

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. RE EXTENSION OF BIA STAY

(Returnable on October 2, 2026 at 11:30 AM)

October 1, 2026

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TO: THE SERVICE LIST

PART I – OVERVIEW

- 1) CYMI Canada Inc. (“**CYMI**”) seeks an order for, among other things, the following:
 - i. abridging if necessary 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 October 2, 2026, and dispensing with further service thereof;
 - ii. extending the time for CYMI to file a proposal under section 50.4(9) of the Bankruptcy and Insolvency Act (“**BIA**”) to and including November 11, 2026;
 - iii. approving the fourth report of the Proposal Trustee, to be filed separately with the Court (the “**Fourth Report**”), and the activities of the Proposal Trustee set out therein; and
 - iv. such further and other relief as may be required to advance CYMI’s restructuring and this Honourable Court may deem just.

PART II - FACTS

- 2) The pertinent facts are outlined in the Affidavit of Oscar De la Fuente Tomé, affirmed September 30, 2026, and affidavits Oscar De la Fuente Tomé previously filed in this proceeding for the hearings on June 9, 2026 (CYMI Motion Record in the June 9 bundle), July 7, 2026 (in the July 7 bundle), and August 20, 2026 (in the August 20 bundle).
- 3) In essence, CYMI is an electrical contractor on major infrastructure projects that has wound down its business and is seeking to restructure while continuing its warranty and maintenance obligations on its past project work with the support of its Spanish parent

company, Control Y Montajes Industriales CYMI S.A (“**CYMI Spain**”), which is the DIP lender in this proceeding.

- 4) CYMI has been acting diligently and in good faith to develop a proposal for its creditors. It is seeking a final extension of its BIA stay today to November 11, 2026 to allow time to complete the development of its proposal to its creditors.
- 5) CYMI has an array of creditors with potential claims totalling around \$55 million (some of which are disputed), the largest of which are about \$20 million in intercompany loans to its parent company, and a disputed arbitration claim of about \$30 million by BNA Constructors Canada GP (“**BNA**”) in respect of work done by CYMI on the construction of the Gordie Howe Bridge between Detroit and Windsor. There is an additional \$5 million or less in claims by CRA and suppliers, and the rest are nominal claims.
- 6) CYMI’s main assets are:
 - a) a contractual receivable from Signature on the Saint Lawrence Construction G.P. (“**SSLC**”) arising from the Champlain Bridge Project with a face value of approximately \$11.4 million. Realization of this receivable is dependent upon the outcome of ongoing litigation between the head contractor and project owner, which is not expected to proceed to trial until 2029; and
 - b) a claim against Mosaic Transit Constructors General Partnership (“**Mosaic**”), for approximately \$4.99 million in contractual and statutory holdback funds relating to the Mosaic Line 6 Project (the “**Mosaic Holdback**”).

- 7) There have been no material developments concerning the SSLC receivable since the August 20, 2026 motion. CYMI continues to monitor the matter and assess potential realization opportunities for the benefit of the estate and its creditors.
- 8) Significant progress has been made with respect to the Mosaic Holdback. Pursuant to Justice Dunphy's August 20, 2026 endorsement, CYMI attended a case conference before the Commercial List on September 17, 2026 regarding its dispute with Mosaic concerning approximately \$4.99 million in holdback funds.
- 9) At the September 17, 2026 case conference, the Court directed that CYMI's Application against Mosaic proceed on the Commercial List and established an expedited timetable for its determination. The Court ordered that: (a) CYMI file its application materials by September 23, 2026; (b) Mosaic deliver responding materials by October 13, 2026; (c) cross-examinations be completed by October 21, 2026; (d) factums be exchanged by November 6, 2026; and (e) the Application be heard on November 12, 2026.
- 10) In accordance with that timetable, CYMI commenced an Application dated September 18, 2026 seeking, among other relief, a declaration that \$4,988,976.22 in contractual and statutory holdback funds are owing and payable together with interest and costs, and filed it as required. Mosaic's responding materials are due October 13 if the matter does not settle before that time.
- 11) The Mosaic Holdback is one of the most significant potential realizations available to the estate and a material component of the proposal CYMI is developing. While the hearing of the Application is scheduled for November 12, 2026, one day after the ultimate 6-month deadline to file a proposal in this proceeding, the result of that hearing will likely be known

before any creditor vote takes place, thereby providing creditors with substantially greater certainty regarding the value available for distribution.

- 12) CYMI has also continued to engage with key stakeholders in an effort to develop and finalize its proposal.
- 13) CYMI has confidentially shared an outline of its proposal concept with BNA, a significant contingent creditor, and discussions remain ongoing. CYMI is hopeful that the amount of the BNA claim can be resolved prior to the filing of a proposal, as the resolution of that claim may materially affect proposal terms.
- 14) Since the last court appearance, the Canada Revenue Agency (“CRA”) issued a revised reassessment respecting additional HST it alleges is owing by CYMI beyond the approximately \$502,000 acknowledged by CYMI. While CRA initially proposed an additional assessment of approximately \$233,000, it subsequently reduced that amount to approximately \$217,000 following submissions from CYMI regarding certain input tax credits.
- 15) CYMI disputes the reassessment and takes the position that it is premature because it assumes certain accounts payable existing at the NOI filing date will never be satisfied. CYMI further believes that recoveries from the Mosaic Holdback and payments to affected suppliers would substantially reduce, and potentially eliminate, much of the reassessed amount. CYMI intends to file an objection before the December 1, 2026 deadline.
- 16) Various stakeholders have also asserted trust claims which may attach to the Mosaic Holdback. Barton Malow, formerly known as Alltrade Industrial Contractors Inc., has

asserted a claim of approximately \$1.27 million. SICE has asserted a trust claim of approximately \$41,967.36. ABB has asserted a claim of approximately \$573,000 in connection with the Mosaic Project and may also claim trust rights in the Mosaic Holdback.

- 17) CYMI maintains that any enforcement efforts in respect of those claims are stayed. Further to discussions with those stakeholders, each has, to date, refrained from taking enforcement steps while CYMI pursues a proposal. (CYMI is of the view that they are stayed in any event).
- 18) CYMI has also continued discussions with its parent company, CYMI Spain, regarding sponsorship and support for a proposal. Those discussions remain ongoing. The structure and scope of any sponsorship arrangement depends in large part on greater certainty regarding both the BNA claim and the Mosaic recovery.
- 19) CYMI's proposal concept presently contemplates:
 - a) funding distributions through recoveries from the Mosaic Holdback, the SSLC receivable and any other residual assets;
 - b) collecting the Mosaic Holdback through either settlement or adjudication of the pending Application;
 - c) continuing to monitor and pursue realization of the SSLC receivable;
 - d) from proceeds realized from the Mosaic Holdback:
 - i. establishing any necessary reserve for Mosaic warranty obligations;
 - ii. paying the professional fees necessary to complete and implement the proposal;

- iii. satisfying obligations secured by the DIP Charge, Administration Charge and Directors' Charge;
 - iv. paying valid trust claims attaching to the Mosaic Holdback, including those of Barton Malow, SICE and ABB;
 - v. paying to CRA the HST component of the Mosaic holdback once collected;
 - vi. paying any other claims ranking ahead of unsecured creditors; and
 - vii. distributing the remaining balance to unsecured creditors on a pro rata basis;
- e) resolving the amount of the BNA contingent claim either by agreement or through a summary BIA claims determination process;
 - f) resolving trust claims either by agreement or through an efficient claims determination process; and
 - g) obtaining customary third-party releases in favour of CYMI's directors, officers, employees, shareholders and affiliates, subject to applicable legal limitations as part of the court order sanctioning the proposal.
- 20) A proposal remains the most effective means of maximizing value for stakeholders. Successful realization of the Mosaic Holdback may be linked to CYMI's ability to continue satisfying warranty obligations under the Mosaic contract, while recovery of the SSLC receivable is more likely to be optimized through a restructuring process than through a bankruptcy.

- 21) A proposal process also provides the most efficient framework for resolving disputes concerning the BNA claim, trust claims and the terms upon which Mosaic may release the holdback funds. A negotiated resolution of those issues during the requested extension period would permit those arrangements to be incorporated directly into the proposal and maximize recoveries for stakeholders.
- 22) CYMI has acted diligently and in good faith throughout these proceedings. It has continued to pursue recovery of its principal assets, advance the Mosaic litigation, engage constructively with key stakeholders and work toward formulating a viable proposal.
- 23) CYMI is confident that a viable proposal can be filed if the requested extension is granted. Whether through negotiated resolutions or mechanisms included in the proposal to address unresolved disputes, CYMI intends to file a proposal that will provide creditors with a materially better outcome than a bankruptcy.
- 24) Accordingly, CYMI proposes to use the extension period to: (a) obtain greater certainty regarding the collectability and value of the Mosaic Holdback through the pending expedited Application; (b) continue discussions with key stakeholders, including BNA, CRA and parties asserting trust claims against the Mosaic Holdback; and (c) finalize the terms of a proposal and lodge that proposal with the Proposal Trustee so that a creditor vote may be held. While CYMI is capable of filing a proposal within the requested extension period even if the Mosaic Holdback remains unresolved, the determination or resolution of that issue is expected to materially enhance the proposal and provide creditors with greater certainty regarding potential recoveries. In the event additional time is required to complete any of these steps, CYMI's maximum six-month extension period under the

BIA does not expire until November 11, 2026, being 5 months and 30 days from the filing of its Notice of Intention on May 12, 2026.

PART III - ISSUE

- 25) The issue on this motion is whether to grant the extension of time to file a proposal until November 11, 2026.

PART IV - LAW AND ARGUMENT

A. Extension of Time for CYMI to File a Proposal Should be Granted

- 26) 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 November 11, 2026 to file a proposal should be granted for the following reasons
- a) CYMI has acted, and continues to act, in good faith and with due diligence in seeking to maximize value for stakeholders and develop a viable proposal. Since the August 20, 2026 motion, CYMI has advanced its claim to recover the approximately \$4.99 million Mosaic Holdback by obtaining an expedited timetable for the determination of its Application, has continued discussions with BNA regarding the quantum of its contingent claim, has engaged with CRA regarding its reassessment, has continued discussions with suppliers asserting trust claims, and has continued discussions with its parent company, CYMI Spain, regarding sponsorship of a proposal;
 - b) The extension of the stay is necessary to permit CYMI to complete the development of its proposal. In particular, CYMI requires additional time to obtain greater certainty regarding the recoverability of the Mosaic Holdback, continue negotiations with stakeholders concerning the treatment and quantum of claims, and finalize the terms of a proposal.

While CYMI is capable of filing a proposal without a determination of the Mosaic Holdback dispute, a proposal prepared with the benefit of the outcome of the Mosaic proceedings or a negotiated resolution thereof will provide creditors with greater certainty regarding recoveries and enhance the prospects of a successful restructuring;

- c) There is no material prejudice likely to result to creditors from the requested extension. To the contrary, creditors stand to benefit from the additional time because it will permit CYMI to pursue a significant asset recovery, continue efforts to resolve disputed claims, and formulate a proposal that offers a materially better outcome than a bankruptcy;
- d) CYMI's cash flow requirements during the extension period will continue to be funded through the existing DIP financing arrangement with the support of CYMI Spain, and CYMI will be able to meet its obligations during the extension period; and
- e) The requested extension is consistent with the objectives of the BIA because it will provide CYMI with a meaningful opportunity to complete and file a viable proposal that maximizes realizations from the Mosaic Holdback and SSLC receivable, resolves stakeholder disputes in a cost-effective manner, and enhances recoveries for creditors when compared to a bankruptcy liquidation.

PART V - ORDER REQUESTED

- 27) For the reasons set out above, CYMI respectfully request that the Court grant the requested Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

CBesant

Date: October 1, 2026

Chris Besant
GARDINER ROBERTS LLP

SCHEDULE “A”
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.

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;...

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