

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF 2123125 ONTARIO INC.

**Applicant**

**FACTUM OF THE APPLICANT  
(Motion returnable June 27, 2016)  
(Re Appointment of CRO and Stay Extension)**

Dated: June 24, 2016

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**PART I - INTRODUCTION**

1. On April 21, 2016, as a result of severe financial difficulties, 2123125 Ontario Inc., formerly known as FirstOnSite G.P. Inc. ("**FirstOnSite GP**" or the "**Applicant**") filed for and was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to the order of Justice Newbould of the same date (the "**Initial Order**"). The Initial Order provided for, *inter alia*, a stay of proceedings against the Applicant through to and including May 20, 2016 (the "**Stay Period**") and extended the relief under the Initial Order to Former Restoration L.P., formerly known as FirstOnSite Restoration L.P. ("**FirstOnSite LP**", together with FirstOnSite GP, "**FirstOnSite**").

2. Prior to commencing these CCAA proceedings, FirstOnSite marketed and sold substantially all of its assets pursuant to an Asset Purchase Agreement dated April 20, 2016 (the “**APA**”) with 3297167 Ontario Inc. (the “**Purchaser**”). The Sale Transaction was approved by this court on May 9, 2016 and closed on June 1, 2016. Since the closing of the sales transactions, FirstOnSite has ceased carrying on any active business, with the exception of the performance of services (the “**Transition Services**”) under certain contracts (the “**Quebec Contracts**”) pursuant to a Transition Agreement dated June 1, 2016 (the “**Transition Agreement**”) with the Purchaser. Accordingly, the directors of FirstOnSite (the “**Board**”) intend to resign from their employment effective on or before June 28, 2016.

3. Notwithstanding the sale of substantially all of FirstOnSite’s assets, there are a number of remaining matters that need to be dealt with before these CCAA proceedings are completed. In order that there will be an directing mind at FirstOnSite to instruct counsel and consult with the FTI Consulting Canada Inc. in it’s capacity as Court-appointed monitor (the “**Monitor**”) after the resignation of the Board, FirstOnSite seeks to appoint Oriole as CRO to oversee the completion of these CCAA proceedings.

4. The principle of Oriole is Kevin McElcheran. Mr. McElcheran qualifications to act as CRO are uncontroverted and the appointment of Oriole as CRO and the CRO Agreement are supported by the Board and the Monitor and unopposed by any other party as of the date of this factum, including BDC Capital Inc. (“**Capital**”).

5. Accordingly, FirstOnSite seeks an order (the “**CRO Appointment Order**”), substantially in the form of the draft order located at Tab 4 of the Motion Record, appointing Oriole as CRO, granting the protections outlined in the draft order, and approving the CRO Agreement (defined below).

6. FirstOnSite also seeks an order (the “**Stay Extension Order**”), substantially in the form attached to the Motion Record at Tab 3 for, among other things:

- (a) extension of the stay of proceedings set out at paragraph 15 of the Initial Order, as subsequently extended, to October 31, 2016; and
- (b) approval of the Pre-filing report of the Proposed Monitor dated April 21, 2016, the First Report of the the Monitor dated April 27, 2016, the Second Report of the Monitor dated May 4, 2016, the Supplemental Report to the Second Report of the Monitor dated May 16, 2016, the Third Report of the Monitor dated June 22, 2016, and the activities of the Monitor as set out therein.

7. FirstOnSite submits that the extension of the stay of proceedings is just and appropriate in the circumstances as it is necessary to permit FirstOnSite to complete the Outstanding Matters (as defined below). FirstOnSite has and continues to act in good faith and with due diligence in these proceedings.

8. The relief sought on this motion is supported by the Monitor and, as of the date of this Factum, unopposed by any party, including Capital.

## PART II - THE FACTS

9. The facts with respect to this application are more fully set out in the affidavit of Dave Demos, sworn April 20, 2016 in support of the Initial Order (the “**Initial Order Affidavit**”), the affidavit of Kevin McElcheran, sworn June 22, 2016 (the “**McElcheran Affidavit**”) and the supplemental affidavit of Kevin McElcheran sworn June 24, 2016 (the “**Supplemental Affidavit**”).<sup>1</sup>

### A. Commencement of the CCAA Proceedings

10. FirstOnSite carried on business in Canada and, to a lesser degree, the United States, by providing remediation, restoration and reconstruction services in the commercial, industrial and residential sectors. Since 2010, FirstOnSite experienced significant financial and liquidity difficulties due to, *inter alia*, insufficient equity, escalating operating losses, and correspondingly escalating debt to fund these losses.<sup>2</sup>

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning assigned to them in the McElcheran Affidavit.

<sup>2</sup> Affidavit of Kevin McElcheran sworn June 22, 2016, para 4, Motion Record of the Applicant, Tab 2 [“**McElcheran Affidavit**”].

11. FirstOnSite conducted a pre-filing sales and investor solicitation process which resulted in FirstOnSite entering into a sale transaction that contemplated the sale of substantially all of FirstOnSite's assets to the Purchaser as set out in the APA.<sup>3</sup>

12. In order to effect the Sale Transaction, on April 21, 2016, FirstOnSite commenced these CCAA proceedings and was granted the Initial Order.<sup>4</sup>

### **B. Sale Transaction and Transition Agreement**

13. The Sale Transaction and APA were approved by the Court on May 9, 2016 and the Sale Transaction was scheduled to close on June 1, 2016 (the "**Closing Date**").<sup>5</sup>

14. Prior to the Closing Date it came to the Purchaser's attention that it would require a licence issued pursuant to the *Builder's Act* (Quebec) to perform the Quebec Contracts. FirstOnSite holds an existing licence, and agreed to perform the Transition Services, comprised of temporarily holding, and continuing to perform the work under the Quebec Contracts, pursuant to the Transition Agreement.<sup>6</sup>

15. Provided that there are no material breaches of the Transition Agreement by the Purchaser, the Vendor will perform the Transition Services until the earlier of (a)

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<sup>3</sup> *Ibid.*, para 6.

<sup>4</sup> *Ibid.*, para 7.

<sup>5</sup> *Ibid.*, para 10.

<sup>6</sup> *Ibid.*, para 15-16.

delivery of the Transition Date Notice and the Subsequent Monitor's Certificate (each as defined in the Transition Agreement) or (b) August 31, 2016.<sup>7</sup>

16. With the Transition Agreement in place, the Sale Transaction closed on the Closing Date, as scheduled. FirstOnSite has ceased having any active operations, with the exception of the Transition Services, since the closing of the Sale Transaction.<sup>8</sup>

### C. Outstanding Matters in CCAA Proceedings

17. In addition to the Transition Service, there are a number of outstanding matters (the "**Outstanding Matters**") that FirstOnSite will have to attend to over the next four months.

#### *i) Disclaimer of Contracts*

18. After the Closing Date, FirstOnSite, with the approval of the Monitor, disclaimed substantially all of the contracts that the Purchaser had elected not to assume under the APA. It has since become apparent that certain of the assets which are the subject of the Disclaimed Contracts may still be in use and/or needed going forward by the Purchaser. In addition, one of the real estate properties that is the subject of a Disclaimed Contract was sublet by FirstOnSite to a subtenant.<sup>9</sup>

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<sup>7</sup> *Ibid.*, para 16.

<sup>8</sup> *Ibid.*, para 19.

<sup>9</sup> *Ibid.*, para 22-23.

19. FirstOnSite is working with the Purchaser and the Monitor to address these matters either by returning possession of the assets to the counterparties of the Disclaimed Contracts or entering into new temporary occupancy and use agreements with the interested parties.<sup>10</sup>

*ii) Other Post-closing Matters*

20. Pursuant to the APA, the purchase price is to be adjusted up or down based on the difference between an estimate of the working capital of FirstOnSite at the date of closing and the amount determined to be the Final Working Capital (as defined in the APA).<sup>11</sup> The determination of the Final Working Capital involves a process that may take as long as 80 days (provided there is no litigation).<sup>12</sup>

21. The APA also requires the Purchaser to deliver a report to FirstOnSite and the Monitor every 14 days, detailing which of the amounts owing to persons on the Potential Trust Claimant List have not been paid or satisfied.<sup>13</sup>

22. In addition to the post-closing matters under the APA, FirstOnSite must also consult with the Monitor with respect to the distribution of the proceeds of the Sale

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<sup>10</sup> *Ibid.*, para 24.

<sup>11</sup> *Ibid.*, para 25.

<sup>12</sup> *Ibid.*, para 27.

<sup>13</sup> *Ibid.*, para 34.



Transaction pursuant to the Distribution Order of Justice Newbould dated May 18, 2016.<sup>14</sup>

*iii) The Capital Motion*

23. Finally, on June 15, 2016, Capital served a motion (the “**Capital Motion**”), returnable on a day to be set by the Court, seeking an order declaring that Capital is entitled to payment of its secured loan in priority to any payment made to three former senior members of FirstOnSite’s management team pursuant to a stub bonus program.<sup>15</sup>

24. FirstOnSite opposes the relief sought in the Capital Motion and is in discussions with Capital regarding setting a schedule for the hearing of the motion.<sup>16</sup>

**D. CRO Required to Complete the CCAA Proceedings**

25. FirstOnSite’s Board intends to resign effective on or before June 28, 2016.<sup>17</sup> The resignation of the Board will leave FirstOnSite with no means of instructing legal counsel or consulting with the Monitor with respect to the Outstanding Matters set out above.

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<sup>14</sup> *Ibid.*, para 28-29.

<sup>15</sup> *Ibid.*, para 32.

<sup>16</sup> *Ibid.*, para 33.

<sup>17</sup> *Ibid.*, para 37.

26. In the circumstances, the Board, in consultation with the Monitor, have determined that the best course of action is to appoint a CRO to complete the Outstanding Matters in these CCAA proceedings.<sup>18</sup>

**E. Kevin McElcheran is Qualified to act as CRO**

F. Oriole is a consulting company whose principal, Kevin McElcheran, has more than 34 years' experience in the insolvency and restructuring field, and is the recipient of the Murray Klein award for excellence in insolvency law.<sup>19</sup>

27. Mr. McElcheran has been a director of FirstOnSite and a member of the special committee of the Board formed in connection with considering a potential transaction since January 27, 2016. As such, he has extensive personal knowledge of the circumstances of these proceedings.<sup>20</sup>

**G. The CRO Agreement**

28. On June 24, 2016, FirstOnSite and Oriole executed an engagement letter (the "CRO Agreement") setting forth the terms of the Oriole's appointment as CRO,

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<sup>18</sup> *Ibid.*, para 41.

<sup>19</sup> *Ibid.* at para 43.

<sup>20</sup> *Ibid.*, para 42.

including its duties, responsibilities, and compensation, all of which is subject to court approval.<sup>21</sup>

29. Pursuant to the CRO Agreement (and subject to the approval of this Court), the CRO will have power and responsibility for overseeing the remaining day to day operations and affairs of FirstOnSite and these CCAA Proceedings, including:

- (a) conducting and controlling the financial affairs and operations of FirstOnSite and carry on the business of FirstOnSite as the CRO deems necessary;
- (b) taking such steps as in the opinion of the CRO are necessary or appropriate to reduce the expenses of FirstOnSite;
- (c) executing such documents as may be necessary in connection with any proceedings before or order of the Court for and on behalf of FirstOnSite;
- (d) taking steps for the preservation and protection of the remaining assets of FirstOnSite (the “**Property**”);
- (e) disposing of, disclaiming, or otherwise dealing with the Property;

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<sup>21</sup> Supplemental Affidavit of Kevin McElcheran sworn June 22, 2016, at para 5. [“**Supplemental Affidavit**”]

- (f) negotiating and entering into agreements on behalf of FirstOnSite with respect to the Property;
- (g) selling, and directing FirstOnSite to apply to Court for any vesting order or orders which may be necessary or appropriate in order to convey the Property to a purchaser or purchasers thereof;
- (h) taking any steps required to be taken by FirstOnSite under any Order of the Court, including without limitation, the Distribution Order dated May 18, 2016 and the Amended and Restated Approval and Vesting Order dated May 9, 2016;
- (i) engaging in such other related activities as may be necessary or desirable;
- (j) providing information to FTI Consulting Canada Inc. in its capacity as court-appointed Monitor regarding the business and affairs of FirstOnSite;
- (k) taking any steps, entering into any agreements or incurring any reasonable obligations necessary or incidental to the exercise of the its powers, with such agreements and obligations to be those of FirstOnSite and not of the CRO or Oriole personally;
- (l) applying to the Court for an order authorizing and directing FirstOnSite to make a voluntary assignment in bankruptcy;

- (m) exercising such shareholder or member rights as may be available to FirstOnSite;
- (n) in consultation with Stikeman Elliott LLP, directing FirstOnSite to commence any proceeding and seek any order, or respond to any motion or application brought by any other person, in these CCAA proceedings or otherwise; and
- (o) applying to Court to seek advice and direction with respect to any of the CRO's powers or duties as set out in the CRO Agreement.<sup>22</sup>

30. The CRO Agreement provides for the payment of a monthly working fee and may be terminated on a motion to the court brought by the Monitor, CRO or any other interested party at any time.<sup>23</sup>

**H. CRO Appointment and Agreement is approved by Board and Monitor and unopposed by any other party**

31. The Board approved the appointment of the CRO and the CRO Agreement on June 23, 2016, and Mr. McElcerhan on behalf of Oriole has consented to the appointment as CRO, subject to the approval of the Court and the protections contemplated in the proposed Order being granted.<sup>24</sup>

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<sup>22</sup> *Ibid.* at para 6.

<sup>23</sup> *Ibid.*, para 7.

<sup>24</sup> *Ibid.*, para 8-9.

32. The appointment of a CRO is necessary for the provision of consistent and ongoing corporate governance following the anticipated resignation of the directors.<sup>25</sup>

33. The appointment of Oriole as CRO is supported by the Monitor<sup>26</sup> and, as of the date of this factum, unopposed by any party, including Capital.

### **I. Stay Extension**

34. The Stay Period granted under the Initial Order was extended by further orders of this Court to June 27, 2016. A further extension of the Stay Period to October 31, 2016 is necessary to provide FirstOnSite with sufficient time to complete the Outstanding Matters.<sup>27</sup>

35. FirstOnSite has acted and continues to act in good faith and with due diligence and no creditor will suffer any material prejudice if the Stay Period is extended to October 31, 2016.<sup>28</sup>

36. The Stay Extension is supported by the Monitor and Capital and, as of the date of this factum, unopposed by any party.<sup>29</sup>

## **PART III – ISSUES**

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<sup>25</sup> McElcheran Affidavit, *supra.* at para 44.

<sup>26</sup> Third Report of the Monitor at para 25.

<sup>27</sup> McElcheran Affidavit, *supra.*, para 47.

<sup>28</sup> *Ibid.*, para 49.

<sup>29</sup> *Ibid.*, para 48 and Third Report at para 39.

37. The issues on this motion are:

- (a) Should Oriole be appointed as CRO and the CRO Agreement should be approved by this Court; and
- (b) Should this Court grant an extension of the stay of proceedings to October 31, 2016?

#### **PART IV – LAW AND ARGUMENT**

38. As previously noted herein, the Board of FirstOnSite intends to resign effective on or before June 28, 2016.<sup>30</sup> The engagement of a CRO by FirstOnSite is necessary in light of such pending resignations and the outstanding issues in these CCAA proceedings.

39. Accordingly, and in order to ensure consistent, ongoing, and appropriate corporate governance, FirstOnSite has entered into the CRO Agreement appointing Oriole as CRO, subject to the approval of this Court. FirstOnSite respectfully submits that the appointment of Oriole as CRO and the approval of the CRO Agreement are just and appropriate in the circumstances and ought to be granted as requested.

40. FirstOnSite further submits that it is appropriate that this court extend the stay of proceedings to October 31, 2016. Extending the stay period will permit FirstOnSite to

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<sup>30</sup> McElcheran Affidavit, *supra.*, at para 37.

complete all of the Outstanding Matters and avoid unnecessary costs associated with a further motion to extend the stay period.

**A. The CRO Appointment Order Ought to be Granted**

41. The jurisdiction of the Court to grant an order appointing a CRO is well established.<sup>31</sup> CROs have been appointed on numerous occasions by this court with protection from liability in the execution of their duties similar to court-appointed monitors.<sup>32</sup>

42. Pursuant to s. 11 of the CCAA, this Court has the jurisdiction to grant an order approving the CRO Agreement appointing Oriole as CRO for FirstOnSite.<sup>33</sup>

43. In *Timminco Limited (Re)*, the board of directors of Timminco resigned after the sale of substantially all the companies' operating assets. The debtor companies had a number of remaining issues to address to complete the CCAA proceedings and the orderly wind-up of the debtor companies.

44. To address these issues, the companies sought and were granted an order on substantially similar terms to the CRO Appointment Order in this case,<sup>34</sup> appointing a

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<sup>31</sup> *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, 2007 SKQB 121, [2007] S.J. No. 154 at para. 19, aff'd 2007 SKCA 72, Book of Authorities of the Applicants dated August 15, 2012 ["Applicants' BOA"], Tab 1; See also: *Collins & Aikman Automotive Canada Inc. (Re)*, [2007] O.J. No. 4186 at paras. 134-139 Applicants' BOA, Tab 2 ["Collins"]; *Prizm Income Fund (Re)*, 2011 ONSC 2061, [2011] O.J. No. 1491 at paras. 40 & 46, Applicants' BOA, Tab 3; *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974, [2012] O.J. No. 3187 at paras. 11-12, Applicants' BOA, Tab 4; *Timminco Limited (Re)*, Court File Number: CV-12-9539-00CL, Order of Justice Newbould dated August 17, 2012, Applicant's BOA, Tab 5 ["Timminco"]

<sup>32</sup> *Collins*, supra., at para 134

<sup>33</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, s. 11

<sup>34</sup> *Timminco Limited*, supra.



CRO with similar protections and approving the terms of the CRO's engagement.

Justice Newbould endorsed the record:

The officers and directors of the Timminco entities have resigned. In these circumstances, the appointment of the CRO is reasonable, if not entirely necessary for the sake of all stakeholders.... The protections provided in the order for the CRO are also reasonable and necessary. Without them, no one could realistically agree to be appointed a CRO.<sup>35</sup>

45. These reasons are equally applicable in the case at bar.

46. In *Re Collins & Aikman Automotive Canada Inc.*, in granting an order appointing a CRO and granting it protections substantially similar to those afforded to the Court-appointed monitor, Justice Spence similarly noted that without these limitations on liability it would be "hard to imagine" someone willing to take on the role of CRO.<sup>36</sup>

47. As previously discussed herein, Mr. McElcheran has 34 years of experience in the insolvency and restructuring field, has been certified by the Law Society of Upper Canada as a specialist in bankruptcy and insolvency law since 1996, and was the 2016 recipient of the Murray Klein award for excellence in insolvency law by the Ontario Bar Association.<sup>37</sup>

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<sup>35</sup> *Timminco Limited (Re)*, Court File Number: CV-12-9539-00CL, Endorsement of Justice Newbould dated August 17, 2012, Applicant's BOA, Tab 6

<sup>36</sup> *Collins, supra.* at para 138.

<sup>37</sup> McElcheran Affidavit, *supra.*, at para 43; McElcheran Affidavit, Exhibit G: Professional History.

48. Furthermore, Mr. McElcheran is uniquely qualified to act as FirstOnSite's CRO as he has specific knowledge of the circumstances of this case, having been on the Board and the Special Committee for the past 6 months.<sup>38</sup>

49. No party has opposed the appointment of Oriole or raised any concerns with respect to Mr. McElcheran's qualifications.

50. The fee structure and compensation provided for in the CRO Agreement is consistent with engagements of this type for CROs with the expertise and experience of Mr. McElcheran. Mr. McElcheran has consented to the appointment of Oriole, subject to the approval of this Court and the granting of the protections contemplated in the proposed Order, and the Monitor similarly supports the appointment of the CRO and the approval of the CRO Agreement.<sup>39</sup>

**B. Extending the Stay Period is Necessary in the Circumstances**

51. The stay of proceeding expires on June 27, 2016.<sup>40</sup> An extension of the stay up to and including October 31, 2016 is necessary to give FirstOnSite time to, among others, complete the Outstanding Matters.

52. In *Re Canwest Global Communications Corp.*, Justice Pepall considered the following factors relevant in granting an extension of a stay of proceedings: (a) the cash

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<sup>38</sup> *Ibid.*, para 42.

<sup>39</sup> Supplemental Affidavit, *supra*. at para

<sup>40</sup> Stay Extension Affidavit, at para. 19, Supplemental Motion Record, Tab 1.

flow forecast indicated that the debtors had sufficient cash resources to operate throughout the extension of the stay period; (b) the monitor supported the extension; (c) there was no opposition to the motion; and (d) the debtors had acted and were continuing to act in good faith and with due diligence.<sup>41</sup>

53. FirstOnSite has been working diligently and in good faith since the start of the CCAA proceedings. Among other things, FirstOnSite has:

- (a) entered into and performed the Transition Agreement;
- (b) resolved a motion brought by the Purchaser with respect to cure costs under the APA;
- (c) closed the Sale Transaction;
- (d) disclaimed the Disclaimed Contracts;
- (e) worked to facilitate the transition of the FirstOnSite business to the Purchaser through the transition of any assets still required by the Purchaser to operate the business;
- (f) consulted with the Monitor with respect to certain distributions; and,

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<sup>41</sup> *Re Canwest Global Communications Corp.*, [2009] O.J. No. 4788 (S.C.J.), Applicant's BOA, Tab 7 at para. 43 [*"Canwest Global"*]

(g) negotiated and executed the CRO Agreement.<sup>42</sup>

54. The Monitor has indicated that it holds sufficient cash in reserve, pursuant to the Distribution Order, to provide FirstOnSite with sufficient liquidity to fund the Outstanding Matters and CCAA Proceedings to October 31, 2016.<sup>43</sup>

55. The Monitor supports the motion to extend the stay of proceeding and FirstOnSite are unaware of any creditor who opposes this motion.<sup>44</sup> No creditor will suffer any material prejudice if the stay of proceeding is extended as requested.

56. For the foregoing reasons, it is respectfully submitted that the stay of proceeding should be extended to October 31, 2016.

#### **PART V – ORDER REQUESTED**

57. For the reasons set out herein, FirstOnSite respectfully requests that this Court grant:

(a) the CRO Appointment order, appointing Oriole as CRO and an officer of this Court, approving the CRO Agreement, and granting Oriole and Mr. McElcheran the protections outlined in the draft Order; and

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<sup>42</sup> McElcheran Affidavit, *supra.*, at para. 46

<sup>43</sup> Third Report at para 37.

<sup>44</sup> Ibid at para 39.

- (b) the Stay Extension Order, extending the stay of proceedings to October 31, 2016, approving the reports of the Monitor and its activities as set out therein, and approving the fees and disbursements of the Monitor and its counsel.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of June, 2016.

  
Stikeman Elliott LLP

Lawyers for the Applicants

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *ICR Commercial Real Estate (Regina) Ltd. v. Bricore Land Group Ltd.*, 2007 SKQB 121, [2007] S.J. No. 154, aff'd 2007 SKCA 72
2. *Collins & Aikman Automotive Canada Inc. (Re)*, [2007] O.J. No. 418, (2007), 37 C.B.R. (5th) 282 (S.C.J.)
3. *Priszm Income Fund (Re)*, 2011 ONSC 2061, [2011] O.J. No. 1491
4. *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974, [2012] O.J. No. 3187
5. *Timminco Limited (Re)*, Court File Number: CV-12-9539-00CL, Order of Justice Newbould dated August 17, 2012
6. *Timminco Limited (Re)*, Court File Number: CV-12-9539-00CL, Endorsement of Justice Newbould dated August 17, 2012
7. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 4788 (S.C.J.)

**SCHEDULE "B"**  
**LIST OF AUTHORITIES**

*Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36.*

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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

Proceeding commenced at [Toronto](#)

**FACTUM OF THE APPLICANT  
(RETURNABLE JUNE 27, 2016)**

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