

**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
(Claims Procedure Order)
(Returnable July 28, 2020)**

July 23, 2020

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FACTUM OF THE APPLICANT

PART I - INTRODUCTION

1. Roberts Company Canada Limited (the “**Applicant**” or “**RCCL**”) is a privately held company that is in the business of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives and other flooring-related products in Canada.
2. On June 29, 2020 (the “**Filing Date**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted the Applicant protection from its creditors pursuant to an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**”). The proceedings under the CCAA in respect of the Applicant are referred to herein as the “**CCAA Proceedings**”.
3. This factum is filed in support of a motion by the Applicant for an order (the “**Claims Procedure Order**”), substantially in the form of the draft order attached as Tab 3 of the Applicant’s Motion Record, *inter alia*:

- (a) establishing a procedure (the “**Claims Process**”) for the identification and quantification of certain claims against the Applicant and its current and former directors and officers (the “**Directors/Officers**”);
- (b) authorizing, directing and empowering the Applicant and Richter Advisory Group Inc. (“**Richter**”) in its capacity as monitor of the Applicant (the “**Monitor**”) to take such actions as contemplated by the Claims Procedure Order; and
- (c) approving the report of Richter in its capacity as proposed monitor dated June 26, 2020 (the “**Pre-Filing Report**”), the first report of Richter in its capacity as monitor of the Applicant (the “**Monitor**”) dated July 6, 2020 (the “**First Report**”), and the second report of the Richter in its capacity as Monitor dated July 23, 2020 (the “**Second Report**”, and collectively with the Pre-Filing Report and the First Report, the “**Reports**”) and the actions, activities and conduct of the Monitor described in the Reports.

PART II - THE FACTS

4. The facts with respect to this motion are more fully set out in the Affidavit of Ravi Williams-Singh sworn July 23, 2020 (the “**Third Affidavit**”), and the Affidavit of Ravi Williams-Singh sworn June 26, 2020.¹ Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Claims Procedure Order and the Third Affidavit.

¹ Affidavit of Ravi Williams-Singh, sworn June 26, 2020, Applicant’s Motion Record at Tab 2, Exhibit “A” [Motion Record]; Affidavit of Ravi Williams-Singh, sworn July 23, 2020 [Third Affidavit], Motion Record at Tab 2.

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.²

6. RCCL sought and obtained the Initial Order to, among other things, afford it breathing space to address its liquidity crisis, stabilize its ordinary course business operations and develop a plan for its restructuring. Pursuant to the Initial Order, *inter alia*:

- (a) a stay of proceedings up to and including July 9, 2020 (the “**Stay Period**”) was granted;
- (b) Richter was appointed as Monitor of RCCL in the CCAA Proceedings; and
- (c) an Administration Charge and a Directors’ Charge (each as defined in the Initial Order) over RCCL’s assets, property and undertakings (the “**Property**”) were approved.³

7. On July 8, 2020, the Court granted a further 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 the Applicant’s restructuring efforts;
- (b) extended the Stay Period to and including August 31, 2020;

² Third Affidavit, *ibid* at para 4, Motion Record at Tab 2.

³ *Ibid* at para 5, Motion Record at Tab 2.

- (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 (as defined in the Amended and Restated Initial Order) 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 (as defined in the Amended and Restated Initial Order) from and after the date of the Amended and Restated Initial Order.⁴

B. THE CLAIMS PROCEDURE ORDER

8. The Applicant is now seeking approval of the proposed Claims Procedure Order and authorization to undertake the Claims Process set out therein. The Claims Process was developed by RCCL with the assistance of the Monitor, with a view to establishing a comprehensive, fair, and expeditious means of identifying, quantifying and resolving Claims against RCCL and the Directors/Officers, including Employee Restructuring Claims (as defined below).⁵ The Claims Process is an integral component of the

⁴ *Ibid* at para 6, Motion Record at Tab 2.

⁵ *Ibid* at paras 9, 11, Motion Record at Tab 2; Second Report of the Monitor, Richter Advisory Group Inc. dated July 23, 2020 at para 19 [Second Report].

CCAA Proceedings and will enable the Applicant to determine the universe of claims that need to be addressed in its restructuring.

9. A detailed description of the Claims Process is provided in the Third Affidavit. The key features of the Claims Process are described immediately below.

Notice to Creditors

10. The Claims Procedure Order requires the Monitor to provide each Known Claimant (other than each Employee with a known Employee Restructuring Claim) with a copy of the Claims Package within five (5) Business Days of the granting of the Claims Procedure Order. The Claims Package contains an Instruction Letter, Notice Letter, Proof of Claim, and Notice of Dispute of Revision or Disallowance. Together, these materials provide notice to Known Claimants of the Claims Process and the relevant Bar Dates (as defined below), and offer guidance on how and when Proofs of Claim must be submitted.⁶

11. The Claims Procedure Order also requires the Monitor to:

- (a) cause the Notice Letter to be published once in *The Globe and Mail* (National Edition) as soon as practicable after the granting of the Claims Procedure Order;
- (b) post a copy of the Claims Procedure Order, the Applicant's Motion Record in respect of the Claims Procedure Order, and the Claims Package on the Monitor's Website as soon as practicable after the granting of the Claims Procedure Order;
- (c) deliver a copy of the Claims Package to any Person claiming to be a Claimant and requesting such material in writing; and

⁶ Third Affidavit, *ibid* at paras 12-13, Motion Record at Tab 2.

- (d) provide a Claims Package to any Person upon becoming aware of a Restructuring Period Claim or an Employee Restructuring Claim (as defined below) or direct such Claimant to the documents posted on the Monitor's Website.⁷

Filing a Proof of Claim and Claims Bar Dates

12. Pursuant to the proposed Claims Procedure Order, any Claimant who does not receive a Notice of Employee Restructuring Claim and who wishes to assert a Claim against the Applicant, the Directors/Officers or any of them, must set out its aggregate Claim in a Proof of Claim, including supporting documentation, and deliver it to the Monitor. Such Proof of Claim must be delivered to the Monitor on or before the applicable Bar Date (as defined below).⁸

13. The proposed Claims Procedure Order provides for a Claims Bar Date, an Employee Restructuring Claims Bar Date, and a Restructuring Period Claims Bar Date (each a "**Bar Date**" and collectively, the "**Bar Dates**"). The Claims Bar Date (for Pre-Filing Claims and Director/Officer Claims) is 5:00 p.m. (Eastern Standard Time) on September 14, 2020. The Restructuring Period Claims Bar Date and the Employee Restructuring Claims Bar Date (for Restructuring Period Claims and Employee Restructuring Claims, respectively) are the later of:

- (a) the Claims Bar Date; and
- (b) 5:00 p.m. (Eastern Standard Time) on the date that is ten (10) Business Days after the date on which the Monitor sends a Claims Package in respect of a Restructuring Period Claim or Employee Restructuring Claim, as applicable.⁹

⁷ *Ibid* at para 14, Motion Record at Tab 2.

⁸ *Ibid* at para 15, Motion Record at Tab 2.

⁹ *Ibid* at para 16, Motion Record at Tab 2.

Employee Restructuring Claims

14. The Claims Procedure Order authorizes the Monitor, in consultation with the Applicant, to deliver a Claims Package containing a Notice of Employee Restructuring Claim to any Employee with a Claim for vacation, termination, severance pay, wages, commissions, or other remuneration, arising as a result of the termination of employment of such Employee by the Applicant prior to the Filing Date or during the CCAA Proceedings (each an “**Employee Restructuring Claim**” and collectively, the “**Employee Restructuring Claims**”).¹⁰

15. The Notice of Employee Restructuring Claim will specify the classification, nature and amount of the Claimant’s Employee Restructuring Claim. Such amount will be determined by RCCL, in consultation with the Monitor, based on RCCL’s books and records. A Claimant who does not dispute the classification, nature or amount of their Employee Restructuring Claim is not required to take any further action or file a Proof of Claim. Rather, the Claimant’s Employee Restructuring Claim will be deemed to be the classification, nature and amount set out in the Notice of Employee Restructuring Claim for voting and/or distribution purposes.¹¹

16. Where an Employee wishes to dispute the classification, nature and/or amount of their Employee Restructuring Claim, the Claims Procedure Order provides that they must deliver a Notice of Dispute of Revision or Disallowance to the Monitor so that it is actually received by the Monitor by no later than the Employee Restructuring Claims Bar Date. Any Claimant that does not deliver such Notice of Dispute of Revision or Disallowance by the Employee Restructuring Claims Bar Date will be barred from disputing the classification, nature and/or amount of their Employee Restructuring Claim, and any Employee

¹⁰ *Ibid* at para 22, Motion Record at Tab 2.

¹¹ *Ibid* at paras 23-24, Motion Record at Tab 2.

Restructuring Claim of a different classification or nature or in excess of the amount specified in the Notice of Employee Restructuring Claim, shall be forever barred and extinguished.¹²

17. Where an Employee receives a Notice of Employee Restructuring Claim and wishes to assert a Claim other than an Employee Restructuring Claim against the Applicant, or the Directors/Officers or any of them, they must deliver a Proof of Claim to the Monitor in respect of such other Claim(s), so that it is actually received by the Monitor by no later than the: (i) Claims Bar Date where such Claim is a Pre-Filing Claim or Director/Officer Claim; or (ii) Restructuring Period Claims Bar Date where such Claim is a Restructuring Period Claim.¹³

Review and Resolution of Disputed Claims

18. The Claims Procedure Order sets out the processes for (i) reviewing Proofs of Claims filed in respect of Pre-Filing and Restructuring Period Claims as well as Director/Officer Claims and (ii) resolving Disputed Claims.¹⁴

19. The Claims Procedure Order provides that the Monitor, with the assistance of the Applicant (and in the case of Director/Officer Claims, the relevant Director or Officer), shall review all Proofs of Claims received by the applicable Bar Date, and accept, revise or disallow the classification, nature and/or amount of such Claims. The Monitor is required to send a Notice of Revision or Disallowance describing the basis for any revision of or disallowance to a Claimant's Claim.¹⁵

20. Any Claimant who wishes to dispute a Notice of Revision or Disallowance, must deliver a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. on the date that is fourteen (14) Calendar

¹² *Ibid* at para 25-26, Motion Record at Tab 2.

¹³ *Ibid* at para 27, Motion Record at Tab 2.

¹⁴ *Ibid* at para 30, Motion Record at Tab 2.

¹⁵ *Ibid* at para 31, Motion Record at Tab2.

Days after the date the Monitor sends such notice. Among other things, where no such Notice of Dispute of Revision or Disallowance is delivered, the classification, nature and amount of the applicable Claim shall be deemed to be as set out in the Notice of Revision or Disallowance.¹⁶

21. The Claims Procedure Order contemplates a consensual resolution process for any Notice of Dispute of Revision or Disallowance delivered to the Monitor. However, where such a Claim cannot be resolved consensually within a period or in a manner satisfactory to the Monitor, in consultation with the Applicant and with the consent of the relevant Director or Officer, as applicable, it will constitute a Disputed Claim. Each Disputed Claim will be referred to the Court for resolution or to such alternative dispute resolution as may be ordered by the Court or agreed to by the Monitor, the Applicant, the Claimant and where applicable, the relevant Director or Officer.¹⁷

PART III - ISSUES

22. The sole issue before this Court, as addressed below, is whether the proposed Claims Procedure Order should be granted.

PART IV - LAW AND ARGUMENT

A. THIS COURT SHOULD APPROVE THE CLAIMS PROCEDURE ORDER

23. Section 11 of the CCAA authorizes this Court to make “any order it considers appropriate in the circumstances”,¹⁸ including an order approving a process for the solicitation and determination of claims against a debtor company and its directors and officers. As this Court recognized in *Re Toys “R” Us (Canada) Ltd.*, such orders are routinely granted.¹⁹

¹⁶ *Ibid* at para 32, Motion Record at Tab 2.

¹⁷ *Ibid* at para 33, Motion Record at Tab 2.

¹⁸ *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-35 s 11.

¹⁹ *Re Toys “R” Us (Canada) Ltd.*, 2018 ONSC 609 at para 8 [*Toys*], Applicant’s Book of Authorities at Tab 1.

24. Claims procedure orders permit insolvent debtors to establish processes “under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation”.²⁰ Generally, such processes involve:

- (a) a method to communicate to potential creditors that there is a process by which they must prove their claims and the date by which they must do so;
- (b) an opportunity for the debtor or its representative to review and, if appropriate, contest claims made by creditors;
- (c) an adjudication mechanism for claims that cannot be agreed upon or settled through negotiation;
- (d) a “claims bar date” by which claims must be submitted; and
- (e) the barring of late claims to ensure that the Court-appointed monitor and the applicant can make accurate and informed determinations for voting and distribution purposes.²¹

25. These processes have been regarded by courts as eminently practical means of streamlining and resolving the “multitude of claims against an insolvent debtor” in a timely and cost effective manner.²²

²⁰ [Ibid](#), Applicant’s Book of Authorities at Tab 1.

²¹ [Ibid](#), Applicant’s Book of Authorities at Tab 1; [Timminco Ltd, Re, 2014 ONSC 3393](#) at para 43, Applicant’s Book of Authorities at Tab 2.

²² [ScoZinc Ltd, Re, 2009 NSSC 136](#) at para 31, Applicant’s Book of Authorities at Tab 3; [Canwest Global Communications Corp, Re, 2011 ONSC 2215](#) at para 40, Applicant’s Book of Authorities at Tab 4.

26. Courts have also frequently approved “negative claims processes”, where they maximize efficiency and reduce the expenditure of costs and time,²³ including negative claims processes addressing claims of employees.²⁴

27. In the circumstances of this case, the factors that support this Court’s exercise of discretion to approve the Claims Process set out in the proposed Claims Procedure Order are as follows:

- (a) the Claims Process is necessary to determine the universe of claims that exist against the Applicant, evaluate the impact of such claims on the restructuring of RCCL’s business and allow the Applicant to make informed decisions regarding its restructuring options;
- (b) it is necessary to understand the scope and nature of any potential claims against the Directors/Officers in order to be able to identify and address any claims that may be secured by the Directors’ Charge;
- (c) the Claims Process has been developed with the assistance and oversight of the Monitor and its counsel, and the Monitor will assist in the Claims Process, including in the determination of Claims;
- (d) the Claims Process has been designed to be a flexible, fair, expeditious, and comprehensive means of identifying, quantifying and resolving all claims against the Applicant and its Directors/Officers;

²³ [Toys](#), *supra* note 19 at paras 13-14, Applicant’s Book of Authorities at Tab 1; [Toys “R” Us \(Canada\) Ltd. \(January 25, 2018\) Toronto, CV-17-00582960-00CL](#) (Claims Procedure Order), Applicant’s Book of Authorities at Tab 5.

²⁴ [Payless Shoesource Canada Inc., \(April 24, 2019\) Toronto, CV-19-00614629-00CL](#) (Claims Procedure Order), Applicant’s Book of Authorities at Tab 6 [*Payless*]; [U.S. Steel Canada Inc. \(March 15, 2017\) Toronto, CV-14-10695-00CL](#) (Supplementary Claims Process Order), Applicant’s Book of Authorities at Tab 7.

- (e) the Applicant has worked with its payroll provider to ensure that all employee wages and vacation pay are paid up to the current payroll period, and the Applicant believes that the use of a “negative claims process” for Employee Restructuring Claims will improve the efficiency of the Claims Process and is appropriate in the circumstances;
- (f) the Claims Procedure Order provides Claimants with sufficient opportunity to review the Claims Package, including where applicable a Notice of Employee Restructuring Claim, and to submit a Proof of Claim or Notice of Dispute of Revision or Disallowance as applicable;
- (g) the Claims Bar Date provides Claimants with approximately forty-eight (48) days after approval of the Claims Procedure Order (if approved on July 28, 2020) to file their Proofs of Claim, which is reasonable and sufficient having regard to (i) claims bar dates in similarly complex CCAA proceedings, and (ii) the Applicant’s belief, based on a review of RCCL’s books and records, that there are a relatively small number of Proofs of Claim that will be filed by suppliers and other Claimants as part of the Claims Process;
- (h) there is a fair and streamlined process for resolving all Disputed Claims in a time-sensitive and cost-efficient manner, and in the event that the Monitor, with the assistance of the Applicant and the Directors and Officers, as applicable, is unable to resolve a dispute regarding any Disputed Claim, the Disputed Claim shall be referred to the Court for resolution or to an alternative dispute resolution as may be ordered by the Court as agreed to by the Monitor, the Applicant and the applicable Claimant; and

- (i) the Monitor is supportive of the granting of the Claims Procedure Order and believes that the Claims Process is appropriate in the circumstances and in the best interests of RCCL and all of its stakeholders.²⁵

28. For these reasons, the proposed Claims Process accords with the Court's discretion under the CCAA. It is flexible, expeditious and procedurally fair, ensuring an efficient solicitation and resolution of claims against the Applicant. The Applicant submits that the Claims Process will streamline the resolution of claims against the Applicant in the most time-sensitive and cost-efficient manner and is appropriate in the circumstances.

²⁵ Third Affidavit, *supra* note 1 at paras 3, 9-10, 12-14, 18-19, 28-30, 33-35 Motion Record at Tab 2; Second Report, *supra* note 5 at paras 19, 31, 36-38. See also, [Forever XXI ULC, \(May 28, 2020\) Toronto, CV-19-00628233-00CL](#) (Claims Procedure Order) where the Court granted a claims procedure order on May 28, 2020 approving a claims bar date of June 30, 2020, Applicant's Book of Authorities at Tab 8; *Payless, ibid* where the Court granted a claims procedure order on April 24, 2019 approving a claims bar date of June 7, 2019, Applicant's Book of Authorities at Tab 6; [Canwest Publishing Inc, \(April 12, 2010\) Toronto, CV-10-8533-00CL](#) (Claims Procedure Order) where the Court granted a claims procedure order on April 12, 2010 providing for a claims bar date of May 7, 2010, Applicant's Book of Authorities at Tab 9; [Cline Mining Corporation, \(December 3, 2014\) Toronto, CV-14-10781-00CL](#) (Claims Procedure Order) where the Court granted a claims procedure order on December 3, 2014 with a claims bar date of January 13, 2015, Applicant's Book of Authorities at Tab 10.

PART V - ORDER REQUESTED

29. For the foregoing reasons, RCCL respectfully requests that this Honourable Court grant an order substantially in the form of the draft Claims Procedure Order at Tab 3 of the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 23rd day of July, 2020.



July 23, 2020

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SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [*Canwest Global Communications Corp, Re*, 2011 ONSC 2215](#)
2. [*Canwest Publishing Inc, \(April 12, 2010\) Toronto, CV-10-8533-00CL*](#) (Claims Procedure Order)
3. [*Cline Mining Corporation, \(December 3, 2014\) Toronto, CV-14-10781-00CL*](#) (Claims Procedure Order)
4. [*Forever XXI ULC, \(May 28, 2020\) Toronto, CV-19-00628233-00CL*](#) (Claims Procedure Order)
5. [*Payless Shoesource Canada Inc., \(April 24, 2019\) Toronto, CV-19-00614629-00CL*](#) (Claims Procedure Order)
6. [*Re Toys “R” Us \(Canada\) Ltd*, 2018 ONSC 609](#)
7. [*ScoZinc Ltd, Re*, 2009 NSSC 136](#)
8. [*Timminco Ltd, Re*, 2014 ONSC 3393](#)
9. [*Toys “R” Us \(Canada\) Ltd, \(January 25, 2018\) Toronto, CV-17-00582960-00CL*](#) (Claims Procedure Order)
10. [*U.S. Steel Canada Inc, \(March 15, 2017\) Toronto, CV-14-10695-00CL*](#) (Supplementary Claims Process Order)

SCHEDULE B – RELEVANT STATUTES

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Section 11

General Power of Court

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.

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LIMITED**

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

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Proceedings commenced in Toronto

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