

**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 1000156489 ONTARIO INC.

APPLICANT

**FACTUM  
(Stay Extension)**

December 1, 2023

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solely in its capacity as Monitor of  
1000156489 Ontario Inc. (f/k/a DCL  
Corporation) and not in its personal or  
corporate capacity

## PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the monitor (in such capacity, the “**Monitor**”) of 1000156489 Ontario Inc. (f/k/a DCL Corporation) (the “**Applicant**”) in its proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the within proceedings, the “**CCAA Proceedings**”).

2. On this motion, the Monitor therefore seeks an order (the “**Stay Extension Order**”) extending the period of the CCAA stay of proceedings (the “**Stay Period**”) until and including June 30, 2024.

3. The Applicant and its affiliated Chapter 11 Debtors (as defined below) underwent a sale process in Spring 2023 which cumulated in a going-concern sale of substantially all of the business and assets of the Applicant and the Chapter 11 Debtors. The Applicant no longer has any business, operations, or employees. On May 8, 2023, this Court granted the Monitor the expanded powers necessary to conduct an orderly wind-down of the Applicant.

4. The Monitor remains engaged with the following activities in relation to the wind-down at this time:

- (a) reviewing and adjudicating claims filed against the Applicant pursuant to the claims procedure established in accordance with this Court’s Order of June 20, 2023 (the “**Claims Procedure**” and the “**Claims Procedure Order**”);
- (b) pursuing a potential recovery in respect of any surplus balance remaining after the wind-down of the registered pension plans for which the Applicant is sponsor (the “**Canadian Pension Plans**”); and

(c) administering the \$750,000 CCAA Cash Pool.

5. The Monitor seeks to extend the Stay Period in order continue the orderly wind-down of the Applicant as outlined above. The Monitor submits that the Stay Extension Order is fair and reasonable in the circumstances and should be granted.<sup>1</sup>

## PART II - SUMMARY OF FACTS

### A. Background and Update on the CCAA Proceedings

6. The Applicant is a subsidiary of its U.S. parent, H.I.G. Colors Inc. (“**Holdings**”). Holdings is a direct wholly-owned subsidiary of the ultimate corporate parent, H.I.G. Colors Holdings, Inc. (“**HIG Colors Holdings**” and, together with Holdings and its direct and indirect subsidiaries, including the Applicant and its subsidiaries, the “**DCL Group**”).<sup>2</sup>

7. On December 20, 2022, the Applicant obtained an initial order from this Court under the CCAA, pursuant to which the Monitor was appointed as monitor.<sup>3</sup>

8. The CCAA Proceedings were commenced as part of a larger coordinated restructuring of the DCL Group,<sup>4</sup> and on the Petition Date, HIG Colors Holdings and certain of its U.S.-based subsidiaries (the “**Chapter 11 Debtors**”) each filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”, and such proceedings, the “**Chapter 11 Proceedings**”, and

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<sup>1</sup> Unless otherwise stated, all monetary amounts referred to in this factum are expressed in U.S. dollars. Capitalized terms used in this factum but not otherwise defined herein have the meanings accorded to them in the Seventh Report of the Monitor dated December 1, 2023 (the “**Seventh Report**”), the Fifth Report of the Monitor dated May 3, 2023 (the “**Fifth Report**”) or the Second Amended and Restated Sale Agreement dated as of March 28, 2023, between the Applicant, DCL US and Pigments (as appended to the Monitor’s Fifth Report).

<sup>2</sup> Seventh Report at para. 1.3.

<sup>3</sup> Seventh Report at para. 1.1.

<sup>4</sup> Seventh Report at para. 1.4.

together with the CCAA Proceedings, the “**Restructuring Proceedings**”).<sup>5</sup> On December 22, 2022, the U.S. Bankruptcy Court granted a number of “first day orders” in the Chapter 11 Proceedings.<sup>6</sup>

9. The DCL Group conducted a sales process in the Restructuring Proceedings that culminated in a transaction (the “**Transaction**”) with Pigments Services, Inc. (including any permitted assignees, “**Pigments**”) which included the sale of substantially all the business and assets of the Applicant. On March 29, 2023, this Court issued an Order (the “**Approval and Vesting Order**”) approving the Transaction and extending the Stay Period until and including June 30, 2023. The Transaction closed on April 14, 2023.<sup>7</sup>

10. On May 8, 2023, this Court issued an Order (the “**Expansion of Monitor’s Powers Order**”), which granted the Monitor expanded powers to, among other things, oversee the wind-down activities of the Applicant.<sup>8</sup>

**(a) Update on the Claims Procedure**

11. On June 20, 2023, this Court issued the Claims Procedure Order which, among other things: (i) granted the Claims Procedure by which creditors were permitted to file claims against the Applicant, or against the Applicant’s Directors or Officers, as applicable; and (ii) extended the Stay Period until and including December 31, 2023.<sup>9</sup>

12. Pursuant to the Claims Procedure Order, the deadlines for filing claims were: (i) in respect of Pre-Filing Claims and Director/Officers Claims, August 18, 2023 (the “**Claims Bar Date**”);

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<sup>5</sup> Seventh Report at para. 1.4.

<sup>6</sup> Seventh Report at para. 1.4.

<sup>7</sup> Seventh Report at para. 1.6.

<sup>8</sup> Seventh Report at para. 1.7.

<sup>9</sup> Seventh Report at paras. 1.8, 4.2.

and (ii) in respect of Restructuring Period Claims, the later of 30 days after the date on which the Monitor sent a Claims Package with respect to a Restructuring Period Claim, or the Claims Bar Date.<sup>10</sup>

13. As of the Claims Bar Date, the Monitor received 170 Proofs of Claim totalling approximately \$40.2 million. Of these Proofs of Claim, 164 related to unsecured Pre-Filing Claims, while six related to unsecured Restructuring Period Claims. No Director/Officer Claims were received by the Monitor.<sup>11</sup>

14. The 170 Proofs of Claim have been reviewed as follows:

- (a) 112 Claims, totalling approximately \$18.2 million, have been admitted as filed;
- (b) 54 Claims were subject to a Notice of Revision or Disallowance (“**NORD**”), which were issued by the Monitor and the time for Claimants to respond by way of a Notice of Dispute has expired. The 54 NORDs issued to date represent a total allowed amount of approximately \$12.6 million in the aggregate, and represent a total of approximately \$3.5 million in disallowed claims;
- (c) two Claims totalling approximately \$136,000 were filed and subsequently withdrawn by the Claimant; and
- (d) two Pre-filing Claims are subject to ongoing review and adjudication by the Monitor, including: (a) one claim in the amount of approximately \$3.75 million for wrongful termination filed by a former employee; and (b) one claim in the amount

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<sup>10</sup> Seventh Report at para. 4.3.

<sup>11</sup> Seventh Report at para. 4.4.

of approximately \$80,000 for payroll source deductions filed by the CRA (collectively, the “**Unresolved Claims**”).<sup>12</sup>

15. The CCAA Cash Pool of \$750,000, less approximately \$100,000 in anticipated administration costs, is expected to be available to satisfy accepted claims. Based on its current analysis, the Monitor expects that Claimants with accepted claims will receive a recovery of approximately 2.7% to 3.0%. This estimated recovery is subject to change as the Unresolved Claims continue to be reviewed and assessed.<sup>13</sup> Further, any recovery obtained from the surplus balance of the Canadian Pension Plans may potentially increase the recovery to unsecured creditors.<sup>14</sup>

**(b) Registered Pension Plans**

16. The Applicant is the sponsor of the following registered Canadian Pension Plans: (i) the Salaried DC Plan; (ii) the Hourly DC Plan; (iii) the Hourly DB Plan; (iv) the Salaried DB Plan; and (v) the Pension Plan for the Employees of Monteith Inc. registered under the Pension Benefits Act (Ontario) and the Income Tax Act (Canada) with registration number 1046994 (the “**Monteith Plan**”). The Canadian Pension Plans were not assumed by Pigments as part of the Transaction.<sup>15</sup>

17. On October 18, 2023, Wind-Up Orders were issued by the Financial Services Regulatory Authority of Ontario (“**FSRA**”) in respect of the Hourly DB Plan and Salaried DB, effective April 14, 2023.<sup>16</sup> If surplus assets remain after the liabilities of the Hourly DB Plan and the Salaried DB Plan are settled, such assets will be allocated in accordance with each plan’s governing documents,

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<sup>12</sup> Seventh Report at para. 4.7.

<sup>13</sup> Seventh Report at para. 4.9.

<sup>14</sup> Seventh Report at para. 4.10.

<sup>15</sup> Seventh Report at para. 3.1.

<sup>16</sup> Seventh Report at para. 3.2.

or as may otherwise be agreed with the Applicant's plan members or ordered by the Court.<sup>17</sup> Based on actuarial calculations, as of December 31, 2022 the Hourly DB Plan was in a surplus position of approximately CAD\$1.56 million, while the Salaried DB Plan was in a surplus position of approximately CAD\$3.49 million.<sup>18</sup>

18. The Applicant's pension counsel and the Monitor's pension council have continued to work with the Applicant to locate documents that may be relevant to surplus entitlement, in order to assess whether the Applicant or the plan members are entitled to the surplus. This process, which is required by FSRA, has been challenging, owing to the fact that the Salaried DB Plan and the Hourly DB Plan are older pension plans which were originally established in 1977 and 1978, respectively.<sup>19</sup>

19. Based on the Applicant's and the Monitor's pension counsel's review of available information and documents regarding the Hourly DB Plan, the Applicant and the Monitor expect to prepare an application to FSRA that entitlement to any surplus in the Hourly Plan lies with the Applicant and to distribute the surplus in the Hourly DB Plan accordingly. The entitlement to and distribution of any surplus is subject to the review, oversight, and consent of FSRA, and it can take several months for FSRA to review an application for surplus and make a determination.<sup>20</sup>

20. Documents related to the Salaried DB Plan have been more challenging to gather. Applicant's counsel has made significant efforts to locate the relevant documentation; however, there remain material gaps in documents located thus far. The Applicant and the Monitor are considering their options in light of these gaps. As is the case with the distribution of the Hourly

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<sup>17</sup> Seventh Report at para. 3.3.

<sup>18</sup> Seventh Report at para. 3.4.

<sup>19</sup> Seventh Report at para. 3.5.

<sup>20</sup> Seventh Report at paras. 3.6-3.7.

DB Plan, the entitlement to any surplus, and the distribution of such surplus, will be subject to the review, oversight, and consent of FSRA.<sup>21</sup>

**(c) Amounts Received by the Monitor**

21. Upon closing of the Transaction, Pigments paid the following amounts to the Monitor (each as defined below):

- (a) The Canadian Designated Amount Portion of \$575,000;
- (b) The CCAA Cash Pool of \$750,000; and
- (c) Approximately \$1.4 million in respect of the amount of HST potentially exigible on the Transaction, to be held on behalf of the Applicant, in trust.<sup>22</sup>

*Canadian Designated Amount Portion*

22. The Canadian Designated Amount Portion was established to pay all remaining costs, professional fees and other amounts incurred in connection with the CCAA Proceedings and the wind-down of the Applicant.<sup>23</sup>

23. Since the establishment of the Canadian Designated Amount Portion, the Monitor has distributed approximately \$718,000 of professional fees and costs incurred in connection with the completion of the CCAA Proceedings and the wind-down of the Applicant, leaving approximately \$35,000 of the Canadian Designated Amount Portion remaining in the Monitor's trust account.<sup>24</sup>

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<sup>21</sup> Seventh Report at para. 3.8.

<sup>22</sup> Seventh Report at para. 3.9.

<sup>23</sup> Seventh Report at para. 3.10.

<sup>24</sup> Seventh Report at para. 3.11.



24. The Applicant has continued to file monthly HST returns and has a receivable of approximately \$93,000 in HST refunds. The Canada Revenue Agency (the “CRA”) has an ongoing audit of the Applicant’s HST account relating to the post-filing period, and the refund is currently being held by the CRA until the audit is completed.<sup>25</sup>

25. The Monitor expects to use the remaining Canadian Designated Amount Portion and the cash to be received from any HST refunds to pay for final wind-down tax-related and pension-related work, and for any remaining professional fees with respect to the Monitor, the Monitor’s legal counsel, and the Applicant’s legal counsel.<sup>26</sup>

#### *CCAA Cash Pool*

26. The CCAA Cash Pool continues to be held by the Monitor for the benefit of the Applicant’s estate in the CCAA Proceedings, including any costs to administer the CCAA Proceedings. The Monitor has not yet disbursed any amounts from the CCAA Cash Pool and continues to hold \$750,000.<sup>27</sup> It is anticipated that the CCAA Cash Pool, less approximately \$100,000 in expected costs related to the administration and finalization of the Claims Procedure, will be made available for distribution to claimants with proven claims in the Claims Procedure.<sup>28</sup>

#### *HST Balance*

27. DCL US and Pigments, with the assistance of its tax advisors, jointly filed a GST44 tax election form by the appropriate deadline such that DCL US’s sale of its business to Pigments was not subject to HST. The Monitor and its legal counsel are reviewing correspondence provided by

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<sup>25</sup> Seventh Report at para. 3.12.

<sup>26</sup> Seventh Report at para. 3.13.

<sup>27</sup> Seventh Report at para. 3.14.

<sup>28</sup> Seventh Report at para. 4.9.

Pigments in respect of same. The Monitor and its legal counsel continue to engage with Pigments and its tax advisors regarding the potential return of the HST Balance.<sup>29</sup>

### **PART III -THE ISSUES AND THE LAW**

28. The issue now before this Court is whether the Stay of Proceedings should be extended until June 30, 2024.

#### **A. The Stay Period Should be Extended**

29. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings 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. There is no statutory time limit on how long a stay of proceedings can be extended.

30. The Stay Period currently expires on December 31, 2023. The Monitor asks that the Stay Period be extended until June 30, 2023. The Monitor submits that extending the Stay Period is warranted for the following reasons:

- (a) the stay of proceedings will provide the necessary time for the Monitor and the Applicant to continue the ongoing review of the Unresolved Claims, continue to pursue the surplus balance from the Canadian Pension Plans, and continue to administer the CCAA Cash Pool;
- (b) the stay of proceedings is required to provide the necessary stability and certainty to enable the Monitor to facilitate the wind-down of the CCAA Proceedings;

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<sup>29</sup> Seventh Report at para. 3.15.

- (c) the Canadian Designated Amount Portion and approximately \$100,000 of the CCAA Cash Pool is expected to provide sufficient liquidity to fund the remaining costs anticipated during the wind-down of the CCAA Proceedings (and any related wind-down proceedings such as formal bankruptcies); and
- (d) the Applicant, with the assistance and oversight of the Monitor, continues to act in good faith and with due diligence.<sup>30</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

31. For the reasons set out above, the Monitor requests that this Court grant the proposed Stay Extension Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 1<sup>st</sup> day of December, 2023:



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**OSLER, HOSKIN & HARCOURT, LLP**  
per Marleigh Dick

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<sup>30</sup> Seventh Report at para. 5.2.

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**TO: SERVICE LIST**

## **SCHEDULE “A”: LIST OF AUTHORITIES**

1. *In the matter of a plan of compromise or arrangement of DCL Corporation*, Court File No. CV-22-00691990-00CL (Ont SCJ [Commercial List]), Fifth Report of the Monitor Alvarez & Marsal Canada Inc, May 3, 2023 (the “[Fifth Report](#)”)
2. *In the matter of a plan of compromise or arrangement of DCL Corporation*, Court File No. CV-22-00691990-00CL (Ont SCJ [Commercial List]), Seventh Report of the Monitor Alvarez & Marsal Canada Inc, December 1, 2023 (the “Seventh Report”)

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

***Companies’ Creditors Arrangement Act, RSC 1985, c C-36***

**Stays, etc. — initial application**

**11.02 (1)** A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

**(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

**(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.

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

**(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**

**(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.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
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PROCEEDING COMMENCED AT TORONTO

**FACTUM**

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