and brief review of Ironbridge factum; serving Monitor's submissions; emails re: other filings. |
| 03/25/24 | LJL | 0.20 | Service of hyperlinked submissions. |
| 04/19/24 | LJL | 0.40 | Reviewing factum of suppliers; emails and discussion with N. Renner re: materials for hearing. |
| 04/22/24 | LJL | 1.40 | Emails re: question of filing reply facta; telephone call with D. Ricci and N. Renner re: same; receipt and review of reply facta; emails re: placing Monitor |

Invoice No. 813692
Our File No. XECC 231911

Page 2
May 6, 2024

| Date | TKID | Hours | Description |
|-------------------|------|-------|---|
| | | | documents in correct bundle. |
| 04/23/24 | LJL | 0.40 | Emails re: materials and organizing same for hearing preparation. |
| 04/24/24 | LJL | 1.80 | Emails re: various materials being posted to bundles; emails and discussions with D. Ricci, N. Renner re: various aspects of argument, trying to avoid duplication; emails and calls with A. Dhanani to confirm instructions; emails with H. Murray re: paragraph he was concerned with and responding that it does not contain privileged information; reviewing historic emails for responses to H. Murray emails; preparation for hearing on April 25. |
| 04/25/24 | LJL | 7.80 | Reviewing reports and submissions and preparing for hearing; attending full day hearing on rectification motion and making submissions. |
| 04/30/24 | LJL | 0.20 | Email from H. Murray re: costs request. |
| Total Fees | | | \$23,226.00 |

Summary of Professional Fees

| TKID | Timekeeper | Billed Hours | Billed Rate | Billed Amount |
|-------------------|----------------|--------------|-------------|--------------------|
| LJL | Latham, Joseph | 19.60 | 1,185.00 | 23,226.00 |
| Total Fees | | | | \$23,226.00 |

| | |
|------------------------------------|--------------------|
| Total Fees On This Invoice | \$23,226.00 |
| ON HST @ 13.0% | \$3,019.38 |
| Total On This Invoice (CAD) | \$26,245.38 |

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GOODMANS LLP

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RJC /

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Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

STATEMENT OF ACCOUNTS RECEIVABLE
(Does not include current invoice amount)

| Invoice Date | Invoice # | Billed Fees | Billed Costs | Tax | Paid/Credits | Balance Due |
|--|-----------|-------------|--------------|------------|--------------|---------------------|
| 11/16/23 | 804959 | \$52,926.00 | \$18.31 | \$6,882.76 | \$33,296.40 | \$26,530.67 |
| 11/27/23 | 805266 | \$25,225.00 | \$0.00 | \$3,279.25 | \$0.00 | \$28,504.25 |
| 01/15/24 | 807749 | \$39,950.50 | \$362.21 | \$5,240.65 | \$0.00 | \$45,553.36 |
| Total Outstanding Invoice (CAD) | | | | | | \$100,588.28 |

Remittance information:

CAD Electronic Wire Payment or EFT (not e-Transfer):

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account Name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Bank ID (for EFT payments): 0004
Transit: 12162 Swift code: TDOMCATTOR
CAD account: 0552488

USD Electronic Wire Payment:

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account name: Goodmans LLP
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Bank ID (for wire payments): 004 Transit: 12162
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ABA: 026009593 Swift code: BOFAUS3NXXX

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Cheques or Bank draft payable to: Goodmans LLP

Send to: Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Please enclose remittance copy including invoice #, matter # and amount paid.

Important Note on Wire Fraud - You or another party will never receive revised instructions from us regarding the transfer of funds to our accounts. If you receive any communication advising you of any purported changes in

Invoice No. 813692

Page 4

Our File No. XECC 231911

May 6, 2024

wire instructions that appear to come from us, you should contact us immediately by phone using a firm phone number consistent with those posted on www.Goodmans.ca.

TDB Restructuring Limited
700 - 11 King St W
Toronto M4H 4C7
Canada

September 30, 2024

Our File No. XECC 231911
Invoice No. 820598

Attention: Bryan Tannenbaum

Re: Project Magic

To our professional services rendered in connection with the above noted matter:

| Date | TKID | Hours | Description |
|----------|------|-------|--|
| 07/05/24 | LJL | 1.00 | Receipt and review of endorsement from Justice Penny on priorities motion; emails with N. Renner and D. Ricci; emails with A. Dhanani. |
| 07/06/24 | LJL | 1.00 | Detailed review of endorsement of Justice Penny on priorities motion; email with N. Renner to discuss next steps. |
| 08/01/24 | LJL | 0.30 | Receipt and review of draft order for Rule 59.06 motion; email to D. Ricci re: same. |
| 08/13/24 | LJL | 0.30 | Emails with K. Kraft to enquire as to status of potential opposition from Waygar to DIP payments, and learning of intended motion to pay out DIP; email with K. Kraft and A. Dhanani re: need to move on Monitor discharge materials. |
| 08/14/24 | LJL | 1.00 | Multiple emails with K. Kraft and A. Dhanani re: scope of issues at hearing in hopes of confirming ability to seek discharge; reviewing records and email to K. Kraft to confirm that we would be preparing materials to seek approval of Monitor's reports and conduct and of professional fees, and advising Receiver of amounts at present outstanding to Goodmans; email from A. Dhanani with similar information for Monitor. |
| 08/15/24 | EAX | 3.20 | Reviewing various court materials and drafting Notice of Motion, Order and Fee Affidavit re: CCAA Termination Order. |
| 08/15/24 | LJL | 0.30 | Emails with E. Axell re: status and need for drafts of materials to approve Monitor's reports and conduct and professional fees. |
| 08/16/24 | EAX | 1.20 | Reviewing various court materials and drafting Notice of Motion, Order and Fee Affidavit re: CCAA Termination Order. |
| 08/16/24 | LJL | 0.40 | Receipt and brief review of draft of sixth report of Monitor and of motion materials for discharge and fee approvals. |
| 08/17/24 | LJL | 1.20 | Reviewing and revising drafts of notice of motion, fee affidavit and order to discharge Monitor; emailing revised drafts to A. Dhanani and E. Axell. |

| Date | TKID | Hours | Description |
|----------|------|-------|---|
| 08/18/24 | LJL | 1.00 | Further revisions to draft notice of motion and order and sharing with A. Dhanani and E. Axell; reviewing and commenting on draft sixth report and sharing with A. Dhanani. |
| 08/19/24 | LJL | 0.50 | Multiple emails with A. Dhanani and K. Kraft re: status of potential hearing; emails from A. Dhanani with comments on draft materials; further revisions and sharing with A. Dhanani and E. Axell. |
| 08/20/24 | LJL | 0.30 | Receipt and review of revised drafts from A. Dhanani; internal emails to prepare for motion. |
| 08/22/24 | LJL | 0.20 | Emails re: issuing order on Rule 59.06 motion; email with K. Kraft re: timing of motion. |
| 08/23/24 | LJL | 0.20 | Call with N. Renner re: order and re: motion to approve fees. |
| 08/27/24 | LJL | 0.40 | Emails to K. Kraft, N. Renner, A. Winton and C. Besant re: intent to seek approval of Monitor's fees and discharge, asking if there were concerns; emails with C. Besant; emails with K. Kraft re: suggestions for draft order; emails with A. Dhanani re: process. |
| 08/29/24 | LJL | 0.20 | Emails with court registrar to book court time. |
| 09/03/24 | LJL | 0.30 | Emails re: scheduling issues and approach to motions. |
| 09/24/24 | LJL | 0.30 | Emails with K. Kraft and A. Dhanani re: October 15 motion and service of materials. |
| 09/26/24 | LJL | 0.20 | Emails re: matters to add to motion. |
| 09/27/24 | LJL | 0.20 | Emails with K. Kraft and Justice Penny re: scheduling of hearing; email to clients re: status. |
| 09/30/24 | EAX | 2.00 | Attending to court materials re: Monitor Discharge Motion. |
| 09/30/24 | LJL | 2.60 | Receipt and review of draft Sixth Report and of A. Dhanani fee affidavit; emails with comments thereon; receipt and review of draft R. Chadwick fee affidavit; emails re: comments thereon; reviewing and commenting on draft notice of motion and draft Monitor Discharge Order; reviewing invoices to deal with redactions of privileged information. |

Total Fees **\$17,621.50**

Summary of Professional Fees

| TKID | Timekeeper | Billed Hours | Billed Rate | Billed Amount |
|------|----------------|--------------|-------------|---------------|
| LJL | Latham, Joseph | 11.90 | 1,185.00 | 14,101.50 |
| EAX | Axell, Erik | 6.40 | 550.00 | 3,520.00 |

Total Fees **\$17,621.50**

Invoice No. 820598
Our File No. XECC 231911

Page 3
September 30, 2024

Disbursements

| Description | Amount |
|----------------------------|-----------------|
| Filing Fee - Motion | 339.00 |
| Total Disbursements | \$339.00 |

| | |
|-------------------------------------|--------------------|
| Total Fees On This Invoice | \$17,621.50 |
| ON HST @ 13.0% | \$2,290.80 |
| Taxable Disbursements | \$339.00 |
| Total Disbursements On This Invoice | \$339.00 |
| ON HST @ 13.0% | \$44.07 |
| Total On This Invoice (CAD) | \$20,295.37 |

THIS IS OUR ACCOUNT HEREIN
GOODMANS LLP

E. & O. E.
RJC /

This invoice may not reflect all time and disbursements incurred on this matter to date. It is payable upon receipt and in accordance with Section 33 of the Solicitors Act (Ontario), interest may be charged at the rate of 12% per annum on unpaid fees, charges or disbursements calculated one month from the date this invoice is delivered.



Barristers & Solicitors

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

GST Registration Number R119422962

STATEMENT OF ACCOUNTS RECEIVABLE
(Does not include current invoice amount)

| Invoice Date | Invoice # | Billed Fees | Billed Costs | Tax | Paid/Credits | Balance Due |
|--|-----------|-------------|--------------|------------|--------------|---------------------|
| 11/16/23 | 804959 | \$52,926.00 | \$18.31 | \$6,882.76 | \$33,296.40 | \$26,530.67 |
| 11/27/23 | 805266 | \$25,225.00 | \$0.00 | \$3,279.25 | \$0.00 | \$28,504.25 |
| 01/15/24 | 807749 | \$39,950.50 | \$362.21 | \$5,240.65 | \$0.00 | \$45,553.36 |
| 05/06/24 | 813692 | \$23,226.00 | \$0.00 | \$3,019.38 | \$0.00 | \$26,245.38 |
| Total Outstanding Invoice (CAD) | | | | | | \$126,833.66 |

Remittance information:

CAD Electronic Wire Payment or EFT (not e-Transfer):

Beneficiary Bank: TD Canada Trust, 394 Bay Street, Toronto, ON M5H 2Y3
Beneficiary Account Name: Goodmans LLP
Beneficiary Address: 333 Bay Street, Suite 3400, Toronto, Ontario M5H 2S7
Bank ID (for wire payments): 004 Bank ID (for EFT payments): 0004
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Intermediary Bank: Bank of America, New York, NY, USA
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Invoice No. 820598

Page 5

Our File No. XECC 231911

September 30, 2024

wire instructions that appear to come from us, you should contact us immediately by phone using a firm phone number consistent with those posted on www.Goodmans.ca.

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF ROBERT J. CHADWICK
SWORN BEFORE ME THIS 1st DAY OF OCTOBER, 2024

Erik Afell

Commissioner for Taking Affidavits

TDB Restructuring Limited
Summary of Goodmans LLP Accounts for the Applicable Period

| Date of Account | Billing Period | Fees | Costs | Taxes | Total |
|------------------------|--|-------------------|---------------|------------------|-------------------|
| November 27, 2023 | November 16, 2023 to November 24, 2023 | 25,225.00 | - | 3,279.25 | 28,504.25 |
| January 15, 2024 | November 27, 2023 to January 05, 2024 | 39,950.50 | 362.21 | 5,240.65 | 45,553.36 |
| May 6, 2024 | January 16, 2024 to April 30, 2024 | 23,226.00 | - | 3,019.38 | 26,245.38 |
| September 30, 2024 | July 05, 2024 to September 30, 2024 | 17,621.50 | 339.00 | 2,334.87 | 20,295.37 |
| TOTAL | | 106,023.00 | 701.21 | 13,874.15 | 120,598.36 |

THIS IS EXHIBIT "C"
TO THE AFFIDAVIT OF ROBERT J. CHADWICK
SWORN BEFORE ME THIS 1st DAY OF OCTOBER, 2024

Erik Afell

Commissioner for Taking Affidavits

TDB Restructuring Limited
Summary of Activity by Goodmans LLP Professionals

| Professional | Year of Call | Hourly Rate | Total Hours |
|---------------------|---------------------|--------------------|--------------------|
| Latham, Joseph | 1991 | \$1,185.00 | 77.60 |
| Axell, Erik | 2022 | \$556.01 | 25.30 |
| Total Hours | | | 102.9 |

| | |
|---|-------------------|
| Average Hourly Rate (\$ Billed / Hours Billed) | \$1,030.35 |
|---|-------------------|

**SCHEDULE “A”
OTHER APPLICANTS**

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

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

Court File No: CV-23-00703933-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF QUALITY
RUGS OF CANADA LIMITED AND THE OTHER COMPANIES LISTED IN SCHEDULE "A"
HERETO**

collectively, the Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT J. CHADWICK
(sworn October 1, 2024)**

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**SCHEDULE “A”
OTHER APPLICANTS**

A.1 QSG Opcos (in addition to QRCL)

1. Timeline Floors Inc.
2. Ontario Flooring Ltd
3. Weston Hardwood Design Centre Inc
4. Malvern Contract Interiors Limited

A.2 Holding Companies

5. Quality Commercial Carpet Corporation;
6. Joseph Douglas Pacione Holdings Ltd.;
7. John Anthony Pacione Holdings Ltd.;
8. Jopac Enterprises Limited;
9. Patjo Holdings Inc.

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**SIXTH REPORT OF THE MONITOR DATED
OCTOBER 1, 2024**

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