Court File No.: CV-20-00643158-00CL

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 ROBERTS COMPANY CANADA LIMITED

Applicant

FACTUM OF THE APPLICANT
(Meeting Order)
(Motion returnable September 28, 2020)

September 24, 2020

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FACTUM OF THE APPLICANT

PART I: INTRODUCTION

1. This factum is filed in support of a motion of Roberts Company Canada Limited (the "**Applicant**" or "**RCCL**") for an order (the "**Meeting Order**"), *inter alia*:

(a) accepting the filing of the Applicant's Plan with the Court (defined below);

(b) approving, pursuant to section 22 of the CCAA, the classification of creditors as set out in the Plan for the purposes of the Meeting (defined below) and voting on the Plan;

(c) authorizing and directing the Applicant to call, hold and conduct a meeting of the Applicant's Affected Creditors on October 16, 2020 (the "**Meeting**"), to consider and vote on a resolution to approve the Plan (the "**Resolution**");

(d) authorizing and directing the mailing and distribution of certain meeting materials and other procedures to be followed to provide notice of the Meeting;

(e) approving the procedures to be followed at the Meeting, including voting procedures; and

(f) setting a date for the hearing (the "**Sanction Hearing**") of the Applicant's motion for an order sanctioning the Plan (the "**Sanction Order**").

2. During the course of RCCL's CCAA proceedings (the "**CCAA Proceedings**") the Applicant, with the assistance of the Monitor, has made significant efforts to develop the Plan. Among other things, the Plan aims to enable the Applicant to emerge from the CCAA Proceedings on a restructured basis, while addressing the Affected Claims of Affected Creditors in a fair and reasonable manner.

3. The Meeting Order sought by the Applicant sets out the processes and procedures relating to the Plan and the Meeting to vote on the Plan.

PART II: FACTS

4. The facts with respect to this motion are more fully set out in the Affidavit of Ravi Williams-Singh sworn September 23, 2020 (the "**Williams-Singh Affidavit**"), and the Fourth Report of the Monitor dated September 23, 2020 (the "**Fourth Report**").[1] Capitalized terms not defined herein have the meaning ascribed to them in the Williams-Singh Affidavit, the Plan or the Meeting Order.

[1] Affidavit of Ravi Williams-Singh sworn September 23, 2020 [Williams-Singh Affidavit], Motion Record of the Applicant at Tab 2 [Motion Record]; Fourth Report of Richter Advisory Group Inc. dated September 23, 2020 [Fourth Report].

A. Background

5. RCCL is a privately held company that is in the business of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives, accessories and other flooring-related products in Canada. RCCL is a direct wholly-owned subsidiary of Roberts Consolidated Industries, Inc. ("**RCI**"). RCI was a leading participant in the carpet installation market in 1997 when all of its outstanding shares, including those of RCCL, were acquired by Q.E.P. Co. Inc. (together with RCI, the "**Parent**").[2]

6. RCCL was granted creditor protection and related relief under the CCAA pursuant to an initial order (the "**Initial Order**") of the Ontario Superior Court of Justice Court (Commercial List) (the "**Court**") dated June 29, 2020. The Initial Order granted a stay of proceedings up to and including July 9, 2020 (the "**Stay Period**"), appointed Richter Advisory Group Inc. as Monitor of RCCL (in such capacity, the "**Monitor**"), and granted an Administration Charge and a Directors' Charge (each as defined in the Initial Order) over RCCL's assets, property and undertakings (the "**Property**").[3]

7. The Initial Order also provided that the ABL Lender (as defined in the Initial Order) shall be treated as unaffected in any plan of compromise or arrangement filed by the Applicant under the CCAA with respect to any obligations outstanding as of the date of the Initial Order or arising thereafter under the ABL Credit Agreement or the ABL Forbearance Agreement (each as defined in the Initial Order).[4]

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[2] Williams-Singh Affidavit, *ibid* at para 5, Motion Record at Tab 2.
[3] *Ibid* at para 6, Motion Record at Tab 2.
[4] *Ibid* at para 7, Motion Record at Tab 2.

8. On July 8, 2020, the Court granted an order (the "**Amended and Restated Initial Order**"), which, among other things:

(a) expanded RCCL's restructuring authority and the Monitor's ability to assist with RCCL's restructuring efforts;

(b) extended the Stay Period to and including August 31, 2020;

(c) approved the KERP, and the KERP Charge (each as defined in the Amended and Restated Initial Order);

(d) authorized RCCL, with the consent of the Monitor and in consultation with the ABL Lender to pay amounts owing for goods and services actually supplied to RCCL prior to the date of the Initial Order by third party suppliers, up to an aggregate amount of $700,000, if, in the opinion of RCCL, the supplier is critical to its business, its ongoing operations, or the preservation of RCCL's Property, and the payment is required to ensure ongoing supply; and

(e) granted the ABL Lender's DIP Charge (as defined in the Amended and Restated Initial Order) in favour of the ABL Lender over RCCL's Property as security for all of the obligations of RCCL to the ABL Lender relating to advances made to RCCL under the ABL Credit Agreement from and after the date of the Amended and Restated Initial Order.[5]

[5] *Ibid* at para 8, Motion Record at Tab 2.

9. On July 28, 2020, RCCL sought and obtained an order (the "**Claims Procedure Order**"), which established a procedure for the identification and quantification of certain claims against the Applicant and its current and former directors and officers, and authorized, directed and empowered the Applicant and the Monitor to take such actions as contemplated by the Claims Procedure Order.[6]

10. On August 26, 2020, RCCL sought and obtained an order, among other things, extending the Stay Period until and including October 30, 2020.[7]

B. The Plan[8]

11. With the support of the Monitor, RCCL has formulated the Plan. The Plan is the product of significant effort on the part of RCCL and the Monitor, and reflects discussions between RCCL, the Monitor, and certain of the Applicant's stakeholders.[9]

12. The Plan provides for, among other things, a compromise of and consideration for Affected Claims that are Proven Claims, and a release and discharge of all Affected Claims and Released Claims, all in the expectation that Affected Creditors and RCCL's other stakeholders will derive a greater benefit from the implementation of the Plan than they would derive from RCCL's bankruptcy or liquidation.[10]

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[6] *Ibid* at para 11, Motion Record at Tab 2.
[7] *Ibid* at para 12, Motion Record at Tab 2.
[8] All capitalized terms not defined in this section shall have the meaning ascribed to them in the plan.
[9] Williams-Singh Affidavit, *supra* note 1 at para 16, Motion Record at Tab 2; Fourth Report, *supra* note 1 at para 39.
[10] Williams-Singh Affidavit, *ibid* at para 18, Motion Record at Tab 2; Fourth Report, *ibid* at paras 25, 39.

13. A detailed description of the Plan is provided in the Williams-Singh Affidavit.[11] The salient features of the Plan include the following:

(a) Affected Creditors with a Proven Claim in an amount less than or equal to $7,000, or those Affected Creditors who have delivered to the Monitor a Convenience Creditor Election, (each a "**Convenience Creditor**") are entitled to a Cash distribution from the Applicant, with the support of the Parent using its existing facilities, in an amount equal to the lesser of (a) $7,000 and (b) the value of such Convenience Creditor's Proven Claim in full satisfaction of their Proven Claim.

(b) Each Affected Creditor with a Proven Claim who is not a Convenience Creditor shall receive from the Applicant, with the support of the Parent, using its existing facilities, (i) the Initial Distribution Amount, being an amount in Cash equal to 20 cents ($0.20) for every dollar of such Affected Creditor's Proven Claim, and (ii) a Promissory Note with a face value equal to 30 cents ($0.30) for every dollar of such Affected Creditor's Proven Claim, which will be payable by the Applicant in eighteen (18) equal consecutive monthly installments on the last day of each calendar month, commencing on January 31, 2021.

(c) The Plan does not affect any Unaffected Claim, including, in accordance with the terms of the Initial Order, any Claim, Post-Filing Claim and/or Secured Claim of BOA or the ABL Lender against any Person, including those arising from the ABL Credit Agreement or the ABL Forbearance Agreement (a "**BOA Claim**").

[11] Williams-Singh Affidavit, *ibid* at paras 16-36, Motion Record at Tab 2.

(d) At the Effective Time, all Affected Claims and all Released Claims will be fully, finally, irrevocably and forever released, discharged, cancelled and barred.

(e) At the Effective Time, each of (a) the Applicant; (b) the Affiliates, including for greater certainty, the Parent; (c) the Monitor; (d) any Person claimed to be liable derivatively through any or all of the foregoing Persons; and (e) the respective Representatives (including Responsible Persons) of any or all of the foregoing Persons will be released and discharged from all Released Claims, which will be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties.

(f) The Plan will not release (i) any Unaffected Claim, (ii) the Applicant's obligations to Affected Creditors under the Plan, (iii) a Released Party in respect of a claim whereby the Released Party is adjudged by the express terms of a judgement rendered on a final determination on the merits by the Court or a court of competent jurisdiction in a judgment recognized by the Court to have committed fraud or wilful misconduct or to have been grossly negligent or, in the case of Directors, in respect of any claim referred to in section 5.1(2) of the CCAA, and (iv) any BOA Claim.

C. The Meeting Order

14. The proposed Meeting Order facilitates voting on the Plan and the Sanction Hearing if the Required Majority (defined below) is obtained. Among other things, the proposed Meeting Order provides that:

(a) All Affected Creditors with Affected Claims will constitute a single class for the purpose of considering and voting on the Plan.

(b) A quorum for the Meeting is the presence at such Meeting in person or by proxy of 1 (one) Affected Creditor with a Voting Claim (defined below) that is an Affected Claim.

(c) The vote on the Resolution to approve the Plan will be decided by approval of the Plan by a majority in number of the Affected Creditors holding Voting Claims representing a two-thirds majority in value of the Affected Creditors Class that are in attendance and voting or deemed to be voting at the Meeting personally or by proxy (the "**Required Majority**").

(d) Only Affected Creditors holding Affected Claims that are Proven Claims or Unresolved Claims or their proxies are entitled to vote at the Meeting. Unaffected Creditors are not entitled, in such capacity, to attend the Meeting or vote on the Plan.

(e) Each Affected Creditor, on the Record Date, with an Affected Claim that is a Proven Claim, is entitled to one vote as a member of the Affected Creditors Class, which vote shall have a value equal to the dollar value of such Affected Creditor's Proven Claim(s) in accordance with the Claims Procedure Order, in respect of such Affected Claim(s) (each, a "**Voting Claim**", and collectively "**Voting Claims**").

(f) Each Convenience Creditor shall be deemed to be and vote in and as part of the Affected Creditors Class and shall be deemed to have voted their Voting Claim in favour of the Resolution to approve the Plan.[12]

15. If the Plan is approved by the Required Majority, the Applicant intends to seek the Court's approval of the Plan by seeking a Sanction Order at the Sanction Hearing.[13]

PART III: ISSUES

16. The issue on this motion is whether the Meeting Order, which accepts the Plan for filing, approves the classification of creditors and authorizes and directs the Applicant to call and conduct the Meeting, should be granted.

PART IV: LAW & ARGUMENT

A. The Meeting Order Should be Granted

1. The CCAA Plan Should be Accepted for Filing

17. Section 4 of the CCAA provides that the Court may order a meeting of creditors, or class of creditors, to consider and vote on a plan compromising the claims of such creditors:

> Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.[14]

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[12] *Ibid* at paras 37-55, Motion Record at Tab 2.
[13] *Ibid* at para 57, Motion Record at Tab 2.
[14] *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 s 4 [CCAA].

18. The threshold to be satisfied in order to file a plan and call a meeting of creditors is low.[15] As the Ontario Court of Appeal held in *Nova Metal Products Inc. v Cominskey (Trustee of)*, the feasibility of a plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors. However, the Court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset.[16]

19. The Court is not required to address the fairness and reasonableness of the Plan at this stage.[17] Unless it is obvious that there is no hope that the plan would be approved by the creditors or, if it was approved by the creditors, it would not, for some other reason, be approved by the Court, the meeting order should be approved and the debtor should not be prevented from presenting a plan to its creditors at a meeting for their consideration.[18]

20. The inclusion of releases in a plan of compromise and arrangement do not render the plan ineligible for sanction. Rather, releases should be considered at the sanctioning stage as they bear on the fairness and reasonableness of the proposed plan.[19]

21. The Applicant submits that stakeholders should be provided with an opportunity to consider and vote upon the proposed Plan to move the CCAA Proceedings toward conclusion. The Applicant submits that the low test for filing the Plan for consideration by the Affected Creditors is satisfied. There is no basis for concluding that the Plan has no hope of success and there is a

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[15] *Federal Gypsum Co (Re)*, 2007 NSSC 384 at para 12.
[16] *Nova Metal Products Inc v Cominskey (Trustee of)*, [1990], 1 O.R. (3d) 289 (CA) at para 90.
[17] *Re Jaguar Mining Inc*, 2014 ONSC 494 at para 48.
[18] *Re ScoZinc Ltd*, 2009 NSSC 163 at paras 4-7.
[19] *Metcalfe & Mansfield Alternative Investments II Corp, (Re)*, 2008 ONCA 587 at paras 73, 95, 113-114.

reasonable basis for believing that the Plan can achieve the approval of the Required Majority, and if such approval is obtained, the sanction of the Court.[20]

22. Taken together, the Applicant submits that the Plan complies with the statutory requirements of the CCAA and is consistent with its objectives and should therefore be accepted for filing purposes.[21]

23. The Applicant also submits that the provisions of the Meeting Order governing the notice, calling and conduct of the Meeting held by videoconference are reasonable and appropriate in the circumstances.[22] Recognizing the importance of permitting creditors to meet virtually to consider and vote on CCAA plans due to COVID-19, this Court has previously granted meeting orders providing for creditor meetings to be held by way of videoconference and other electronic mediums.[23]

2. The Proposed Classification of Affected Creditors is Appropriate

24. As set out above, the Meeting Order provides that all of the Affected Creditors holding Affected Claims will vote in a single class. As made clear by Pepall J. (as she then was), in *Canwest Publishing Inc., Re*, the CCAA permits a debtor company to present a plan to a single class of creditors, as is proposed here.[24]

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[20] Williams-Singh Affidavit, *supra* note 1 at para 59, Motion Record at Tab 2; Fourth Report of the Monitor, *supra* note 1 at para 39.
[21] Williams-Singh Affidavit, *ibid* at para 35, Motion Record at Tab 2.
[22] *Ibid* at paras 46, 59; Fourth Report of the Monitor, *supra* note 1 at para 42.
[23] *In the Matter of a Plan of Compromise or Arrangement of Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited* (June 18, 2020) Toronto, CV-19-00633392-00CL (Order) at para 8; *In the Matter of a Plan of Compromise or Arrangement of Forever XXI ULC* (May 28, 2020) Toronto, CV-19-00628233-00CL (Meeting Order) at para 14.
[24] *Canwest Publishing Inc, Re*, 2010 ONSC 222 at para 38 [*Canwest*].

25. Subsection 22(1) of the CCAA provides that:

> A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.[25]

26. Section 22(2) of the CCAA further provides that, for the purposes of Section 22(1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a "commonality of interest", taking into account:

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.[26]

27. These criteria, which were added to the CCAA as part of the 2009 amendments, codify factors considered in case law pre-dating these amendments.[27] In *Canadian Airlines*, Paperny J. (as she then was), summarized the principles applicable to the classification of creditors as follows:

> In summary, the cases establish the following principles applicable to assessing the commonality of interest:

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[25] CCAA, *supra* note 14 s 22(1).
[26] *Ibid* s 22(2).
[27] *SemCanada Crude Co, Re*, 2009 ABQB 490 at para 18.

1. Commonality of interest should be viewed on the basis of the non-fragmentation test, not on an identity of interest test.

2. The interests to be considered are the legal interests the creditor holds qua creditor in relationship to the debtor company, prior to and under the plan as well as on liquidation.

3. The commonality of these interests are to be viewed purposively, bearing in mind the object of the CCAA, namely to facilitate reorganizations if at all possible.

4. In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches which would potentially jeopardize potentially viable plans.[28]

28. Classification is a fact-specific determination that must be evaluated in the unique circumstances of every case. The exercise must be approached with the flexible and remedial jurisdiction of the CCAA in mind.[29]

29. "Commonality of interest" does not mean "identity of interest".[30] "Commonality of interest" is based on the principle that a class consists of those persons whose interest are not so dissimilar as to make it impossible for them to consult together with a view to their common interests.[31] It is a non-fragmentation test designed to facilitate, rather than hinder, the restructuring.

30. Where all of the creditors of the debtor company have unsecured claims it is "reasonable, logical, rational and practical to have all this unsecured debt in the same class".[32]

31. If the Meeting Order is granted, the sole class of creditors of the Applicant for the purpose of voting on the Plan will comprise of all of the Affected Creditors with Affected Claims. All

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[28] *Canadian Airlines Corp, Re*, [2000] AJ No. 1693 at para 31.
[29] *Ibid* at para 18.
[30] *Ibid* at para 20.
[31] *Ibid* at para 17.
[32] *Stelco Inc, Re* (2005), OJ No. 4814 at para 13.

Affected Creditors with Proven Claims, subject to their election to be treated as a Convenience Creditor, will receive a distribution in respect of their Proven Claims, and their Claims will be compromised, released, discharged and barred.

32. Pursuant to the Plan and the Meeting Order, each Convenience Creditor shall be deemed to be in, and shall be deemed to vote in favour of the Resolution to approve the Plan as part of the Affected Creditors Class. The proposed treatment of Convenience Creditors under the Plan mirrors that of other CCAA plans of compromise and arrangement previously approved by the Court.[33]

33. Given the nature of the Affected Claims held by the Affected Creditors, the Applicant submits that all of the Affected Creditors having Affected Claims, including Convenience Creditors, are appropriately included in the same class. None of the Affected Creditors have recourse to any security in respect of their Affected Claims. Thus, the proposed single classification does not have the effect of confiscating the legal rights of any of the Affected Creditors, or adversely affecting any existing security position.[34]

34. Additionally, the Applicant submits that there are no material distinctions between the Affected Creditors that warrant separate classes or preclude reasonable consultation among the Affected Creditors.

35. For the foregoing reasons, the classification of Creditors, as contemplated in the Meeting Order, is fair having regard to the Creditors' legal interests, the remedies available to them, the

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[33] *In the Matter of a Plan of Compromise or Arrangement of Target Canada Co. et al.* (April 13, 2016) Toronto, CV-15-10832-00CL (Meeting Order) at paras 25, 33; *In the Matter of the a Plan of Compromise or Arrangement of Canwest Global Communications Corp et al.* (June 23, 2010) Toronto, CV-09-8396-00CL (Meeting Order) at para 45.

[34] Williams-Singh Affidavit, *supra* note 1 at para 19, Motion Record at Tab 2; Fourth Report of the Monitor, *supra* note 1 at para 39.

consideration offered to them under the Plan, and the extent to which they would recover their claims by exercising those remedies.[35]

36. As indicated in the Fourth Report, the Monitor supports the classification of Creditors under the Plan.[36]

PART V: RELIEF REQUESTED

37. The Applicant submits that it meets all of the qualifications required to obtain the relief sought and respectfully request that this Court grant the proposed Meeting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of September, 2020.

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[35] Williams-Singh Affidavit, *ibid*, Motion Record at Tab 2; Fourth Report, *ibid*.
[36] Fourth Report, *ibid* at para 39.

SCHEDULE "A"

LIST OF AUTHORITIES

Cases Cited

1. *Canadian Airlines Corp., Re*, [2000] AJ No. 1693
2. *Canwest Publishing Inc, Re*, 2010 ONSC 222
3. *Federal Gypsum Co, Re*, 2007 NSSC 384
4. *In the Matter of the a Plan of Compromise or Arrangement of Canwest Global Communications Corp et al.* (June 23, 2010) Toronto, CV-09-8396-00CL (Meeting Order)
5. *In the Matter of a Plan of Compromise or Arrangement of Forever XXI ULC* (May 28, 2020) Toronto, CV-19-00628233-00CL (Meeting Order)
6. *In the Matter of a Plan of Compromise or Arrangement of Lydian International Limited, Lydian Canada Ventures Corporation and Lydian U.K. Corporation Limited* (June 18, 2020) Toronto, CV-19-00633392-00CL (Order)
7. *In the Matter of a Plan of Compromise or Arrangement of Target Canada Co. et al.* (April 13, 2016) Toronto, CV-15-10832-00CL (Meeting Order)
8. *Jaguar Mining Inc, Re*, 2014 ONSC 494
9. *Metcalfe & Mansfield Alternative Investments II Corp, (Re)*, 2008 ONCA 587
10. *Nova Metal Products Inc v Cominskey (Trustee of)*, [1990], 1 O.R. (3d) 289 (CA)
11. *ScoZinc Ltd, Re*, 2009 NSSC 163
12. *SemCanada Crude Co, Re*, 2009 ABQB 490
13. *Stelco Inc, Re* (2005), OJ No. 4814

SCHEDULE "B"

STATUTES RELIED ON

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

Section 4

Compromises with unsecured creditors

Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Section 6

Compromises to be Sanctioned by Court

(1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act or is in the course of being wound up under the Winding-up and Restructuring Act, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement,

of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the Income Tax Act;

(b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, an employee's premium, or employer's premium, as defined in the Employment Insurance Act, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or

(ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a provincial pension plan as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the Bankruptcy and Insolvency Act if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the

compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

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

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

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

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Section 22

Company may establish classes

(1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

(a) the nature of the debts, liabilities or obligations giving rise to their claims;

(b) the nature and rank of any security in respect of their claims;

(c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

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 OR COMPROMISE OR ARRANGEMENT OF ROBERTS COMPANY CANADA LIMITED

Court File No.: CV-20-00643158-00CL

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(COMMERCIAL LIST)

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