

**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 OLD TBS CANADA LIMITED**

**FACTUM OF THE MONITOR  
(CLAIMS PROCEDURE ORDER)**

February 14, 2025

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Monitor of Old TBS Canada Limited*

**TO: The Service List**

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**PART I - INTRODUCTION<sup>1</sup>**

1. This factum is filed by Alvarez & Marsal Canada Inc. in its capacity as court appointed monitor (the “**Monitor**”) of Old TBS Canada Limited (f/k/a The Body Shop Canada Limited) (the “**Company**”) in its proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) in support of the Monitor’s motion for an Order, substantially in the form found at Tab 3 of the Monitor’s Motion Record dated February 12, 2025 (the “**Claims Procedure Order**”), among other things:

- (a) establishing a procedure for the identification, quantification and resolution of claims against the Company and its directors and officers (the “**Claims Procedure**”); and
- (b) extending the Stay Period to and including December 31, 2025.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning given to them in Third Report of the Monitor dated February 12, 2025 (the “**Third Report**”) or the Claims Procedure Order, as applicable.

## PART II - SUMMARY OF FACTS

2. The Company filed a notice of intention (“**NOI**”) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3, as amended, on March 1, 2024 following the sudden and unexpected filing for administration by its parent company in the United Kingdom. A&M was appointed as the proposal trustee in the NOI proceeding.<sup>2</sup>

3. On July 5, 2024, the Company obtained an Order (the “**Initial Order**”), among other things, continuing the NOI Proceeding under the CCAA (such proceeding, the “**CCAA Proceeding**”) and appointing A&M as the Monitor.<sup>3</sup>

4. Also on July 5, 2024, the Company obtained an Order (the “**Sale Process Order**”), among other things, authorizing the Company and the Monitor to conduct a sale process in respect of the assets and business of the Company (the “**Sale Process**”).<sup>4</sup>

5. In accordance with the Sale Process Order, the Company and Monitor conducted the Sale Process, which culminated in the Company entering into an asset purchase agreement dated as of December 6, 2024 (as amended, the “**APA**”) with Body and Lotion Inc. (previously 1001072685 Ontario Inc.) (the “**Purchaser**”).<sup>5</sup>

6. Pursuant to an Approval and Vesting Order (“**AVO**”), an Assignment Order and a Declaration Order obtained by the Company, each dated December 13, 2024, among other things, the Court approved a transaction contemplated by the APA (the “**Transaction**”) pursuant to which,

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<sup>2</sup> Third Report at 1.1.

<sup>3</sup> Third Report at 1.7(i).

<sup>4</sup> Third Report at 1.7(ii).

<sup>5</sup> Third Report at 1.7; Second Report of the Monitor dated December 9, 2024 at 4.2 – 4.23.

upon the Monitor's delivery of a certificate substantially in the form attached as a schedule to the AVO (the "**Monitor's Certificate**"), all of the Company's right, title and interest in and to the Purchased Assets would vest in the Purchaser, free and clear of all claims and encumbrances other than the Permitted Encumbrances.<sup>6</sup>

7. Also on December 13, 2024, the Court granted an Order (the "**Ancillary Order**"), among other things:

- (a) effective upon the delivery of the Monitor's Certificate, expanding the Monitor's powers and granting certain additional protections in favour of the Monitor, including authorizing the Monitor to hold the proceeds from the Transaction and make payments from such proceeds as the Monitor deems necessary and appropriate in accordance with any claims process conducted in respect of the Company and oversee the wind-down activities of the Company; and
- (b) extending the Stay Period to and including March 31, 2025.<sup>7</sup>

8. The Monitor's Certificate was delivered on December 16, 2024, at which time the Transaction closed and the Monitor was granted certain expanded powers and additional protections, as set out in further detail in the Ancillary Order.<sup>8</sup>

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<sup>6</sup> Third Report at 1.9 & 4.1.

<sup>7</sup> Third Report at 1.9.

<sup>8</sup> Third Report at 4.1.

***Proposed Claims Procedure Order***

9. As a result of the completion of the Transaction, the Company no longer has any business, operations or employees. All of the directors and officers have resigned. Accordingly, the Monitor intends to conduct an orderly wind-down of the Company, commencing with the implementation of the Claims Procedure.<sup>9</sup>

10. The Claims Procedure has been designed to establish a process for the identification, quantification and resolution of claims of claimants against the Company and the Company's Directors and Officers. The Claims Procedure will be implemented by the Monitor on behalf of the Company.<sup>10</sup>

11. The key steps and timelines in the proposed Claims Procedure Order are summarized in the table below:<sup>11</sup>

<b>Timeframe</b>	<b>Activity</b>
February 19, 2025	Scheduled date for the hearing of the motion seeking the proposed Claims Procedure Order
No later than March 5, 2025	Claims Packages to be sent by the Monitor, on behalf of TBS Canada, to each of the known Potential Claimants
April 21, 2025	Claims Bar Date for the filing of Prefiling Claims against TBS Canada and the Director/Officer Claims

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<sup>9</sup> Third Report at 4.1, 4.4 – 4.5, 4.7

<sup>10</sup> Third Report at 5.1.

<sup>11</sup> Third Report at 5.2.

**(a) Claims**

12. The proposed Claims Procedure will solicit the following claims:<sup>12</sup>

- (a) Prefiling Claims: any right or claim of any Person against the Company in connection with any indebtedness, liability or obligation of any kind whatsoever in existence on or before the Filing Date (March 1, 2024);
- (b) Restructuring Period Claims: any right or claim of any Person against the Company arising out of the restructuring, disclaimer, termination or breach by the Company on or after the Filing Date of any contract, lease or other agreement; and
- (c) Director/Officer Claims: any existing or future right or claim of any Person against anyone who is or was, or may be deemed to be or have been, a Director and/or Officer of the Applicant, in their capacity as a Director or Officer.

13. The proposed Claims Procedure does not apply to any Excluded Claim, namely:<sup>13</sup>

- (a) any Claim secured by the Administration Charge or the D&O Charge;
- (b) any claim that may be asserted by the Company against a Director or Officer;
- (c) any claim enumerated in subsections 5.1(2) and 19(2) of the CCAA; and
- (d) any Claim set forth in (i) through (iii) above arising through subrogation.

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<sup>12</sup> Third Report at 5.3.

<sup>13</sup> Third Report at 5.4.

**(b) Claims Bar Dates**

14. Any Claimant asserting a Prefiling Claim and/or a Director/Officer Claim must file the applicable Proof of Claim form with the Monitor in respect of such claim by 5:00 p.m. (Eastern Prevailing Time) on April 21, 2025 (the “**Claims Bar Date**”). Any Prefiling Claim or Director/Officer Claim not filed by the Claims Bar Date shall be extinguished and the Claimant barred from asserting such Claim.<sup>14</sup>

15. Any Claimant asserting a Restructuring Period Claim must file the applicable Proof of Claim form with the Monitor in respect of such claim by the later of: (i) twenty (20) Calendar Days after the date on which the Monitor sends a Claims Package in respect of such Restructuring Period Claim; or (ii) the Claims Bar Date (the “**Restructuring Period Claims Bar Date**”). Any Restructuring Period Claim not filed by the Claims Bar Date shall be extinguished and the Claimant barred from asserting such Claim.<sup>15</sup>

**(c) Assessment and Determination of Claims**

16. The Monitor will review all Proofs of Claim received on or before the applicable claims bar date and accept, revise, or disallow the classification, nature, and/or amount of each Claim.<sup>16</sup>

17. If the Monitor intends to revise or disallow a Claim, the Monitor will notify the Claimant by sending a Notice of Revision or Disallowance along with the reasons for such revision or disallowance.<sup>17</sup> A Claimant wishing to dispute a Notice of Revision or Disallowance must deliver

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<sup>14</sup> Third Report at 5.6.

<sup>15</sup> Third Report at 5.7.

<sup>16</sup> Third Report at 5.9.

<sup>17</sup> Third Report at 5.11.

a Notice of Dispute or Revision or Disallowance by no later than 5:00 p.m. (Eastern Prevailing Time) on the date that is fourteen (14) Calendar Days after the date the applicable Claimant is deemed to have received such Notice of Revision or Disallowance.<sup>18</sup> Any Claimant that does not file a Notice of Dispute of Revision or Disallowance with the Monitor within such time period shall be deemed to have accepted the amount and determination as set out in the Notice of Revision or Disallowance for voting and distribution purposes, as applicable. The Claimant's right to dispute the same or otherwise pursue the Claim in a greater amount than that provided for in the Notice of Revision of Disallowance shall be forever extinguished and barred.<sup>19</sup>

18. In the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, the Monitor is authorized to notify the Claimant and refer the Disputed Claim to the Court or such other alternative dispute resolution proceeding as may be ordered by the Court or agreed to by the Monitor and the applicable Claimant. The Court or such other Person conducting the alternative dispute resolution proceeding shall have authority to resolve the dispute.<sup>20</sup>

19. In respect of any Director/Officer Claim received, the Monitor will undertake its review of such Proofs of Claim in consultation with the relevant Director or Officer.<sup>21</sup> The Monitor will provide the relevant Director or Officer (and their counsel, if known) with a copy of any Proofs of Claim received in respect of such Director/Officer Claims.<sup>22</sup> The Monitor will also provide the

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<sup>18</sup> Third Report at 5.12.

<sup>19</sup> Third Report at 5.13.

<sup>20</sup> Third Report at 5.14.

<sup>21</sup> Third Report at 5.10.

<sup>22</sup> Third Report at 5.10.

relevant Director or Officer (and their counsel, if known) with any applicable Notice of Revision or Disallowance and Notice of Dispute of Revision or Disallowance.<sup>23</sup>

20. To the extent that any Claim filed in accordance with the Claims Procedure Order includes a Director/Officer Claim, a corresponding D&O Indemnity Claim shall be deemed to have been filed in respect of each Director/Officer Claim prior to the applicable claims bar date. Directors and Officers shall not be required take any action in respect of any such D&O Indemnity Claim.<sup>24</sup>

21. The proposed Claims Procedure Order provides that any Person that does not deliver a Proof of Claim to the Monitor on or before the applicable claims bar date: (i) shall not be entitled to attend or vote at a Meeting in respect of such Claim; (ii) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise; (iii) shall not be entitled to any further notice in the CCAA Proceedings (unless it has otherwise sought to be included on the Service List); (iv) shall not be entitled to participate as a Claimant or creditor in the Claims Procedure or the CCAA Proceeding in respect of such Claim; and (v) shall be forever barred from making or enforcing such Claim against the Applicant, the Directors or the Officers or any of them, and such Claim shall be extinguished without any further act or notification.<sup>25</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

22. The issues now before this Court are whether:

- (a) this Court should approve the proposed Claims Procedure; and

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<sup>23</sup> Third Report at 5.11 & 5.12.

<sup>24</sup> Third Report at 5.16.

<sup>25</sup> Third Report at 5.17.

(b) this Court should extend the Stay of Proceedings until December 31, 2025.

**(a) The Claims Procedure Should be Approved**

23. Section 11 of the CCAA gives the Court the power to make any order it considers appropriate in the circumstances, which includes the ability to approve a process to solicit and determine claims against a debtor company and/or its directors and officers.<sup>26</sup> Furthermore, the Court's power under section 12 of the CCAA to "fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement" has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.<sup>27</sup>

24. The general practice in CCAA proceedings is for debtors to apply to the Court for approval of a process to solicit claims against the debtor company and/or its directors and officers and to establish a deadline for filing claims. This Court's practice of approving claims processes in CCAA restructurings is well accepted.<sup>28</sup>

25. A claims procedure enables a CCAA debtor to determine the validity and quantum of claims against the debtor and/or its officers and directors in order to make a distribution to creditors. This determination is key to any CCAA proceeding, including a proceeding involving a liquidation of assets.<sup>29</sup>

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<sup>26</sup> CCAA s. 11.

<sup>27</sup> *Re Toys "R" Us (Canada) Ltd.*, [2018 ONSC 609](#) at para 8 [*Toys "R" Us*]; *Re Timminco Ltd.*, [2014 ONSC 3393](#) at para 40 [*Timminco*].

<sup>28</sup> *Toys "R" Us* at para 8; see also *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#) at paras 5-6; *Re ScoZinc Ltd.*, [2009 NSSC 136](#) at para 25 [*ScoZinc*]; *In the Matter of DCL Corporation et. al.*, (June 20, 2023), ONSC (Commercial List), Court File No. CV-22-00691990-00CL ([Endorsement of Osborne, J.](#)) at paras 5-7 [*DCL Corporation CPO Endorsement*].

<sup>29</sup> *Re Walter Energy Canada Holdings Inc.*, [2016 BCSC 1746](#) at para 81; *Timminco* at para 41.

26. A court approved claims procedure should be both flexible and expeditious to achieve the broad remedial objectives of the CCAA and to ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.<sup>30</sup> The proposed claims procedure should be fair and reasonable to all stakeholders, including those who will be directly affected by the acceptance of other claims.<sup>31</sup>

27. The proposed Claims Procedure is fair and reasonable and should be approved.

- (a) *The Claims Procedure is fair.* The Monitor has designed the Claims Procedure to attempt to provide a comprehensive, fair and expeditious means for identifying, quantifying and resolving Claims against the Company and its Directors and Officers;
- (b) *The Claims Procedure provides sufficient notice to Potential Claimants.* The Monitor will send a Claims Package to each of the Potential Claimants within ten Business Days following the granting of this Claims Procedure Order; cause the Notice Letter (or a condensed version thereof) to be published in a national newspaper and publish information about the Claims Procedure on its website; and deliver a copy of the Claims Package to any Person claiming to be a Claimant upon request. With respect to any notices of disclaimer or resiliation delivered after the date of the Claims Procedure Order, the Monitor will deliver an accompanying Claims Package.<sup>32</sup>

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<sup>30</sup> *ScoZinc* at para [23](#); *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#) at para [30-31](#) [*Laurentian*].

<sup>31</sup> *Laurentian* at para [32](#).

<sup>32</sup> Third Report at 5.8.

- (c) *Potential Claimants have sufficient time to submit a Proof of Claim.* The Claims Bar Date for Pre-Filing Claims and Director/Officer Claims is April 21, 2025. Potential Claimants with Pre-Filing Claims and/or Director/Officer Claims will therefore have more than two months to submit Proofs of Claim in respect of such claims. Similarly, Potential Claimants with Restructuring Period Claims will have a minimum period of twenty (20) days to file the applicable Proof of Claim form with the Monitor. The Monitor does not currently anticipate any Restructuring Period Claim arising after the issuance of the Claims Procedure Order which is not presently known to the Monitor and held by a Potential Claimant.<sup>33</sup> The Monitor believes that these periods are sufficient for a Claimant to evaluate and submit any Claim they may have.<sup>34</sup>
- (d) *The Claims Procedure is employee-friendly.* Any employee wishing to file a Proof of Claim can obtain a Claims Package from the Monitor. The Monitor is authorized and empowered to assist any Claimant, including any former employee of the Company, in filing a Proof of Claim. Several of the former employees of the Company have already submitted proofs of claim in connection with the WEPP process authorized by the Ancillary Order, which authorized the Monitor to accept such proofs of claim as Proofs of Claim for purposes of the Claims Procedure. Should any former employees have additional Claims, the Monitor has been authorized, and intends, to assist with the submission of such Claim.<sup>35</sup>

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<sup>33</sup> Third Report at 4.3 – 4.4 & 5.7.

<sup>34</sup> Third Report at 5.6 & 5.7.

<sup>35</sup> Third Report at 4.11 & 4.12.

- (e) *The Claims Procedure will be independent.* The Monitor will undertake the Claims Procedure, in consultation with Directors and Officers where appropriate.
- (f) *Disputed Claims will be fairly and efficiently adjudicated.* If a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a satisfactory time period or manner, the Monitor shall notify the Claimant (and, if applicable, any relevant Directors or Officers and their counsel). The Monitor shall then refer the Claim to dispute resolution, either to the Court or to such alternative dispute resolution proceeding as may be ordered by the Court or agreed to by the parties (the Claimant, the Monitor, and if applicable, any relevant Directors or Officers).<sup>36</sup>

28. The proposed Claims Procedure satisfies the overarching purpose of claims processes generally, being “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner”, and ought to be approved.<sup>37</sup>

#### **(b) The Stay of Proceedings Should be Extended**

29. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings “for any period that the court considers necessary” where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.<sup>38</sup>

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<sup>36</sup> Third Report at 5.13 & 5.14.

<sup>37</sup> *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at para [40](#).

<sup>38</sup> CCAA s. [11.02\(2\) & \(3\)](#).

30. The Stay Period currently expires on March 31, 2025. The Monitor seeks an extension of the Stay Period until December 31, 2025. The Monitor submits that the requested Stay Period is appropriate and necessary to provide the Monitor time to, among other things:<sup>39</sup>

- (a) implement the proposed Claims Procedure and assess, quantify and seek to resolve the claims filed in connection therewith;
- (b) provide a report to the Court and the creditors on the nature of the claims resolved;
- (c) permit the Monitor to continue to work with the Company's UK counsel to assert claims against the UK Parent; and
- (d) allow the Monitor, exercising its powers under the Ancillary Order, to seek approval of one or more distributions to the Company's creditors and otherwise administer the Company's estate and wind-down of the CCAA Proceeding, including a potential assignment into bankruptcy.

31. The Monitor intends to provide a report to the Court during the Stay Period, if granted, reporting on, among other things, the results of the Claims Procedure and the status and progress of the assertion of the Company's claims against the UK Parent. This will ensure that stakeholders have access to information, even if the Monitor determines that a court attendance is not required in the near term.<sup>40</sup>

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<sup>39</sup> Third Report at para 6.4.

<sup>40</sup> Third Report at 6.3.

32. The anticipated costs through the proposed extended Stay Period are expected to consist primarily of professional fees of the Monitor and its legal counsel in relation to administering the Claims Procedure and will be funded by the Proceeds.<sup>41</sup>

33. The proposed extension of the Stay Period is consistent with prior orders of this Court granted in similar circumstances to permit the Monitor to implement a claims procedure on behalf of a debtor company.<sup>42</sup>

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<sup>41</sup> Third Report at 6.5.

<sup>42</sup> *In the Matter of DCL Corporation et. al.*, (June 20, 2023), ONSC (Commercial List), Court File No. CV-22-00691990-00CL ([Claims Procedure Order](#)) at para 40; *DCL Corporation CPO Endorsement* at para 8.

**PART IV - ORDER REQUESTED**

34. For the reasons set out herein, the Monitor requests that this Court grant the proposed Stay Claims Procedure Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of February, 2025.

*Cassels Brock & Blackwell LLP*

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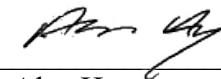
**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#)
2. *In the Matter of DCL Corporation et. al.*, (June 20, 2023), ONSC (Commercial List), Court File No. CV-22-00691990-00CL ([Claims Procedure Order](#))
3. *In the Matter of DCL Corporation et. al.*, (June 20, 2023), ONSC (Commercial List), Court File No. CV-22-00691990-00CL ([Endorsement of Osborne, J.](#))
4. *Re Laurentian University of Sudbury*, [2021 ONSC 3885](#)
5. *Re ScoZinc Ltd.*, [2009 NSSC 136](#)
6. *Re Timminco Ltd.*, [2014 ONSC 3393](#)
7. *Re Toys “R” Us (Canada) Ltd.*, [2018 ONSC 609](#)
8. *Re U.S. Steel Canada Inc.*, [2017 ONSC 1967](#)
9. *Re Walter Energy Canada Holdings Inc.*, [2016 BCSC 1746](#)

**Certificate of Authenticity**

I, Alec Hoy, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Dated as of February 14, 2025

  
\_\_\_\_\_  
Alec Hoy

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY - LAWS**

**Companies’ Creditors Arrangement Act, RSB 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.

**Stays, etc. — other than initial application**

**11.02 (2)** A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

**11.02 (3)** The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Fixing Deadlines**

**12** The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

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Proceeding commenced at Toronto

**FACTUM**  
**(CLAIMS PROCEDURE ORDER)**

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