Court File No. BK-26-03364251-0032

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NATIONAL TRAFFIC SAFETY MANAGEMENT INC.

FACTUM OF LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 183 AND 506

(Motion of the Proposal Trustee returnable October 26, 2026)

PART I – OVERVIEW

1. Ramudden bid on a transaction that pays the post-filing union arrears out of the purchase price. The Proposal Trustee asks the Court to approve that transaction, but without that payment. The Court has no power to authorize the sale on those terms.

2. There are three unions involved in this matter, all locals of the Labourers' International Union of North America ("**LIUNA**"). LIUNA Locals 183 and 506 (the "**Unions**") are aligned, share counsel and submit this factum. LIUNA Local 837 is separately represented. The Unions support the sale. The *Bankruptcy and Insolvency Act* (the **"BIA"**) permits the Court to authorize it only if the employees' post-filing compensation and unpaid pension contributions will be paid. The Unions ask the Court to approve the sale on that condition and to direct the Proposal Trustee to pay those amounts in full from the proceeds.

PART II – FACTS

3. On October 16, 2026, Ramudden Global (Canada) Inc. (**"Ramudden"**) delivered a binding letter of intent (the **"LOI"**) to purchase the assets of National Traffic Safety Management Inc. (the **"Company"**). Section 1 divides the purchase price among named obligations, including $650,000 to Emkay Canada Leasing Corp. (**"Emkay"**), $718,000 to Oxygen Working Capital Corp. (**"Oxygen"**), $368,841 for pre-filing union pension and vacation pay, and $384,887.54 for post-filing union amounts. Those amounts "shall be paid or applied by the Proposal Trustee

from the Purchase Price pursuant to the Approval and Vesting Order or a further order of the Court."[1]

4. Ramudden's director gave evidence that the bid "will provide for payment of amounts owing to the Company's unions and the CRA in respect of post-filing obligations."[2]

5. TDB Restructuring Limited, in its capacity as proposal trustee (the **"Proposal Trustee"**), moves for approval of the transaction contemplated by the LOI.[3] It "has not agreed to, and does not recommend," the LOI's payment allocations.[4] It seeks to increase the administration charge granted in these proceedings (the **"Administration Charge"**) from $200,000 to $300,000 and to pay professional fees from the proceeds before the deemed assignment.[5] The asset purchase agreement keeps a directed payment to Emkay.[6]

6. The Company filed a notice of intention to make a proposal (the "**NOI**") on April 24, 2026. It did not pay its post-filing union obligations during these proceedings. Up to the August 2026 reporting period, it owes $64,738.44 to Local 183 and $15,261.47 to Local 506. The Proposal Trustee expects secured claims to exceed the assets available in a bankruptcy.[7]

PART III – ISSUES

7. There are two issues. First, whether subsection 65.13(8) of the BIA requires payment of the unionized employees' post-filing compensation and unpaid pension contributions as a condition of approving the sale. Second, whether the approval and vesting order should direct the Proposal Trustee to pay those amounts from the proceeds on closing, ahead of the Administration Charge.

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[1] LOI, s 1, Responding Motion Record of Ramudden ("**RMR**"), Tab 1, Exhibit "B".
[2] Affidavit of Jamie West sworn October 21, 2026 ("**West Affidavit**") at para 16, RMR, Tab 1.
[3] Notice of Motion of the Proposal Trustee dated October 23, 2026 ("**Notice of Motion**") at relief (a).
[4] Seventh Report of the Proposal Trustee dated October 23, 2026 ("**Seventh Report**") at para 38.
[5] Notice of Motion at relief (d) and (f); Seventh Report at paras 29–33 and 37.
[6] Asset Purchase Agreement dated October 21, 2026, s 3.6, RMR, Tab 1, Exhibit "A".
[7] Seventh Report at para 45.

PART IV – LAW AND ARGUMENT

A. The Court can approve the sale only if it directs payment of the statutory employee amounts

8. Section 65.13 of the BIA is the source of the Court's power to approve this sale.[8] It is also a limit on that power. The Court "may grant the authorization **only if the court is satisfied that the insolvent person can and will make the payments** that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal" [Emphasis added].[9] Paragraph 60(1.3)(a) requires payment of "compensation for services rendered after" the NOI, and of the amounts employees could claim under paragraph 136(1)(d) as at the filing date. Paragraph 60(1.5)(a) requires payment of pension amounts "unpaid to the fund", whenever they arose. The post-filing union amounts include various contributions owed to the LIUNA trust funds, including benefit, vacation and training funds, all of which are compensation for work done after April 24, 2026. The pre-filing pension arrears are amounts unpaid to the fund.[10]

9. Subsection 65.13(8) applies although no proposal will follow. Parliament enacted section 65.13 in the statute that established the Wage Earner Protection Program, and the Government described that statute as a response to the inadequate protection of workers whose employers become bankrupt.[11] The subsection measures the required payments by what "would have been required" if the court "had approved the proposal". That language is written for a sale that no approved proposal will follow. This Court has held that section 65.13 authorizes a sale whether or not the debtor can present a proposal. Parliament could have made a proposal a condition of that power, and did not.[12] If the Court may approve this sale without a proposal, it may do so only on the terms subsection 65.13(8) sets.

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[8] Notice of Motion at para 28.
[9] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 65.13(8).
[10] BIA, ss 60(1.3)(a) and 60(1.5)(a).
[11] *Komtech Inc (Re)*, 2011 ONSC 3230 at paras 30–31.
[12] *Komtech* at paras 25 and 33.

10. The post-filing amounts are pension contributions, vacation pay and contributions to the benefit and training funds. Pension contributions fall within paragraph 60(1.5)(a). The BIA treats vacation pay as compensation.[13] "Compensation" in subsection 60(1.3) includes amounts owing in exchange for an employee's labour, and extends to remittances to a union for the employee's benefit.[14] The remittances here are calculated on hours worked. The pension, benefit and training contributions are remittances of that kind.

11. The LOI shows that the Company can pay these amounts. It sets aside $384,887.54 for the post-filing amounts and $368,841 for the pre-filing amounts.[15] The Proposal Trustee's plan shows that the Company will not. It leaves them to the bankruptcy.[16] On that plan, the employees will not receive their "compensation for services rendered" after the NOI, and the statutory condition fails. The discretionary test points the same way: the Court must consider "the effects of the proposed sale or disposition on the creditors and other interested parties".[17]

B. **The payments are a condition of the sale**

12. The Proposal Trustee submits that the proceeds should be distributed only in a bankruptcy, under the statutory scheme, and that the LOI cannot reorder priorities without creditor consent. That submission mistakes the nature of the payment. A payment required by subsection 65.13(8) is not a distribution of the proceeds. It is the statutory condition of the order that authorizes the sale. Parliament put these amounts first, and a statutory condition needs no creditor's consent. The submission fails for two further reasons:

    (1) The Proposal Trustee asks the Court to approve a transaction no one proposed. Ramudden priced its bid on the allocations in section 1. The Proposal Trustee selected that bid for its "purchase price and other material

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[13] BIA, s 81.3(9).
[14] *Ted Leroy Trucking Ltd. (Re)*, 2009 BCSC 41 at para 20, aff'd 2010 BCCA 223 at para 35.
[15] LOI, ss 1(c) and 1(d).
[16] Seventh Report at paras 38 and 45.
[17] BIA, s 65.13(4)(e).

terms."[18] It now asks the Court to keep the price and strike the terms. Nor does the asset purchase agreement change that. The Proposal Trustee seeks approval of the LOI "subject to the execution of a definitive Asset Purchase Agreement".[19] The LOI remains the bid, and it supplies its own payment mechanism: the Proposal Trustee pays under the vesting order. The Court is asked to approve the LOI, and the LOI provides for these payments.

(2) The Proposal Trustee does not defer distribution to the bankruptcy for everyone. It proposes to pay its *own* fees, the other professionals and Emkay before the assignment. The union amounts are left to the bankruptcy. That is not what the LOI or Ramudden's evidence contemplated.

C. The Unions funded these proceedings and should be paid on the same footing as the professionals

13. The unpaid post-filing remittances paid for the stay. The employees worked, but the Company kept the remittance portion of their pay. The going concern that Ramudden is buying exists because of that labour. Had the unionized members stopped working, there would be nothing for Ramudden to buy. The professionals stand in the same position. They worked during the stay without payment. Yet they are to receive a larger charge and payment before bankruptcy,[20] while the Unions and their members wait. The professionals' charge need not rank ahead of the employees. This Court has granted an administration charge expressly subject to the statutory security for unpaid wages and pension contributions.[21]

14. Bankruptcy is not an equivalent remedy for these claims. In a bankruptcy, some of the post-filing amounts would be secured and others would rank as unsecured claims against an estate the Proposal Trustee expects secured claims to exhaust.[22] Whatever security exists attaches only on the bankruptcy, after the Proposal

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[18] Seventh Report at para 24(b).
[19] Seventh Report at para 5(a).
[20] Notice of Motion at relief (d) and (f); Seventh Report at paras 32–33 and 37.
[21] *Komtech* at para 34; BIA, ss 81.4(4), and 81.6(2).
[22] Seventh Report at para 45; BIA, ss 81.3 and 81.5.

Trustee has paid its own charge and Emkay from the same proceeds. Subsection 65.13(8) requires payment as a condition of the sale. Deferral leaves the employees with less than the BIA gives them.

15. The post-filing remittances are the employees' pension, benefit, vacation and training entitlements. The same employees will work for Ramudden the day after closing.[23] Parliament made payment of those entitlements a condition of any sale of this business during these proceedings. The Proposal Trustee's plan does not satisfy that condition.

16. The Proposal Trustee asks the Court to authorize the sale without the payments subsection 65.13(8) requires. The Court has no power to do that. It can authorize the sale with the payments made, and the Unions ask that it do so.

PART V – ORDER REQUESTED

17. The Unions request an order:

(a) approving the transaction contemplated by the LOI on the condition set out in paragraph (b);

(b) directing the Proposal Trustee, as a condition of the authorization under subsection 65.13(8) of the BIA, to pay in full from the proceeds on closing, whether before or after any assignment in bankruptcy and whether or not they exceed the allocations in section 1 of the LOI, the amounts required by paragraphs 60(1.3)(a) and 60(1.5)(a) of the BIA in respect of the members of all the Labourers' International Union of North America locals, including the post-filing compensation and pension contributions and the pre-filing pension contributions;

(c) declaring that neither the Administration Charge, as increased, nor any charge granted in favour of the Proposal Trustee as prospective trustee in bankruptcy ranks ahead of the amounts payable under paragraph (b);

[23] Asset Purchase Agreement, s 2.7(b), RMR, Tab 1, Exhibit "A"; Seventh Report at para 24(e).

(d) in the alternative, if the Court does not determine on this motion the amounts payable under paragraph (b), directing the Proposal Trustee to hold back from the proceeds a reserve sufficient to pay those amounts in full, pending further order; and

(e) such further relief as this Court considers just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of October, 2026.



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CERTIFICATE

I, Robert Drake, lawyer for LIUNA, Locals 183 and 506 certify that I am satisfied as to the authenticity of every authority cited in this factum.



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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3

2. *Komtech Inc (Re)*, 2011 ONSC 3230

3. *Ted Leroy Trucking Ltd. (Re)*, 2009 BCSC 41, aff'd 2010 BCCA 223

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act

R.S.C., 1985, c. B-3

Restriction on disposition of assets

- **65.13 (1)** An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

- **Factors to be considered**

  (4) In deciding whether to grant the authorization, the court is to consider, among other things,

  - **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - **(b)** whether the trustee approved the process leading to the proposed sale or disposition;
  - **(c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
  - **(d)** the extent to which the creditors were consulted;
  - **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
  - **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

- **Additional factors — related persons**

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

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

- **Related persons**

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

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

- **Restriction — employers**

  (8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Proposals by employers

60(1.3) No proposal in respect of an employer shall be approved by the court unless

- **(a)** it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period; and
- **(b)** the court is satisfied that the employer can and will make the payments as required under paragraph (a).

- **Proposals by employers — prescribed pension plans**

  (1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

  - **(a)** the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:
    - **(i)** an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,
    - **(ii)** if the prescribed pension plan is regulated by an Act of Parliament,
      - **(A)** an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and
      - **(A.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that were required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 to liquidate an unfunded liability or a solvency deficiency,
      - **(A.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined at the time of the

filing of the notice of intention or of the proposal, if no notice of intention was filed,

- **(B)** an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,
- **(C)** an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

- **(iii)** in the case of any other prescribed pension plan,
  - **(A)** an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and
  - **(A.1)** an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,
  - **(A.2)** any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed,
  - **(B)** an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,
  - **(C)** an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

- **(b)** the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Priority of claims

- **136 (1)** Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:
  - **(a)** in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;
  - **(b)** the costs of administration, in the following order,

- **(i)** the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),
- **(ii)** the expenses and fees of the trustee, and
- **(iii)** legal costs;

- **(c)** the levy payable under section 147;
- **(d)** the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

Security for unpaid wages, etc. — bankruptcy

- **81.3 (1)** The claim of a clerk, servant, travelling salesperson, labourer or worker who is owed wages, salaries, commissions or compensation by a bankrupt for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event and ending on the date of the bankruptcy is secured, as of the date of the bankruptcy, to the extent of $2,000 — less any amount paid for those services by the trustee or by a receiver — by security on the bankrupt's current assets on the date of the bankruptcy.

- **Commissions**

  (2) For the purposes of subsection (1), commissions payable when goods are shipped, delivered or paid for, if shipped, delivered or paid for during the period referred to in that subsection, are deemed to have been earned in that period.

- **Security for disbursements**

  (3) The claim of a travelling salesperson who is owed money by a bankrupt for disbursements properly incurred in and about the bankrupt's business during the period referred to in subsection (1) is secured, as of the date of the bankruptcy, to the extent of $1,000 — less any amount paid for those disbursements by the trustee or by a receiver — by security on the bankrupt's current assets on that date.

- **Rank of security**

  (4) A security under this section ranks above every other claim, right, charge or security against the bankrupt's current assets — regardless of when that other claim, right, charge or security arose — except rights under sections 81.1 and 81.2 and amounts referred to in subsection 67(3) that have been deemed to be held in trust.

- **Liability of trustee**

  (5) If the trustee disposes of current assets covered by the security, the trustee is liable for the claim of the clerk, servant, travelling salesperson, labourer or worker to the extent of the amount realized on the disposition of the current assets and is subrogated in and to all rights of the clerk, servant, travelling salesperson, labourer or worker in respect of the amounts paid to that person by the trustee.

- **Claims of officers and directors**

  (6) No officer or director of the bankrupt is entitled to have a claim secured under this section.

- **Non-arm's length**

  (7) A person who, in respect of a transaction, was not dealing at arm's length with the bankrupt is not entitled to have a claim arising from that transaction secured by this section unless, in the opinion of the trustee, having regard to the circumstances — including the remuneration for, the terms and conditions of and the duration, nature and importance of the services rendered — it is reasonable to conclude that they would have entered into a substantially similar transaction if they had been dealing with each other at arm's length.

- **Proof by delivery**

  (8) A claim referred to in this section is proved by delivering to the trustee a proof of claim in the prescribed form.

- **Definitions**

  (9) The following definitions apply in this section.

  compensation includes vacation pay but does not include termination or severance pay. (*rémunération*)

  receiver means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1). (*séquestre*)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF NATIONAL TRAFFIC SAFETY MANAGEMENT INC.

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(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM OF LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCALS 183 AND 506

(Motion of the Proposal Trustee returnable October 26, 2026)

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