

Court File No. BK-26-03371910-0033  
Estate No. 33-3371910

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C.  
B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO  
MAKE A PROPOSAL OF CYMI CANADA INC. FILED IN  
THE CITY OF OTTAWA, IN THE PROVINCE OF  
ONTARIO**

**FACTUM OF CYMI CANADA INC.**

(Motion for Initial Order returnable on June 9, 2026 at 10:00 AM)

June 8, 2026

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**TO: THE SERVICE LIST**

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## PART I – OVERVIEW

1. On May 12, 2026, CYMI Canada Inc. (“**CYMI**”) filed a notice of intention to make a proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). TDB Restructuring Limited (“**TDB**”) was named proposal trustee (the “**Proposal Trustee**”) in CYMI’s proposal proceeding (the “**Proposal Proceedings**”).
2. CYMI with the support of its interim lender and the Proposal Trustee seeks an initial proposal order for, among other things, the following:
  - (a) if necessary, abridging the time for service and filing of the notice of motion and the motion record, validating service of the notice of motion and the motion record so that this motion is properly returnable on June 9, 2026, and dispensing with further service thereof;
  - (b) extending the time for CYMI to file proposals under section 50.4(9) of the BIA by 45 days to and including July 24, 2026;
  - (c) approving the first report of the Proposal Trustee dated June 6, 2026 to be filed separately with the Court (the “**First Report**”), and the activities of the Proposal Trustee set out therein;
  - (d) authorizing CYMI to enter into the interim financing term sheet (the “**DIP Term Sheet**”) with Control y Montajes Industriales CYMI, S.A. (“**CYMI Spain**”), as interim lender, and granting super-priority charges over CYMI’s property assets and undertaking ranking in the order they appear below:
    - i. granting CYMI Spain a super priority charge (the “**DIP Charge**”) in an amount not to exceed \$500,000.00 plus interest, fees and expenses, against CYMI’s property, assets and undertakings as security for all of CYMI’s obligations to CYMI Spain under the DIP Term Sheet; and
    - ii. granting a super-priority charge against CYMI’s property, assets and undertakings in an amount not to exceed \$500,000 in favour of CYMI’s legal counsel, the Proposal Trustee and the Proposal Trustee’s legal counsel as security for the professional fees and disbursements of counsel to CYMI, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administration Charge**”), and related thereto, authorizing CYMI to

continue to realize on their assets and to use their cash and realization proceeds to pay the ongoing costs of the restructuring from same notwithstanding any trusts, deemed trusts, security interests or liens attaching to same.

## PART II - FACTS

### A. Background

3. CYMI is a privately held corporation, incorporated pursuant to the laws of Ontario with its headquarters located in Toronto, Ontario. CYMI is an electrical installation and specialty contracting company that operates in the energy, industrial, technology and infrastructure sectors.<sup>1</sup>
4. CYMI Canada is a subsidiary of CYMI Spain, an engineering, supply and construction company with more than sixty (60) years of experience in the execution and commissioning of projects in the energy, industrial, technology and infrastructure sectors. Its activities include electrical installations, transmission and distribution lines, substations, industrial facilities, pipelines, storage tanks, renewable energy projects, data centres and other complex technical installations for both public and private clients.<sup>2</sup>
5. Over a period of approximately ten (10) years, CYMI executed a number of major construction contracts in Canada, including work on large-scale infrastructure projects such as the Samuel De Champlain Bridge Corridor project, the Eglinton Light Rail Transit project, and the Gordie Howe International Bridge project.<sup>3</sup>

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<sup>1</sup> Affidavit of Oscar De la Fuente Tomé affirmed on June 6, 2026 at para 2 (“**Tome Affidavit**”), CYMI’s Motion Record (“MR”), Tab 2.

<sup>2</sup> Tome Affidavit at para 6.

<sup>3</sup> Tome Affidavit at para 7.

6. Although CYMI was able to secure and perform substantial infrastructure work in Canada, the net financial contribution of several of these contracts was limited and, in many instances, negative. The repeated occurrence of losses, together with only marginal profitability on certain projects, progressively eroded CYMI's margins, weakened its retained earnings, and placed sustained pressure on its liquidity. Over time, this pattern became a significant contributing factor to CYMI's financial difficulties, leading to the need to close its operations and conduct an orderly wind-down of its affairs<sup>4</sup>.
7. CYMI is currently insolvent with a total creditors list of approximately \$24.4 million, excluding a disputed arbitration claim. It has initiated this Proposal Proceeding in order to effect an orderly realization of its assets and to develop a proposal to its creditors for the distribution of the proceeds to its creditors that is more favourable to creditors than bankruptcy.<sup>5</sup>

### **The Three Main Heads of Relief**

*(i) Authorization of the DIP Term Sheet and DIP Charge*

8. As required by the BIA, CYMI prepared a cash flow and the Proposal Trustee prepared a report on same and it was duly filed within the 10 days provided by the BIA (the "**Cash Flow**"), a copy of which is attached to the First Report.<sup>6</sup>
9. The Cash Flow indicates that CYMI could operate through the restructuring process with the projected receipts and disbursements. That said, the forecast leaves little room for error.

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<sup>4</sup> Tome Affidavit at para 8.

<sup>5</sup> Tome Affidavit at para 5.

<sup>6</sup> First Report of Proposal Trustee dated June 6, 2026 ("**First Report**").

Moreover, as payment of CYMI's main asset, a significant non-current account receivable in the approximate amount of CAD \$4.5 million owing from Mosaic Transit Group ("**Mosaic**") in respect of electrical work performed on the Finch West LRT project (the "**Mosaic Holdback**") is disputed, additional financing capacity is needed to allow flexibility to collect same. Accordingly, out of prudence, CYMI is seeking approval of a DIP facility.<sup>7</sup>

10. To back stop the cash flow requirements of CYMI during the Proposal Proceeding, CYMI Spain, in its capacity as the proposed lender under the DIP Term Sheet (the "**DIP Lender**"), has offered to make available to CYMI a debtor-in possession loan in the maximum amount of \$500,000 (the "**DIP Loan**") to fund operations and the cash shortfall anticipated in the Extended Cash Flow.<sup>8</sup>
11. The DIP Term Sheet is conditional on the Court granting an order, on terms acceptable to the DIP Lender, which, among other things, grants the DIP Charge on the property assets and undertaking of CYMI, which shall rank in priority to all other security, trusts (whether Statutory or otherwise), encumbrances and claims on the property assets and undertaking of CYMI. As the cash flow without the DIP shows just enough cash to complete the process, and the DIP is a back up facility, the DIP term sheet gives CYMI Spain discretion as to what to fund.<sup>9</sup>
12. CYMI believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, CYMI would be in too tight a

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<sup>7</sup> Tome Affidavit at para 29.

<sup>8</sup> Tome Affidavit at para 30.

<sup>9</sup> Tome Affidavit at para 31.

cash flow situation and would not have the standby financial backing to credibly show it can aggressively pursue the Mosaic Holdback, which would make its principal asset more difficult to collect, a result detrimental to all of CYMI's creditors and stakeholders.<sup>10</sup>

(ii) *Granting of the Administrative Charge*

13. CYMI requests the granting of a first-ranking Administration Charge in the amount of \$500,000 to ensure payment of the fees and expenses of each of CYMI's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel. CYMI seeks the Administration Charge, which is to rank in priority to all security, trusts (whether statutory or otherwise), encumbrances and claims on the property assets and undertaking of CYMI excepting the DIP Charge.<sup>11</sup> As well, and related thereto, CYMI needs to use some of its existing cash, borrowings and net realizations to pay the expenses of conducting its asset realization and pursue its proposals. There are no secured creditors but there is \$500K+ in unpaid HST which may give rise to a deemed trust. As CRA may otherwise later claim the right to trace assets used to fund expenses when its deemed trust exists, an order is sought explicitly authorizing CYMI's to continue to realize on their assets and to use their cash and realization proceeds to pay the ongoing costs of the restructuring from same notwithstanding any trusts, deemed trusts, security interests or liens attaching to same. CRA would lose its deemed priority in bankruptcy so it is not prejudiced by this. In fact this gives CRA a better chance of realization since in a successful proposal it would not lose its deemed trust priority.

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<sup>10</sup> Tome Affidavit at para 32.

<sup>11</sup> Tome Affidavit at para 33.

(iii) *Extension of Time to File a Proposal*

14. The stay of proceedings imposed on the filing of CYMI's NOI will expire on June 12, 2026.<sup>12</sup>
15. In order to commence and advance proposal, CYMI is seeking an extension of time to file a proposal for 45 days to and including July 24, 2026.<sup>13</sup>
16. Without the present requested extension, CYMI will not be in a position to make a viable proposal to creditors and will become automatically bankrupt after the expiry of the current stay on June 12, 2026. That would worsen the position of the stakeholders as a proposal to creditors is likely to produce better results than a sale in a liquidating bankruptcy.<sup>14</sup>
17. CYMI does not consider that any creditor will be materially prejudiced if the stay extension is granted. The extension is supported by CYMI, its shareholders, its DIP Lender, and the Proposal Trustee.<sup>15</sup>
18. If the extension sought is granted, CYMI would be able to make a viable proposal to its creditors for the distribution of the proceeds.<sup>16</sup>

**PART III - ISSUES**

19. The issues on this motion are whether to grant the Initial Order, including more particularly as follows:
  - (a) Whether to authorize the DIP Term Sheet and grant the DIP Charge;

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<sup>12</sup> Tome Affidavit at para 43.

<sup>13</sup> Tome Affidavit at para 44.

<sup>14</sup> Tome Affidavit at para 45.

<sup>15</sup> Tome Affidavit at para 46.

<sup>16</sup> Tome Affidavit at para 47.

- (b) Whether to grant the Administration Charge;
- (c) Whether the court-ordered charges should prime Crown deemed trust claims; and
- (d) Whether to grant the extension of time to file a proposal.

## **PART IV - LAW AND ARGUMENT**

### **A. The DIP Term Sheet and DIP Charge Should be Approved**

20. The Court has authority under section 50.6(1) of the BIA to authorize the DIP Term Sheet and DIP Charge, subject to a consideration of the factors in section 50.6(5) of the BIA.<sup>17</sup>
21. Having regard to those factors, the DIP Term Sheet and the DIP Charge should be approved for the following reasons:
- (a) The Cash Flow suggests that CYMI could operate through the restructuring process with the projected receipts and disbursements. That said, the forecast leaves little room for error. Accordingly, out of prudence, CYMI is seeking approval of a DIP facility, which will be available if required to support working capital and develop a proposal;
  - (b) The DIP Term Sheet is conditional on the Court granting an order, on terms acceptable to the DIP Lender, which, among other things, grants the DIP Charge on the property assets and undertaking of CYMI, which shall rank in priority to all other security, trusts (whether Statutory or otherwise), encumbrances and claims on the property assets and undertaking of CYMI; and
  - (c) CYMI believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, CYMI would be in too tight a cash flow situation given the Mosaic Holdback.

### **B. The Administration Charge Should be Granted**

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<sup>17</sup> BIA, ss. 50.6(1) and (5); *Colossus Minerals Inc. (Re)*, 2014 ONSC 514 at [para 3](#).

22. Section 64.2 of the BIA provides jurisdiction to grant a super-priority charge for the purpose of securing the fees and expenses of a trustee, its legal advisors and CYMI's legal advisors.
23. The Administration Charge is reasonable in the circumstances. The continued services of the professionals are critical to the progress and success of these Proposal Proceedings and, without such charge, the foregoing professionals are unlikely to continue in their capacities in support of these Proposal Proceedings.
24. The Administration Charge serves a useful back up role in protecting professionals should any particular requests to fund professionals not be advanced under the DIP Charge. That makes the successful completion of the restructuring more likely. This is particularly true given that CYMI has limited liquidity, and therefore a charge securing professional fees ensures that the Proposal Proceedings continue effectively.
25. As well, as noted above, CYMI needs to use some of its existing cash, borrowings and net realizations to pay the expenses of conducting its asset realization and pursue its proposals. There are no secured creditors but there is \$500K+ in unpaid HST which may give rise to a deemed trust. As CRA may otherwise later claim the right to trace assets used to fund expenses when its deemed trust exists, that could paralyze the restructuring. Hence an order is sought explicitly authorizing CYMI to continue to realize on their assets and to use their cash and realization proceeds to pay the ongoing costs of the restructuring from same notwithstanding any trusts (including deemed trusts), security interests or liens attaching to same. CRA would lose its deemed priority in bankruptcy so it is not prejudiced by this – i.e. facilitating the proposal process gives CRA a better chance of realization since in a

successful proposal it would not lose its deemed trust priority and would share in distribution on a priority basis.

26. The right to continue to use cash is not an uncommon feature of initial proposal orders and as such the relief sought is commercially reasonable and permitted by the court’s inherent jurisdiction which is preserved by BIA s. 183. The existence of inherent jurisdiction in BIA proceedings was confirmed in *Syndic de Chronométriq Inc.*, 2023 QCCA 1295, at paras 54-61.<sup>18</sup>

### C. The Court-Ordered Charges Should Prime Crown Deemed Trust Claims

27. CYMI owes a liability to CRA in the net amount after input credit set offs of \$501,816.97 for unremitted HST due to be remitted in March 2026 for February 2026.
28. The Supreme Court of Canada in *Canada v. Canada North Group Inc.*, 2021 SCC 30<sup>19</sup> confirmed that, in CCAA proceedings, courts have jurisdiction to grant super-priority charges that rank ahead of the Crown’s deemed trusts under s. 227(4.1) of the *Income Tax Act* (“ITA”).
29. The Quebec Court of Appeal in *Attorney General of Canada v. Richter Advisory Group Inc. (In re Syndic de Chronometric Inc.)* 2023 QCCA 1295 has confirmed that equivalent authority exists in BIA proposal proceedings.<sup>20</sup>

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<sup>18</sup> S 183 provides as follows: “**183 (1)** The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;...”; See also [Syndic de Chronométriq inc., 2023 QCCA 1295, at paras 54-61](#) which confirms the inherent jurisdiction of the Court in BIA proceedings.

<sup>19</sup> [Canada v. Canada North Group Inc., 2021 SCC 30, at para 31](#)

<sup>20</sup> [Syndic de Chronométriq inc., 2023 QCCA 1295, at para 46](#), application for leave to appeal to the Supreme Court of Canada dismissed.

30. Relying heavily on *Canada North*, the Court of Appeal held that the remedial purposes of the CCAA and BIA, namely, facilitating the restructuring and financial rehabilitation of insolvent debtors, require that they be interpreted harmoniously. In that context, the court found that the BIA contains comparable statutory language authorizing priority charges. In particular, s. 50.6(3) BIA, which permits a court to order that a charge rank ahead of secured creditors, mirrors s. 11.2(2) CCAA.
31. The Court of Appeal concluded that this express authority necessarily includes the ancillary power to determine ranking, including subordinating the Crown's deemed trust. As the court noted, creating a charge without determining its priority would be meaningless. Accordingly, the court held that BIA courts have jurisdiction to grant super-priority charges that can rank ahead of the ITA deemed trust.
32. In the alternative, the court confirmed that any perceived statutory gap may be filled through the court's inherent or implied jurisdiction in insolvency matters, consistent with the flexible and remedial nature of the BIA.
33. In the present case, granting a court-ordered super-priority charge that primes the Crown's deemed trust is both legally authorized and practically necessary to achieve the BIA's remedial objective of facilitating a viable restructuring.

#### **D. Extension of Time for CYMI to File a Proposal Should be Granted**

34. The Court has authority to grant such relief under section 50.4(9) of the BIA. CYMI's request for an extension of the stay until July 24, 2026 to file a proposal should be granted for the following reasons:
  - (a) CYMI is acting in good faith and with due diligence, with a view to maximizing value for the stakeholders, and developing a viable proposal to creditors;

- (b) the extension of the stay is necessary for CYMI to develop a proposal;
- (c) There is no material prejudice likely to result to creditors from the extension of the stay;
- (d) CYMI's cash flows, with the support of the loan under the DIP Term Sheet, will enable CYMI to meet their financial obligations; and
- (e) the Proposal Trustee supports the requested relief.

**PART V - ORDER REQUESTED**

35. For the reasons set out above, CYMI respectfully request that the Court grant the requested orders.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Date: June 8, 2026

*CBesant*

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**Chris Besant**  
**GARDINER ROBERTS LLP**

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Colossus Minerals Inc. (Re)*, 2014 ONSC 514
2. *Canada v. Canada North Group Inc.*, 2021 SCC 30
3. *Syndic de Chronométriq inc.*, 2023 QCCA 1295

**SCHEDULE “B”**  
**RELEVANT STATUTES**

***Bankruptcy and Insolvency Act, RSC 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.

**Priority**

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

**Factors to be considered**

**50.6 (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.

### **Priority**

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

### **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**

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.

### **Individual**

64.2 (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.

### **Factors to be considered**

65.13 (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.

**183** (1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;...

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CYMI CANADA INC. IN THE CITY OF OTTAWA, IN THE PROVINCE OF ONTARIO**

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PROCEEDING COMMENCED AT  
TORONTO

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**FACTUM OF CYMI CANADA INC.**

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