

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
NATIONAL TRAFFIC SAFETY MANAGEMENT INC.  
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**STATEMENT OF LAW OF NATIONAL TRAFFIC SAFETY  
MANAGEMENT INC.**

(Returnable May 3, 2024)

May 2, 2024

**CHAITONS LLP**  
5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, Ontario M2N 7E9

**Harvey Chaiton** (LSO No. 21592F)  
Tel: (416) 218-1129  
E-mail: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Laura Culleton** (LSO No. 82428R)  
Tel: (416) 218-1128  
Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

**Lawyers for National Traffic Safety  
Management Inc.**

TO: THE SERVICE LIST

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**Relief Sought**

1. National Traffic Safety Management Inc. (the “**Company**”) seeks the following relief:
  - (a) approving the Amended and Restated DIP Term Sheet between the Company and J9 Investments Inc. dated April 30, 2024 (“**Amended DIP Term Sheet**”) and granting an increase to the DIP Charge to secure the DIP Loan;
  - (b) granting the Administration Charge to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee’s counsel and the Company’s counsel (the “**Administrative Professionals**”);
  - (c) granting the D&O Charge; and
  - (d) extending the time required for the Company to file its proposal from May 5, 2024, the date the current stay expires, to June 19, 2024.

**The Court Should Approve the Amended DIP Term Sheet**

2. On April 16, 2024, Justice Cavanagh approved a bridge interim financing loan pursuant to a term sheet dated April 10, 2024 between the Company and a non-arms length party, J9

Investments Inc. in order to finance the Company's working capital requirements and general corporate purposes.<sup>1</sup>

3. The Company has continued negotiations with a third-party lender for replacement interim financing. The third-party lender has not yet completed its due diligence process.<sup>2</sup>

4. In the meantime, the Company requires additional financing to pay its post-filing obligations.<sup>3</sup>

5. The Company and J9 Investments Inc. have agreed to increase the principal amount of the interim financing provided by J9 Investments Inc. from \$150,00 to \$350,000 (the "**DIP Loan**"), conditional on, among other things, an increase in the debtor-in-possession charge from \$150,000 to \$350,000 (the "**DIP Charge**").<sup>4</sup>

6. Pursuant to section 50.6 of the BIA, the Court may make an order declaring that all or part of the Company's property is subject to a security or charge and order that the security or charge rank in priority over the claim of any secured creditor of the Company.<sup>5</sup>

7. In deciding whether to make such an order, the Court is to consider the following:<sup>6</sup>

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;

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<sup>1</sup> Motion Record of National Traffic Safety Management Inc., Tab 2, Affidavit of Michael Spencley sworn May 1, 2024 (the "**Second Spencley Affidavit**") at para. 3.

<sup>2</sup> Second Spencley Affidavit at para. 6.

<sup>3</sup> Second Spencley Affidavit at para. 7.

<sup>4</sup> Second Spencley Affidavit at para. 5.

<sup>5</sup> *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"), section 50.6(1).

<sup>6</sup> BIA, section 50.6(5).

- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

8. The Amended DIP Term Sheet should be approved and the increase to the DIP Charge should be granted for the following reasons:

- (a) the Company requires the increase in the DIP Loan to pay its post-filing obligations;
- (b) the Company anticipates the third-party lender will complete its due diligence in the coming weeks;
- (c) the terms of the Amended DIP Term Sheet are consistent with the terms of DIP financing facilities in similar proceedings;  
and
- (d) the Proposal Trustee supports the approval of the Amended DIP Term Sheet and the increase to the DIP Charge.

9. Pursuant to section 50.6(4) of the BIA, the court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) on consent of the person in whose favour the previous order was made.<sup>7</sup>

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<sup>7</sup> BIA, section 50.6(4).

10. J9 Investments Inc. has agreed that the DIP Charge shall rank subordinate to the Administration Charge and the first tranche of the D&O Charge pursuant to the Amended DIP Term Sheet.<sup>8</sup>

### **The Court Should Approve the Administration Charge**

11. The Company also seeks the Administration Charge in the amount of \$100,000 to secure the fees of the Administrative Professionals, whose services are critical to this proceeding. The Administration Charge is to rank in priority over the first and second tranches of the D&O Charge, the DIP Charge and all other claims and encumbrances.

12. The BIA confers on the court the statutory jurisdiction to grant an administration charge. Specifically, section 64.2 provides as follows:<sup>9</sup>

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

**64.2 (2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

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<sup>8</sup> Second Spencley Affidavit at para. 8; Exhibit "A" to the Second Spencley Affidavit.

<sup>9</sup> BIA, section 64.2.

13. Administrative charges have been approved in BIA proposal proceedings, where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the BIA.<sup>10</sup>

14. The Company submits that this is an appropriate circumstance for the Court to grant the Administration Charge. The Company has worked with the Proposal Trustee to estimate the quantum of the Administration Charge. The proposed Administration Charge is both fair and reasonable in the circumstances.<sup>11</sup>

### **The Court should approve the Director's Charge**

15. The Company is seeking an order granting a charge over its property and assets in favour of its directors and officers (the “**D&O Charge**”) to secure obligations they may incur as directors and officers of the Company during the NOI Proceedings. The first tranche of the D&O charge in the amount of \$100,000, will rank in priority to all other claims and encumbrances, with the exception of the Administration Charge. The second tranche of the D&O Charge in the amount of \$250,000 will rank subordinate to the Administration Charge, the first tranche of the D&O Charge and the DIP Charge but in priority to all other claims and encumbrances.

16. Section 64.1 of the BIA permits the Court to grant a charge in connection with the indemnification of a director or officer:<sup>12</sup>

**64.1 (1)** On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to

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<sup>10</sup> [Mustang GP Ltd. \(Re\), 2015 ONSC 6562 at paras. 32-33.](#)

<sup>11</sup> Second Spencley Affidavit, at para. 13.

<sup>12</sup> BIA, section 64.1(1).

indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

17. The purpose of the D&O Charge is to:
- a) keep the directors and officers in place during the restructuring by providing them with protection against liabilities they may incur during the process, and in addition to avoid a potential destabilization of the business if they resigned; and
  - b) enable a debtor company to benefit from an experienced director or officer during the restructuring proceedings.
18. In *Colossus*, Justice Wilton-Siegel approved the request for a charge to indemnify directors pursuant to section 64.1 of the BIA, and in so doing, highlighted the fact that the continued involvement of the remaining directors and officers was critical to the operations of the company during its proposal proceedings.<sup>13</sup>
19. The Company has worked with the Proposal Trustee to estimate the proposed amount of the D&O Charge. The Company and the Proposal Trustee considers the D&O Charge to be reasonable and appropriate in the circumstances.<sup>14</sup>

### **The Court Should Grant an Extension of the Proposal Period**

20. The Company filed its NOI on April 5, 2024. By operation of section 50.4(8) of the BIA, the Company is required to file a proposal within 30 days unless it otherwise obtains an extension

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<sup>13</sup> *Colossus Minerals Inc (Re)*, 2014 ONSC 514 at paras. 16 and 20.

<sup>14</sup> Second Spencley Affidavit, at para. 13.

of time from the Court within that 30-day period. The Company is seeking to extend the time within which a proposal must be filed to and including June 19, 2024.

21. Pursuant to section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is satisfied that:<sup>15</sup>

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

22. The Company respectfully submits that the extension sought ought to be approved for, *inter alia*, the following reasons:

- (a) the Company is acting in good faith and with due diligence<sup>16</sup>;
- (b) an extension of the proposal will enable the Company to make a viable proposal to its creditors<sup>17</sup>;
- (c) the extension will not materially prejudice any creditors<sup>18</sup>; and
- (d) the proposed extension is supported by the Proposal Trustee<sup>19</sup>.

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<sup>15</sup> BIA, section 50.4(9).

<sup>16</sup> Second Spencley Affidavit, at para. 16.

<sup>17</sup> Second Spencley Affidavit, at para. 15.

<sup>18</sup> Second Spencley Affidavit, at para. 17.

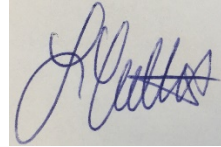
<sup>19</sup> Second Report of the Proposal Trustee dated May 2, 2024, at para. 29.



**V – RELIEF SOUGHT**

23. For the reasons set out above, the Company requests that this Court grant an order for the relief sought in its Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of May, 2024.



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**CHAITONS LLP**

**Lawyers for National Traffic Safety  
Management Inc.**

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. [\*Mustang GP Ltd. \(Re\)\*, 2015 ONSC 6562](#)
2. [\*Colossus Minerals Inc \(Re\)\*, 2014 ONSC 514](#)

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

#### *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*

#### **Extension of time for filing proposal**

**50.4 (9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

#### **Order — interim financing**

**50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor’s cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

**(2)** In the case of an individual,

- (a) they may not make an application under subsection (1) unless they are carrying on a business; and
- (b) only property acquired for or used in relation to the business may be subject to a security or charge.

#### **Priority**

**(3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

#### **Priority — previous orders**

(4) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

- (5) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
  - (b) how the debtor's business and financial affairs are to be managed during the proceedings;
  - (c) whether the debtor's management has the confidence of its major creditors;
  - (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
  - (e) the nature and value of the debtor's property;
  - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
  - (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

### **Security or charge relating to director's indemnification**

64.1 (1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

### **Restriction — indemnification insurance**

(3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

### **Negligence, misconduct or fault**

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

### **Court may order security or charge to cover certain costs**

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

### **Individual**

(3) In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

### **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.

### **Individuals**

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

### **Notice to secured creditors**

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

### **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).

### **Assets may be disposed of free and clear**

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**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.

**Restriction — intellectual property**

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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MANAGEMENT INC.,  
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Court File No. BK-24-03064916-0031

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
**IN BANKRUPTCY AND**  
**INSOLVENCY**

Proceedings commenced at TORONTO

**STATEMENT OF LAW**

**CHAITONS LLP**

5000 Yonge Street, 10<sup>th</sup> Floor  
Toronto, ON M2N 7E9

**Harvey Chaiton** (LSO #21592F)

Tel: (416) 218-1129

Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**Laura Culleton** (LSO #82428R)

Tel: (416) 218-1128

Email: [laurac@chaitons.com](mailto:laurac@chaitons.com)

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