

**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 (THE "APPLICANTS")**

MOTION RECORD

(Motion for the Extension of the Directors and Officers Charge, 24 Nov 2023)

November 17th 2023, 2023

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Schedule “A” – Other Applicants

A.1 Other Applicants - 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 and Other Entities to be Protected by the CCAA Stay

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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TAB 1

**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 (THE "APPLICANTS")**

**NOTICE OF MOTION
(Re: Directors and Officers Charge)**

Joseph R Pacione Sr., John Pacione, Joseph D Pacione, Ross Fletcher and Martin Katz, former Directors and Officers ("**Former QSG D&Os**") of Quality Rugs of Canada Limited and the applicants listed in Schedule "A" (collectively with the Company, variously herein the "**QSG**" or "**QSG Group**" and the "**Applicants**") will make a motion before the Honourable Justice Penny of the Ontario Superior Court of Justice (Commercial List) on Friday, November 24th, 2023 at 10:00 am, or as soon after that time as the Motion can be heard, via Zoom videoconference.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference at a link to be provided to the Service List once it is made available by the Commercial List Office.

THE MOTION IS FOR:

1. An Order extending those provisions of the Amended and Restated Initial CCAA Order ("**ARIO**") which stay proceedings against existing and former QSG D&Os until further order of this Honourable Court; and
2. Such further and other relief as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On August 25, 2023, the Honourable Justice Penny granted an initial CCAA Order in this matter (variously herein, the “**Initial Order**” and the “**Initial CCAA Order**”), which, among other things
 - a) stayed all proceedings against the directors and officers of QSG;
 - b) granted QSG’s directors and officers (the QSG D&Os) a court ordered indemnity from QSG in respect of all liabilities arising after the initiation of the CCAA Application on August 3, 2023, secured by a charge over all QSG assets, capped at \$600,000.00 (the “**D&O Charge**”).
2. These protections were continued by the Amended and Restated Initial CCAA Order (“ARIO”) made at the Comeback hearing in this proceeding on September 5, 2023.
3. QSG has a \$1 million D&O insurance policy. Potential claims against the Former D&Os have been notified to the insurer, but without admitting liability for same. The insurer has not responded as to whether it will admit the claims or provide defence coverage.
4. The D&O Charge is worded such that it provides a further \$600,000 coverage to the extent that claims are not paid under that policy and requires recourse be made first to the policy.
5. The claims notified to the insurer exceed \$1.6 Million and over \$600,000 of them may be covered by the court ordered indemnity secured by the D&O Charge.
6. The Former QSG D&Os resigned as directors and officers of QSG on October 30, 2023.
7. The Former Directors and Officers are all of the directors and officers of QSG excepting Juliet McNeely, a minority shareholder and former director of Malvern who has also resigned. She is separately represented but is anticipated to support the relief sought herein.
8. QSG was placed in receivership on October 31, 2023, and the CCAA Stay, including the stay protecting the Former D&Os, was continued until November 24, 2023.

9. The Receiver has brought a motion which proposes that the CCAA proceedings continue in parallel with the Receivership process, but that the CCAA stay would be replaced by a standard receivership stay based on the model order. The standard receivership stay does not address a stay of proceedings against directors and officers.
10. No process has yet been conducted to bar claims against QSG's former directors and officers and until that is done, the D&O Charge remains an encumbrance on QSG's assets. The existing stay protecting QSG's former directors and officers should remain in place until that issue is addressed by the court and any process the court puts into place to bar such claims is completed. It would be in the interests of the process to bar those claims as soon as possible to facilitate distributions and simplify the proceedings.
11. The court is establishing a process to determine priorities to the QSG realization proceeds in the receivership. Allowing parallel proceedings to unfold involving the directors (and various of the contending priority claimants who may become third parties) outside the CCAA/Receivership context would add unnecessary duplication, complication, and expense to the proceedings without a clear benefit to the Receivership process. Extending the CCAA Stay, insofar as it protects the past or present directors of QSG, would avoid that.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Affidavit of John Pacione affirmed November 17th, 2023, and the Exhibits attached thereto;
2. the affidavits of John Pacione affirmed September 2, 2023 and October 30, 2023 previously filed in this proceeding.
3. Such further and other documentary evidence as counsel may advise and this Court may permit.

November 17th, 2023

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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"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY
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 APPLICANTS LISTED IN SCHEDULE "A" (the
"Applicants")

AFFIDAVIT OF JOHN A. PACIONE
(Affirmed November 17, 2023)

I, John Pacione, of the City of Vaughan, in the Province of Ontario, AFFIRM AND SAY AS FOLLOWS:

1. Until October 30, 2023, I was the Co-Chief Executive Officer of the Quality Sterling Group of Companies (which group for purposes of these proceedings consists of the 10 Applicants, and is variously referred to in these proceedings as "**QSG**", the "**QSG Group**", the "**Group**" or the "**Companies**"). As such, I have knowledge of the matters to which I depose in this affidavit, save and except for such facts or matters which are based on information and belief which I verily believe to be true. Defined terms herein have the same meaning as in my previous affidavits filed in this proceeding except where specified herein.

2. This affidavit is sworn in response to motions made by stakeholders to terminate or subordinate the Director and Officers Charge ("**D&O Charge**"), and in support of a motion by the former QSG directors and officer to extend the provisions of the Amended

and Restated Initial CCAA Order (“ARIO) which stay proceedings against the former directors and officers of QSG. Specifically,

- (a) Waygar is seeking to terminate the D&O Charge on the basis that there are no claims to which it is responsive;
 - (b) Certain Suppliers are seeking a trust charge with superpriority over all other claims on QSG assets including the D&O Charge;
 - (c) The former directors and officers of QSG (“Former D&Os”) are seeking a continuance of the provisions of the CCAA Stay which stay proceedings against them, until further Order of this Honourable Court.
3. All of the directors and officers of QSG have resigned. The former directors and officers of QSG bringing this motion are Joseph R Pacione, Joseph D Pacione, John Pacione, Ross Fletcher and Martin Katz (the “**Former D&Os**”). During the CCAA from the initial filing date (August 4, 2023) until their resignation on October 30, 2023 (the date Ironbridge Equity Partners Management Limited (“Ironbridge”) advised it would not complete the proposed purchase of QSG’s business and assets), those were all of the directors and officers of QSG entities, excepting Juliet McNeely, a minority shareholder and former director of Malvern who has also resigned. She is separately represented but it is anticipated she will support the relief sought in the Former D&Os motion.
4. QSG filed for CCAA protection in August 2023 to try to complete a going concern sale of its business to Ironbridge, who on August 25, 2023 entered into an LOI to purchase the assets and business of QSG. Ironbridge was selected as the proposed purchaser further to a pre-filing SISP conducted by Alvarez & Marsal Canada Securities ULC (“**A&M**”) from and after February 2023. If successfully concluded, the Ironbridge transaction was expected to produce a far better outcome for QSG stakeholders than any form of liquidation process.

5. Interim protection to QSG was granted in this CCAA proceeding for the period from August 4-25, 2023 while negotiations with Waygar as senior lender took place over the form of the CCAA filing, and on August 25, 2023, an Initial CCAA Order was made with the support of Waygar and DIP financing from the proposed Purchaser Ironbridge. On the Comeback Hearing on September 5, 2023, an Amended and Restated Initial CCAA Order (the “ARIO”) was made continuing QSG’s CCAA protection until October 31, 2023 to allow for the time projected to be required to complete and execute definitive documentation, approve the transaction, and close the deal with Ironbridge.

6. Completing this purchase required QSG to do a number of things, including

- (a) to continue to operate as a going concern during the CCAA process;
- (b) to deal with various court motions including motions to approve and implement the Ironbridge transaction;
- (c) to negotiate and execute definitive transaction documentation,
- (d) and then close the transaction

Each of those steps required the continued participation of QSG’s directors and officers in their roles to provide QSG with a governance structure to carry out those activities.

7. In view of the importance of the company continuing to have a governance and executive structure to guide the CCAA process, and in view of the risk of personal liability exposure to directors and officers by continuing in those roles, the Initial Order and the ARIO gave the Former D&Os the following protections:

- (a) A stay of proceedings prohibiting proceedings against them without leave of this Honourable Court (the “**D&O Stay**”);
- (b) a court ordered indemnity from QSG (the “**Indemnity**”); and

- (c) A court ordered charge over the assets of QSG to secure the Indemnity (the “D&O Charge”) which was capped at \$600,000. The ARIO provides that the D&O Charge ranks in priority to all secured claims and other charges on the assets of QSG, with the exception of the DIP Lender’s Charge (which secures a \$5 million DIP Loan plus related interest and expenses) and the Administration Charge for CCAA professionals fees capped at \$750,000 (also both granted by the Initial Order and the ARIO).
8. As the Former D&Os resigned on October 30, 2023, the D&O Charge secures D&O exposures accruing during, or relating to, the period of from the date the Application was filed (either August 3 or 4, 2023 depending on whether the clause refers to the issue of the Application or the first court date in the CCAA process) to the date of resignation (October 30, 2023). Potential claims accruing in or relating to that period might not be known or asserted until some point subsequent to October 30, 2023.
9. QSG has a \$1 million directors and officers insurance policy with Chubb Insurance (“**D&O Insurance Policy**”), a copy of which was filed in this proceeding as an Exhibit to my August 17 Affidavit. Its coverage and exception to coverage provisions is complex and further time is required to determine to which claims it would be responsive and to get the insurer’s position on same.
10. Under the terms of the D&O Charge, recourse to the D&O Charge is available if a claim is not covered and paid under the D&O Insurance Policy. That implies recourse may need to be sought under the D&O Insurance Policy before it can be determined which claims are covered by the D&O Charge.
11. Notices of potential claims and of circumstances which could potentially give rise to claims under the policy were submitted to Chubb under the policy, the most recent and comprehensive of which submissions was by letter dated October 27, 2023, a copy of

which is attached hereto as **Exhibit A**. The potential claims notified to the insurer include amongst other things potential D&O liability for HST reassessments, payroll claims, and trust claims from suppliers. The potential claims notified to the insurer which might ultimately qualify for reimbursement under the D&O Charge may exceed \$1,600,000 (i.e. may exceed the combined coverage provided by the D&O Insurance Policy and the D&O Charge).

12. The directors and officers do not admit that any of those potential claims are valid.
13. Chubb Insurance (hereinafter variously “**Chubb**” or the “**Insurer**”) has not yet determined whether to defend, deny, admit or pay any of the claims and is still reviewing the matter and has not yet appointed counsel.
14. There is as yet no process in either the CCAA or Receivership proceedings to deal with D&O claims, and potential claims against the Former D&Os have not yet been determined or barred in either proceeding.
15. Counsel to the Former D&Os advised the stakeholders by email on November 16, 2023 that it is premature to consider terminating the D&O Charge before claims under the policy have been determined, and before claims against the Former D&Os. Directors and Officers which might qualify for reimbursement under the Charge have been barred. A copy of that email is attached hereto as **Exhibit B**.

The D&Os relied on the Stay, the Indemnity, the D&O Charge and its Priority

16. When they sought and obtained CCAA protection for QSG, QSG’s directors and officers relied on the court ordered grant of Indemnity, the D&O Charge, and the super-priority

granted for same, in deciding to continue in their director and officer roles at QSG during the CCAA process, and may not have continued in those roles otherwise.

The Role of the D&O Stay, Indemnity, D&O Charge and its Priority in the CCAA Process

17. The main purpose of the CCAA filing was to try to complete a sale to Ironbridge, who had been sourced as a potential purchaser by a SISP run by Alvarez & Marsal Canada Securities ULC (“A&M”). Ironbridge signed an LOI dated July 25, 2023 further to that SISP, and then on August 25, 2023 signed an Amended LOI that became the basis of the senior lender dropping its opposition to the filing. The LOI contemplated QSG would make a CCAA filing pursuant to a form of Initial CCAA order that contained the D&O Stay, the Indemnity, and the D&O Charge with third ranking priority.
18. The D&O Stay, Indemnity, and the D&O Charge and its priority allowed QSG to retain its executive decision making structure to allow QSG to:
 - (a) continue to operate in the ordinary course while attempts were made to get the definitive document finalized, executed and approved, and then to close the deal before the end of October;
 - (b) to bring motions in the CCAA process to assist in attaining those objectives
 - (c) to take the transactional steps necessary to implement those objectives.

As the sale would be far better for stakeholders than any form of liquidation, the granting of those protections enabled stakeholders an opportunity to access that improved overall realization.

19. No stakeholders opposed the Initial Order or the ARIO. Once Waygar’s support for the sale was secured on August 25, 2023, no stakeholder opposed the pursuit of the sale to Ironbridge. No stakeholder opposed the grant of the D& O Stay, the Indemnity or the

D&O Charge or its priority on August 25 or at the Comeback hearing on September 5, 2023 or at any time prior to their resignation on October 30, 2023.

20. While the sale did not ultimately close despite QSG's best efforts, on an operational level, the CCAA process allowed QSG to operate efficiently in the normal course. QSG's core variable assets remained roughly the same from August 25, 2023 to end of October, 2023 while the sale was pursued. That protected the value of the business and its assets. Specifically, QSG's records showed the following for its total accounts receivable (net of doubtful accounts), contract holdbacks, and inventory (its core variable assets) for weeks ending from Sept 3 to October 22, 2023:

Quality Sterling Group (\$000s)	Sep 3	Sep 10	Sep 17	Sep 24	Oct 1	Oct 8	Oct 15	Oct 22
Accounts receivable	32,287	31,626	31,828	35,075	34,119	31,917	31,700	31,832
Holdbacks	7,197	7,237	7,129	6,751	6,561	6,561	6,557	6,912
Inventory	6,573	6,573	6,293	6,293	6,293	6,293	7,125	7,125
	<u>46,057</u>	<u>45,436</u>	<u>45,250</u>	<u>48,119</u>	<u>46,973</u>	<u>44,771</u>	<u>45,382</u>	<u>45,869</u>

21. As QSG bought supplies on a COD basis during the CCAA, paid its employees and installers on their normal payroll schedules, and remitted current HST, and largely paid its professionals during the process, its unsecured liabilities did not materially increase between October 4 and October 31, 2023 with the exception of the DIP Loan. While the DIP Loan increased from 0\$ on August 3, 2023 to \$5 million (plus interest and expenses) by October 31, 2023, that DIP Loan simply replaced QSG's \$6 million in cash which was swept on August 3 to pay down the Waygar loan.

Position of the Directors and Officers on the November 24, Motions

22. The positions of the Former D&Os on the motions returnable November 24, 2023 motions are as follows:
- (a) They oppose the termination of the D&O Charge proposed by Waygar as premature for the reasons noted above;
 - (b) They do not oppose subordinating the D&O charge to the Receivers' charges for its fees and borrowings, as priority charges to run and finance the receivership are necessary just like the DIP and D&O Charges were necessary in the CCAA for those purposes;
 - (c) They oppose the subordination of the D&O Charge to any Trust charge to be established in favour of suppliers, as operating the company is what produced the pool of receivables and ultimately collections which is sought to be attached by that charge. Someone had to operate QSG to do that, and to induce the D&Os to do so, a priority indemnity and charge protecting them from liability in the CCAA was necessary; and
 - (d) They do not oppose the Receiver's proposal to have a lien and trust claims process. As noted below, they believe that should be supplemented by a process to bar D&O claims.

Extending the CCAA Stay of Proceedings insofar only as it pertains to the D&Os

23. As noted the D&O Stay provisions of the ARIO stay all proceedings against the directors and officers. That aspect of the stay should be extended until claims are barred against the D&Os.
24. The directors and officers charge issue is collateral to the real dispute in the case which is a priority issue amongst QSG's other senior creditors and suppliers as to how the proceeds of realization of the QSG assets will be distributed. That is being determined with in the CCAA and Receivership proceedings. If the D&O Stay were not extended, it could lead to parallel proceedings outside the CCAA/Receivership process into which some or all of the contending parties in the main priorities dispute might be added as third

parties. That would be duplicative, expensive, inefficient, and would unnecessarily complicate matters. QSG related matters should be dealt with as far as possible within the context of the CCAA and Receivership and the extension of the D&O Stay facilitates that.

Barring Claims Against the D&Os

25. By email dated November 16th 2023, counsel to the D&Os advised the Stakeholders participating in the November 24 motions that terminating the D&O Charge and avoiding parallel proceedings could be achieved by:

- (a) Barring all claims against QSG's former directors and officers;
- (b) Establishing and completing a claims bar process for claims against QSG's former directors and officers. This option has downsides as it could lead to delay and unnecessary expense in dealing with contingent claims that might never materialize as well as unmeritorious claims, without a clear benefit to the CCAA/Receivership process; or
- (c) As was done with the union holdback issue, limiting the recourse of all D&O claims to recovery from the D&O Insurance Policy, and otherwise barring all claims against directors and officers beyond that, provided that stakeholders would retain the right to raise director and officer liability arguments if relevant in their priority battles with other stakeholders.

26. Additional time is needed to determine what process would be most efficient to bar claims against QSG's former directors and officers. A motion could be brought forward

by the Receiver proposing a process once some consultation has occurred re same. In the meantime, extending the D&O Stay until further order of this Honourable Court would provide a framework for those consultations to occur.

AFFIRMED by John Pacione at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



DocuSigned by:
Noah Bonis Charancle 11/17/2023
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Commissioner for Taking Affidavits
(or as may be)
Noah Bonis Charancle, LSO #88470Q

DocuSigned by:
John Pacione 11/17/2023
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JOHN PACIONE



This is Exhibit "A" referred to in the Affidavit of John A. Pacione
sworn at the City of Toronto, in the Province of Ontario, before me
on November 17 2023 , in Accordance with O. Reg. 431/20 Administering
Oath or Declaration Remotely

DocuSigned by:
 11/17/2023
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Commissioner for Taking Affidavits (or as may be)

Noah Bonis Charancle, LSO #88470Q



October 27, 2023

Chubb Insurance Company of Canada
 Address: Delivered by e-mail
Jenny.Chamat@Chubb.com

Attention: Claims Department
 Jenny Chamat-Paniagua

Re: *Directors and Officers Insurance Policy# 82427885 - Notice of Claims*

Dear Ms. Chamat-Paniagua and Ms. DiPietro

We are hereby giving you notice of additional claims made or likely to arise against the directors and officers (D&Os) of the Quality Sterling Group of Companies (QSG) within the policy period. The company is operating under a *Companies Creditors Arrangements Act* ("CCAA") filing initial filed on August 4, 2023. An interim Order was made that date creating a stay of proceedings and full CCAA protection was granted to QSG on August 25, 2023. (To be eligible for protection under the CCAA, a company must be insolvent; hence QSG has been found by the court to have been insolvent as of August 25, 2023.)

Details of QSG's CCAA filing can be found on the CCAA Monitor's website at
<https://rsmcanada.com/services/consulting/restructuring-and-recovery/current-engagements/quality-sterling-group.html>

Below are the claims submitted in this notice:

CLAIM	AMOUNT (all amounts are estimates)	NOTES
Unpaid wages and vacation pay owing to employees (claims by employees or under WEPPA)	\$400,000 +	<p>Directors and Officers may have statutory liability to employees for unpaid wages and for unpaid vacation pay.</p> <p>Payroll (approx. \$400K biweekly) is current, but if the CCAA does not conclude successfully and ends in Receivership or Bankruptcy, amounts will accrue between the last pay period and the date of the bankruptcy or receivership and potentially for which the directors and officer might become liable.</p> <p>As well if, during the CCAA process, QSG runs short of money due to low collections or restriction on DIP Loan, it may</p>

		become unable to meet payroll obligations or honour vacation pay claims.
Unpaid source deductions from employee wages (EI, CPP, Employee portion of income tax etc) (claims by employees or CRA)	Included in above calculation	See above. Directors and Officers may have statutory liability for unpaid source deductions
Vacation Pay	\$202,000+	Directors and Officers may have statutory liability for unpaid vacation pay. Approximately \$202,000 is presently outstanding in unpaid vacation pay of which approximately \$128,000 accrued since the CCAA filing. The Company has not been able to pay any of the \$202,000 during the CCAA process.
Canada Revenue Agency has proposed a re-assessment of ITC's on unpaid Payables as of August 25, 2023	\$2,128,094.72	The basis of the proposed reassessment is that ITCs were deducted in the ordinary course on approximately \$18 million in supplier payables, but payments of the payables were then deferred and had not been paid by the time QSG sought CCAA protection on August 25, 2023. QSG is reviewing the CRA proposed assessment and has the right to object until November 16, 2023. CRA will issue the reassessment unless it is persuaded not to by any objection which is filed before November 16, 2023.
Trust related claims of suppliers under the Ontario Construction Act and related legislation in other provinces, and constructive trust claims arising from unperformed trust obligations under those acts. (Claims by the trade creditors of QSG companies)	\$18,300,000 +	There are approximately \$18.3 Million in materials supplier payables. Suppliers have a potential statutory trust claim under the Construction Act (and related legislation in other provinces in certain cases) against receivables owing to the QSG arising from the installation or use on a construction site of materials or services they supply to construction projects. That trust continues in the receipt once the receivable is collected by QSG which is required to deposit it to a project receipts account. Under the applicable statutory rules, directors can be held liable for use of the trust funds to pay

Union Claims
LiUNA Local 183 ("LiUNA")
Carpenters Union Local 27 ("CU-27")

Installer Holdback funds

\$190,000+

non supplier payables by QSG before project suppliers are paid in full, if they did so and knew or ought to have known of the trust obligations attaching to the funds.

Constructive trust claims re same might also be asserted against the directors by suppliers.

Contribution claims re same might also be asserted by others sued by unpaid suppliers.

At least one supplier, Olympia Tile, has raised by letter the prospect of asserting a \$555,000 claim against the directors for breach of the statutory trust.

A group of the suppliers led by Torlys, with aggregate materials claims totaling \$12,042,000, has raised the prospect in a telephone call with counsel to QSG of pursuing those claims against the directors based on breach of the statutory trust, but have not yet given formal notification of the intention to do so.

A list of the materials suppliers owed \$18.3 + million, each of which is a potential claimant against the directors and officers, is attached hereto.

Two unions Liuna and CU-27 (the "unions") have asserted claims in the CCAA proceedings against the directors and officers in respect of installers covered by collective agreements.

Specifically the Unions have asserted that amounts deducted by QSG from installer payables as a reserve for quality issues resulting from installer flooring installations on projects, was supposed to be held in trust in specie as a trust fund. As the amounts were not so held, the Unions have reserved the right to claim against the directors and officers for breach of trust.

The holdback amounts in each case are approximately \$95,000 – in other words the total principal amount of the claims is approximately \$190,000+

<p>Union Claims LiUNA Local 183 ("LiUNA") Carpenters Union Local 27 ("CU-27")</p> <p>Liability for unpaid Wages to Installers and pension and other remittances owed to the union on their behalf.</p>	<p>Installer Payroll \$575,000 x 2 weeks = \$1,150,000</p> <p>Installer remittances re pensions benefits etc current to Sept 30. Accrued amount owing for Oct (payable Nov 15) estimated to be \$185,000</p>	<p>The court has set aside a fund of \$190,000 to answer for such claims in the CCAA proceedings, but if that fund is released before the Unions assert claims, claims can be made against the directors and officers.</p> <p>LiUNA and CU-27 have asserted that the QSG installers, who are hired contractors, legally qualify as employees. Hence the Unions will seek to hold the directors and officers liable for non-payment of payments to the installers, and for non-payment of remittances for pensions and union dues etc to the unions, on the basis that they are wages and potentially under other legal theories. Directors and officers may be liable for non-payment of Wages under various statutes.</p>
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This notice of claims made is not an admission of liability. All liability for such claims is denied and QSG and the D&Os intend to contest any such claims if made.

QSG and the D&Os deny any at fault conduct giving rise to any such claims and assert that they have performed their duties at all material times.

All of the amounts of the potential claims above are estimates based on information to date. The amounts may change as the claims are asserted.

All rights under the policy and otherwise are hereby reserved.

In the CCAA proceedings, the directors and officers of QSG were granted a court ordered indemnity from QSG for these claims secured by a court ordered charge over the QSG assets, capped at \$600,000. However the terms of the indemnity require resort to be had first to claims under this policy.

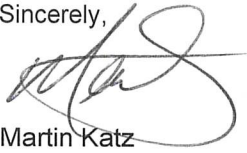
We would be happy to discuss this with you should you require any further information to assess the claims. A claim under the insurance policy for coverage and indemnification in respect of the above claims, including for legal fees and other expenses in respect of their handling and defence, is hereby made.

This letter is sent to you on behalf of QSG and each of its directors and officers and any other person covered by the policy, and is intended to be a claim made within the policy period by every person and entity covered by the policy, and under any other policies that QSG may have with you that are responsive to such claims.

Without prejudice to the assertion of claims under the policy above, please also treat this as notice of circumstances that may give rise to claims under the policy.

The present notice of claims is in addition to any other notices of circumstances and notices of claims already submitted under the policy, all of which prior notices continued to be relied upon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin Katz', written over a circular scribble.

Martin Katz

Group Controller,
Quality Sterling Group

cc. Maria DiPietro Maria.DiPietro@Chubb.com



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Writer's Ext. 225
Secretary's Ext. 233
Writer's email: mdrudi@dakllp.com
Our File No. 230245

August 23, 2023

VIA EMAIL: cbesant@grllp.com

Gardiner Roberts LLP
East Tower, 22 Adelaide St W, Ste 3600
Toronto, ON M5H 4E3

Attention: Chris Besant

Dear Sir:

RE:

Our Client: Olympia Tile International Inc. ("Olympia")
Your Clients: Quality Rugs of Canada Limited, ("Quality") Malvern Contract Interiors Limited ("Malvern") and Timeline Floors Inc. ("Timeline") (collectively "your Clients")
Application: Waygar Capital Inc. v. Quality Rugs of Canada Limited, CV-23-00703933-00CL (the "Application")

Our firm was recently retained by Olympia , a supplier to some of the respondents in the Application. We understand that you act for the Respondents.

Currently, the total outstanding amount across 15 projects by your Clients is \$555,988.22

We in the process of registering liens on these projects as the initial CCAA Order permits preservations of liens.

We also have instructions to commence a breach of trust action against your Clients including its officers and directors under s. 13 of the Construction Act (the "**Trust Action**").

In addition, please provide us with all materials that have been exchanged or filed with the Court in the Application.

Yours very truly,

DRUDI ALEXIOU KUCHAR LLP

Per: *Marco Drudi*

Marco Drudi

MD/sr

Signed in accordance with the Electronic Commerce Act, 2000, S.O. 2000, c. 17

This is Exhibit "B" referred to in the Affidavit of John A. Pacione
sworn at the City of Toronto, in the Province of Ontario, before me
on November 17 2023 , in Accordance with O. Reg. 431/20 Administering
Oath or Declaration Remotely

DocuSigned by:
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Commissioner for Taking Affidavits (or as may be)

Noah Bonis Charancle, LSO #88470Q

Archived: Thursday, November 16, 2023 4:35:12 PM

From: [Besant, Chris](#)

Sent: Thursday, November 16, 2023 1:49:51 PM

To: [Kraft, Kenneth](#); jlatham@goodmans.ca; sgraff@airdberlis.com; mlici@airdberlis.com

Subject: D&O Insurance Claims Notice + D&O Charge, Stay and Bar

Sensitivity: Normal

Ken, Joe, Steve & Matilda

NOTICE OF CLAIMS SENT TO INSURER UNDER D&O POLICY

A notice of potential claims and circumstances delivered under the QSG D&O Policy on October 27, 2023. There was other correspondence with the insurer prior to that. The point for present purposes is that the total of the potential claims in the notice exceeds the \$600,000 cap on the D&O Charge.

D&O CHARGE CONTINUATION PENDING BARRING OF POTENTIAL CLAIMS AGAINST D&Os

As the potential claims exceed \$600K, it is premature to terminate the D&O Charge until these claims are barred or determined to be invalid or determined not to be covered by the Charge.

The D&Os we represent (ie (John JD and Joe Pacione Sr, Ross Fletcher and Martin Katz) do not admit that any of the claims are valid and will seek to have them dismissed if advanced. The D&Os believe there are defences or answers to each.

The D&Os relied on the D&O Charge to continue in office, so it's not an option to terminate the charge without resolving whether there are claims covered by the charge

Note that the way the D&O Charge works, it covers claims within its scope not otherwise paid by the D&O Policy. Hence the policy is not a substitute for the D&O Charge under the CCAA Order, and the fact that the policy exists is no a basis to terminate the D&O Charge.

Note that the D&Os resigned effective October 30, 2023 so any liability issues relate only to the period up to October 30. There is no reason for the charge to continue for issues beyond October 30.

Note also that there is at least one D&O we don't represent – Juliet Neely who is a director of Malvern as she is a minority shareholder. She is represented by Peter Vitre of Sotos LLP. I would assume she will take a similar position.

EXTENSION OF D&O STAY

As claims against the D&Os are a sideshow to what is really a priorities dispute between QSG senior creditors, allowing the claims to proceed without extending the D&O stay could lead to parallel proceedings into which all the contending parties are added as third parties, which would be wasteful. Hence extending the CCAA stay against the D&Os is a practical step.. The Receiver's motion should be modified to seek that.

BARRING THE D&O CLAIMS TO ALLOW EXTINGUISHMENT OF THE D&O CHARGE AND AVOID PARALLEL PROCEEDINGS

To put the process in a position to terminate the charge, and to avoid parallel proceedings, the options are to

1. bar all claims against the D&Os;
2. have a claims process which includes claims against the D&Os (which is suboptimal as it prolongs things); or
3. set up a solution as with done with the Union Holdback issue and stream all claims to the D&O Charge and D&O policy, and bar all other D&O claims, but preserve the right of parties to raise D&O arguments in their priority battles with other parties.

CHARGE PRIORITY

Ideally we can come to an agreement on the relief being sought that reflects the above points so that the D&O role in the Nov 24 motions is limited. The D&Os are not opposing the charge priority proposed in the Receiver's draft motion, so if the above

points are reflected, their role on Nov 24 could be limited to opposing the demotion of the D&O Charge sought by the suppliers.

I am happy to discuss.



Chris Besant • Partner

Gardiner Roberts LLP

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Named one of Ontario's Top 10 Regional Firms by Canadian Lawyer Magazine in 2021-22

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"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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Chris Besant (248820)

Tel: (416) 865-6600

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Lawyers for the Applicants