

**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

**MOTION RECORD
(Returnable October 26, 2020)**

Volume 1 of 2

October 20, 2020

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Raj Sahni (LSO#42942U)
Tel: (416) 777-4804
Email: SahniR@bennettjones.com

Danish Afroz (LSO#65786B)
Tel: (416) 777-6124
Email: AfrozD@bennettjones.com

Fax: (416) 863-1716

Lawyers for the Applicant

**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**

**SERVICE LIST
(as of October 20, 2020)**

COMPANY	CONTACT
BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON, M5X 1A4 <i>Counsel to the Applicant</i>	Raj Sahni (416) 777-4804 sahnir@bennettjones.com Danish Afroz (416) 777-6124 afrozd@bennettjones.com
RICHTER ADVISORY GROUP INC. 181 Bay Street, #3510 Bay Wellington Tower Toronto, ON, M5J 2T3 <i>Monitor</i>	Paul Van Eyk (416) 485-4592 pvaneyk@richter.ca Duncan Lau (416) 488-2323 dlau@richter.ca
BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West Suite 3400 Toronto, ON, M5H 4E3 <i>Counsel to the Monitor</i>	Roger Jaipargas (416) 367-6266 RJaipargas@blg.com
DEPARTMENT OF JUSTICE CANADA 3400-130 King Street, West Toronto, ON M5X 1K6	Diane Winters (416) 973-3172 diane.winters@justice.gc.ca

COMPANY	CONTACT
MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8	Kevin O'Hara (416) 327-8463 kevin.ohara@ontario.ca
ALBERTA TREASURY BOARD AND FINANCE 9811-109 Street Edmonton, AB T5K 2L5	tra.revenue@gov.ab.ca
NORTON ROSE FULBRIGHT CANADA LLP Royal Bank Plaza, South Tower, Suite 3800 200 Bay Street, P.O. Box 84 Toronto, Ontario M5J 2Z4 <i>Counsel to Bank of America, Secured Party</i>	Evan Cobb (416) 216-1929 evan.cobb@nortonrosefulbright.com Arnold Cohen (514) 847-6082 arnold.cohen@nortonrosefulbright.com
Q.E.P. CO., INC. 1001 Broken Sound Parkway NW, Boca Raton, Florida 33487 USA <i>Parent Company of the Applicant</i>	Adam Morgan amorgan@qep.com
LIFTCAPITAL CORPORATION 300 The East Mall, Suite 401 Toronto, ON M9B 6B7 <i>Secured Party</i>	Finella Grosso (AVP, Contract Administration, Toyota Industries Commercial Finance Canada, Inc.) (416) 621-5522 x7224 finella.grosso@toyotacf.ca
REVENU QUÉBEC 1600, boul.René-Lévesque Ouest, Montréal (Québec), secteur R23DGR, H3H 2V2	Johanne Chalifour DGR, Service du recouvrement des dossiers d'insolvabilité C (514) 415-5161 Johanne.Chalifour@revenuquebec.ca
VANCOUVER TAX SERVICES OFFICE 9755 King George Boulevard Surrey, BC V3T 5E1	

COMPANY	CONTACT
SASKATCHEWAN TAX SERVICES OFFICE 340 3Rd Avenue North Saskatoon, SK S7K 0A8	
WINNIPEG TAX SERVICES OFFICE 325 Broadway Winnipeg, MB R3C 4T4	
WINNIPEG TAX SERVICES OFFICE 360 Main Street Winnipeg, MB R3C 3Z3	
BD&P BURNET, DUCKWORTH & PALMER LLP Law Firm Suite 2400, 525 - 8th Ave SW Calgary, AB T2P 1G1 Fax 403.260.0332 <i>Counsel to Darrell Tweed</i>	James Jeffrey Associate (403) 260-0153 jjeffrey@bdplaw.com

EMAIL ADDRESS LIST

sahnir@bennettjones.com; afrozd@bennettjones.com; pvaneyk@richter.ca; dlau@richter.ca;
RJaipargas@blg.com; kevin.ohara@ontario.ca; tra.revenue@gov.ab.ca;
diane.winters@justice.gc.ca; evan.cobb@nortonrosefulbright.com;
arnold.cohen@nortonrosefulbright.com; amorgan@qep.com; finella.grosso@toyotacf.ca;
Johanne.Chalifour@revenuquebec.ca; jjeffrey@bdplaw.com

INDEX

**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

INDEX

TAB	DOCUMENTS
	<i>VOLUME 1 OF 2</i>
1	Notice of Motion
2	Affidavit of Ravi Williams-Singh sworn October 20, 2020
A	<i>Exhibit "A"</i> – Amended and Restated Initial Order dated July 8, 2020
B	<i>Exhibit "B"</i> – Affidavit of Ravi Williams-Singh sworn June 26, 2020 (without exhibits)
	<i>VOLUME 2 OF 2</i>
C	<i>Exhibit "C"</i> – Claims Procedure Order dated July 28, 2020
D	<i>Exhibit "D"</i> – Meeting Order dated September 28, 2020
E	<i>Exhibit "E"</i> – Affidavit of Ravi Williams-Singh sworn September 23, 2020 (without exhibits)
3	Draft Sanction Order

TAB 1

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

**NOTICE OF MOTION
(Returnable October 26, 2020)**

Roberts Company Canada Limited ("RCCL" or the "**Applicant**") will make a motion before the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on October 26, 2020, at 9:30 a.m. or as soon after that time as the motion can be heard. Please refer to the videoconference details attached at Schedule "A" hereto in order to attend the motion and advise if you intend to join the motion by emailing Danish Afroz at afrozd@bennettjones.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:¹

1. An order (the "**Sanction Order**") substantially in the form of the draft order attached at Tab 3 of the Applicant's Motion Record, which, among other things:

- (a) declares that the meeting of the Affected Creditors Class (as defined in the Williams-Singh Affidavit) on October 16, 2020 (the "**Meeting**") was duly

¹ All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Affidavit of Ravi Williams-Singh sworn October 20, 2020 (the "**Williams-Singh Affidavit**"), attached at Tab 2 to the Applicant's Motion Record and the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, concerning, affecting and involving RCCL, dated September 28, 2020 (the "**Plan**") attached as **Schedule "A"** to the draft Sanction Order.

convened, held and conducted in conformity with the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), the Meeting Order (as defined below), and all other Orders of the Court (as defined below) in these CCAA proceedings (the "**CCAA Proceedings**");

- (b) sanctions and approves the Plan of Compromise and Arrangement pursuant to the CCAA concerning, affecting and involving the Applicant dated September 28, 2020 (the "**Plan**"), a copy of which is attached as **Schedule "A"** to the draft Sanction Order;
- (c) grants the releases to the Released Parties (as defined in the Plan);
- (d) approves the fees of Richter Advisory Group Inc. ("**Richter**"), in its capacity as Monitor of the Applicant (the "**Monitor**"), and the Monitor's counsel, Borden Ladner Gervais LLP in respect of the CCAA Proceedings, plus estimates to completion;
- (e) extends the Stay Period (as defined below) until the date of the Monitor's Second Certificate (as defined in the Williams-Singh Affidavit);
- (f) approves the Fifth Report (as defined below), and the actions and activities of the Monitor described therein, and in the Monitor's other reports to Court from time to time;
- (g) authorizes the Applicant and the Monitor to perform their obligations in respect of the Plan to facilitate the implementation of the Plan and to complete all matters incidental to the termination of the CCAA Proceedings;

- (h) provides mechanisms to terminate the CCAA Charges (as defined in the Plan), terminate the CCAA Proceedings, and discharge Richter as Monitor; and
 - (i) grants such further and other relief as this Court deems just.
2. Such further and other relief as the Court deems just.

THE GROUNDS FOR THE MOTION ARE:

A. Background

3. RCCL is in the business of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives and other flooring-related products in Canada.
4. On June 29, 2020, RCCL sought and received an order (the "**Initial Order**") granting it protection under the CCAA.
5. Pursuant to the Initial Order, *inter alia*:
- (a) Richter was appointed as Monitor of RCCL;
 - (b) an initial stay of proceedings to and including July 9, 2020 was granted (the "**Stay Period**"); and
 - (c) an Administration Charge and Directors' Charge (each as defined in the Initial Order) over RCCL's assets, property and undertakings (the "**Property**") were granted up to the maximum amounts of \$500,000 and \$250,000, respectively.
6. 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 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 (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 the 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.

7. On July 28, 2020, the Court granted 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.

8. On August 26, 2020, the Court granted an order extending the Stay Period until and including October 30, 2020 (the "**Stay Extension Order**").

9. On September 28, 2020, the Court approved an order (the "**Meeting Order**") which, among other things: (i) accepted the Plan for filing; (ii) authorized the Applicant to call, hold and conduct the Meeting; (iii) approved the classification of creditors provided in the Plan pursuant to section 22 of the CCAA for the purposes of voting on the Plan; (iv) authorized and directed the mailing and distribution of certain meeting materials; and (v) set the date for the hearing of the Applicant's motion for an order to sanction the Plan.

B. The Plan

10. 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.

11. In the expectation that all Affected Creditors will derive a greater benefit from the implementation of the Plan than they would derive from the Applicant's bankruptcy or liquidation, the purposes of the Plan are to:

- (a) complete a restructuring of the Applicant;
- (b) provide for a compromise of and consideration for Affected Claims that are Proven Claims with distributions as set out in Section 4.1 of the Plan; and

- (c) effect a release and discharge of all Affected Claims and Released Claims and give effect to the releases in favour of the Released Parties.

12. 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**"), shall receive from the Applicant, with the support of the Parent using its existing facilities (as may be amended, modified or restated), an amount in Cash equal to the lesser of (a) \$7,000, and (b) the value of such Convenience Creditor's Proven Claim;
- (b) each Affected Creditor with a Proven Claim who is not a Convenience Creditor receives:
 - (i) from the Applicant, with the support of the Parent using its existing facilities, the Initial Distribution Amount, being a Cash distribution equal to 20 cents (\$0.20) for every dollar of such Affected Creditor's Proven Claim; and
 - (ii) a promissory note distributed by the Applicant (each 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, in accordance with the terms and conditions of the Promissory Note and the Plan; and

- (c) no distributions will be made pursuant to the Plan in respect of Intercompany Claims and all such Intercompany Claims will be fully preserved and not released, discharged or extinguished pursuant to the Plan.

C. The Meeting

13. The Meeting was held via videoconference on October 16, 2020 in accordance with the Meeting Order.

14. At the Meeting, 98% percent in number representing 94% percent in value of the Affected Creditors Class that were present in person or by proxy at the Meeting voted to pass the Resolution approving the Plan. Accordingly, the Plan was approved by the requisite double majority of creditors, as required under the CCAA.

D. The Sanction Order

15. The Plan represents a fair, equitable and reasonable balance of the interests of the Applicant's stakeholders in the circumstances and provides greater recovery for the Affected Creditors than would be available in the Applicant's liquidation or bankruptcy.

16. The Applicant has complied with all of the statutory requirements of the CCAA, with all orders of the Court, and has not taken any step in the CCAA Proceedings that is not authorized by the CCAA.

17. The releases in favour of the Released Parties constitute a fundamental element of the Plan, are necessary to facilitate the successful completion of the Plan, and are justified by the tangible and material contributions that the Released Parties have made in the CCAA Proceedings.

18. The Monitor has concluded that the Plan is fair and reasonable and supports the Plan being sanctioned by the Court.

(a) Approval of the Administrative Reserve Fund

19. The Applicant seeks approval of the Administrative Reserve Fund and authorization to distribute and release funds from the Administrative Reserve Fund in accordance with the Plan.

(b) Approval of the fees and disbursements of the Monitor and its counsel

20. The Monitor seeks approval of its fees and disbursements, and those of its counsel, as described in the Fifth Report, as well as an estimate to completion.

(c) Termination of the Applicant's CCAA Proceedings

21. As contemplated by the Plan, the Monitor shall, as soon as practicable following the Effective Time, serve on the Service List and post on the Monitor's Website, a certificate in the form attached as Schedule "B" to the Sanction Order (the "**Monitor's Certificate**") certifying that the Effective Date has occurred.

22. At the Effective Time, among other things, the ABL Lender's DIP Charge (as provided for and defined in the Amended and Restated Initial Order and any subsequent Orders in the CCAA Proceedings) shall be terminated, discharged, expunged and released.

23. In order to ensure that amounts payable under the KERP to KERP beneficiaries are paid, and any other amounts secured by the KERP Charge are satisfied, the Sanction Order provides that the Monitor shall not deliver the Monitor's Certificate unless and until the Monitor has received, from or on behalf of the Applicant, in immediately available funds, an amount sufficient to be

distributed to each of the KERP beneficiaries, in indefeasible payment in full of all amounts owing and outstanding under the KERP and any other amounts secured by the KERP Charge (the "**KERP Escrow Fund**").

24. Upon: (i) the fulfillment of the Monitor's duties under the Claims Procedure Order and the Sanction Order; (ii) the Monitor receiving acknowledgement of payment in full of the claims secured by the Administration Charge; and (iii) payment, by the Applicant from the KERP Escrow Fund, to each of the KERP beneficiaries of all amounts owing and outstanding under the KERP and any other amounts secured by the KERP Charge, the Monitor shall serve on the Service List a certificate in the form attached as Schedule "C" to the Sanction Order (the "**Monitor's Second Certificate**").

25. Upon the filing of the Monitor's Second Certificate:

- (a) the CCAA Proceedings shall be terminated;
- (b) Richter shall be discharged and released from its duties, obligations and responsibilities as Monitor of the Applicant and shall be forever released, remised and discharged from any claims against it relating to its activities as Monitor; and
- (c) the Directors' Charge, the Administration Charge, and the KERP Charge (as each term is provided for and defined in the Amended and Restated Initial Order) shall be terminated, discharged, expunged and released.

(d) Extension of the Stay Period

26. The Stay Extension Order extended the Stay Period until and including October 30, 2020.

27. The Applicant is seeking an extension of the Stay Period to and including the date on which the Monitor serves the Monitor's Second Certificate on the Service List.

28. The extension of the Stay Period will provide the Applicant and the Monitor with an opportunity to, among other things, complete the necessary steps to implement the Plan and fulfill the Monitor's duties under the Claims Procedure Order.

29. The Monitor has forecast the Applicant to have sufficient cash on hand to continue the CCAA Proceedings during the extended Stay Period.

30. The Applicant has acted, and continues to act, in good faith and with due diligence in the CCAA Proceedings, and has acted in accordance with the CCAA and the orders of the Court at all times.

31. The Applicant is not aware of any creditors that will be prejudiced by the requested extension of the Stay Period.

32. The Monitor is supportive of the proposed extension to the Stay Period.

E. Other Grounds

33. The provisions of the CCAA, including sections 5.1, 6 and 11 thereof, and the statutory, inherent and equitable jurisdiction of the Court.

34. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

35. Such further and other grounds as counsel may advise and the Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

36. The Affidavit of Ravi Williams-Singh sworn October 20, 2020;
37. The Fifth Report of the Monitor dated October 20, 2020 (the "**Fifth Report**"); and
38. Such further and other materials and evidence as counsel may advise and the Court permit. ^{may}

October 20, 2020

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Raj Sahni (LSO #42942U)

Tel: 416-777-4804

Email: SahniR@bennettjones.com

Danish Afroz (LSO #65786B)

Tel: 416-777-6124

Email: AfrozD@bennettjones.com

Fax: 416-863-1716

Lawyers for the Applicant

SCHEDULE "A"

Topic: (CV-20-00643158-00CL) - Motion by Roberts Company Canada Limited for a Sanction Order before the Honourable Justice McEwen

Time: Oct 26, 2020 09:30 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/95457266804?pwd=WktSdkNlQ3ZLbEdoa0JFUDFEN2lIZz09>

Meeting ID: 954 5726 6804

Passcode: 952387

One tap mobile

+16699006833,,95457266804# US (San Jose)

+19292056099,,95457266804# US (New York)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

Meeting ID: 954 5726 6804

Find your local number: <https://zoom.us/u/ajGel0a3O>

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

NOTICE OF MOTION
(Returnable October 26, 2020)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario M5X 1A4

Raj Sahni (LSO #42942U)
Tel: 416-777-4804
Email: SahniR@bennettjones.com

Danish Afroz (LSO #65786B)
Tel: 416-863-6124
Email: AfrozD@bennettjones.com

Fax: 416-863-1716

Lawyers for the Applicant

TAB 2

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

**AFFIDAVIT OF RAVI WILLIAMS-SINGH
(Sworn October 20, 2020)**

I, Ravi Williams-Singh, of the City of Brampton, in the Province of Ontario, **MAKE
OATH AND SAY:**

1. I am the Chief Administrative Officer and Controller for Roberts Company Canada Limited (the "**Applicant**" or "**RCCL**"). I have been employed by RCCL for a total of 28 years and have held my current position with RCCL since October, 2007. I have also served on RCCL's Board of Directors since October, 2006. As a result of my past and present roles with RCCL, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I believe such information to be true.

2. I swore an affidavit on June 26, 2020 (the "**Initial Affidavit**") in support of RCCL's application for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"). The proceedings commenced under the CCAA by the Applicant are referred to herein as the "**CCAA Proceedings**".

3. I have sworn prior affidavits dated (i) July 8, 2020; (ii) July 23, 2020; (iii) August 21, 2020; and (iv) September 23, 2020, in support of various motions brought by the Applicant in

these CCAA Proceedings. To avoid unnecessary duplication, the facts discussed in my prior affidavits will not be reproduced herein except to the extent necessary. I understand that Richter Advisory Group Inc. ("**Richter**"), in its capacity as Court-appointed Monitor (the "**Monitor**") in the CCAA Proceedings, will be filing a report to the Court (the "**Fifth Report**") in support of this motion.

4. Unless indicated otherwise, capitalized terms not defined in this Affidavit have the meaning given to them in the Plan, the Meeting Order, or the Sanction Order (as such terms are defined below). All monetary amounts in this Affidavit are in Canadian Dollars, unless otherwise stated. Copies of the materials filed in these CCAA Proceedings are available on the Monitor's website for these proceedings: <https://www.richter.ca/insolvencycase/roberts-company-canada-limited/> (the "**Monitor's Website**").

I. RELIEF REQUESTED

5. I am swearing this Affidavit in support of a motion by the Applicant seeking an order (the "**Sanction Order**") substantially in the form of the draft Sanction Order included at Tab 3 of the Applicant's Motion Record, which, among other things:

- (a) declares that the meeting of the Affected Creditors Class (defined below) on October 16, 2020 (the "**Meeting**") was duly convened, held and conducted in conformity with the CCAA, the Meeting Order (defined below), and all other Orders of the Court (defined below) in the CCAA Proceedings;
- (b) sanctions and approves the Plan of Compromise and Arrangement pursuant to the CCAA concerning, affecting and involving the Applicant dated September 28,

2020 (the "**Plan**"), a copy of which is attached as Schedule "A" to the draft Sanction Order;

- (c) grants the releases to the Released Parties (as defined in the Plan);
- (d) approves the fees of the Monitor and its counsel, Borden Ladner Gervais LLP ("**BLG**") in respect of the CCAA Proceedings, plus estimates to completion;
- (e) extends the Stay Period (defined below) until the date of the Monitor's Second Certificate (as defined below);
- (f) approves the Fifth Report, and the actions and activities of the Monitor described therein, and in the Monitor's other reports to Court from time to time;
- (g) authorizes the Applicant and the Monitor to perform their obligations in respect of the Plan to facilitate the implementation of the Plan and to complete all matters incidental to the termination of the CCAA Proceedings;
- (h) provides mechanisms to terminate the CCAA Charges, terminate the CCAA Proceedings, and discharge Richter as Monitor; and
- (i) grants such further and other relief as this Court deems just.

II. OVERVIEW

A. Background to the CCAA Proceedings

6. 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**").

7. 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 (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 as 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**").

8. The Initial Order also provided that the ABL Lender (as defined in the Initial Order) shall be treated as unaffected in any plan of arrangement or compromise 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).

9. 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.

A copy of the Amended and Restated Initial Order is attached hereto as **Exhibit "A"**.

10. The causes of the Applicant's liquidity crisis and reasons for commencing the CCAA Proceedings are set out in greater detail in the Initial Affidavit and are not repeated herein. The Initial Affidavit, without exhibits, is attached hereto as **Exhibit "B"**.

B. The Claims Process

11. On July 28, 2020, RCCL sought and obtained an order (the "**Claims Procedure Order**"), which established a procedure (the "**Claims Process**") 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. A copy the Claims Procedure Order is attached hereto as **Exhibit "C"**.

12. The Monitor, with the assistance of the Applicant, conducted the Claims Process in accordance with the Claims Procedure Order. As detailed in the Fourth Report dated September 23, 2020 (the "**Fourth Report**"), by the Claims Bar Date a total of 127 Claims with a value of approximately \$9.4 million (including the placeholder claim) were filed, comprising of:

- (a) 107 Claims with a value of approximately \$8.9 million;
- (b) 19 Employee Restructuring Claims with a value of approximately \$0.5 million;
and
- (c) one (1) placeholder claim, with no value provided.

13. I understand that the Monitor will provide an update on the status of the Claims Process in the Fifth Report.

14. As will be discussed in the Fifth Report, certain additional claims were received after the Claims Bar Date (collectively, the "**Late Claims**"). The Late Claims were accepted for voting and distribution purposes.

C. The Meeting Order

15. On September 28, 2020, RCCL sought and obtained an order (the "**Meeting Order**") which, among other things:

- (a) accepted the filing of the Plan with the Court;
- (b) approved, pursuant to section 22 of the CCAA, the classification of creditors as set out in the Plan for the purposes of the Meeting and voting on the Plan;
- (c) authorized and directed the Applicant to call, hold and conduct the Meeting to allow Affected Creditors to consider and vote on a resolution to approve the Plan (the "**Resolution**");
- (d) authorized and directed the mailing and distribution of certain meeting materials and other procedures to be followed in order to provide notice of the Meeting;
- (e) approved the procedures to be followed at the Meeting, including voting procedures; and
- (f) set a date for the hearing of the Applicant's motion for the Sanction Order.

16. The Meeting Order provided that all Affected Creditors with Affected Claims would constitute a single class for the purpose of considering and voting on the Plan (the "**Affected Creditors Class**"). The Meeting Order specified that the Meeting was to be held on October 16, 2020. As a result of the COVID-19 pandemic and the continued restrictions on gatherings in the Province of Ontario, the Meeting Order provided that the Meeting was to be held by

videoconference and teleconference. A copy of the Meeting Order is attached hereto as **Exhibit "D"**.

17. As will be described in the Fifth Report, the Monitor provided notice to creditors in accordance with the Meeting Order. The Monitor caused copies of the Information Statement, the Notice of Meeting and Sanction Hearing, the Proxy and Election Notice, and the Convenience Creditor Election (collectively, the "**Meeting Materials**"), as well as the Meeting Order and the Fourth Report, to be posted on the Monitor's Website. Further, the Monitor also caused a notice of the Meeting, substantially in the form of the Notice of Meeting and Sanction Hearing, to be published in *The Globe and Mail* (National Edition).

III. THE CCAA PLAN¹

A. Purposes and Effect of the Plan

18. RCCL formulated the Plan with the support of the Monitor. 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, including the ABL Lender. A summary of the Plan was set out in my Affidavit dated September 23, 2020 (the "**September 23 Affidavit**"). A copy of the September 23 Affidavit (without exhibits) is attached hereto as **Exhibit "E"**.

¹ All capitalized terms not defined in this section shall have the meaning ascribed to them in the Plan.

19. The purposes of the Plan are to:

- (a) complete a restructuring of the Applicant;
- (b) provide for a compromise of and consideration for Affected Claims that are Proven Claims with distributions as set out in Section 4.1 of the Plan; and
- (c) effect a release and discharge of all Affected Claims and Released Claims and give effect to the releases in favour of the Released Parties,

in the expectation that all Affected Creditors will derive a greater benefit from the implementation of the Plan than they would derive from the Applicant's bankruptcy or liquidation.

20. In accordance with the Plan:

- (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**"), shall receive from the Applicant, with the support of the Parent using its existing facilities (as may be amended, modified or restated), an amount in Cash equal to the lesser of (a) \$7,000, and (b) the value of such Convenience Creditor's Proven Claim;
- (b) each Affected Creditor with a Proven Claim who is not a Convenience Creditor shall receive:
 - (i) from the Applicant, with the support of the Parent using its existing facilities, the Initial Distribution Amount, being a Cash distribution equal

to 20 cents (\$0.20) for every dollar of such Affected Creditor's Proven Claim; and

(ii) a promissory note distributed by the Applicant (each 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, in accordance with the terms and conditions of the Promissory Note and the Plan; and

(c) no distributions will be made pursuant to the Plan in respect of Intercompany Claims and all such Intercompany Claims will be fully preserved and not released, discharged or extinguished pursuant to the Plan.

21. The Plan does not affect the following unaffected claims (collectively, the "**Unaffected Claims**"): (a) any Claim secured by any of the CCAA Charges; (b) any claims for amounts required to be paid by subsections 6(3), (5) and (6) of the CCAA ("**CCAA Priority Payment Claims**"); (c) any Secured Claim; (d) any BOA Claim; (e) any Claim that cannot be compromised pursuant to subsections 5.1(2) and 19(2) of the CCAA; (f) any Post-Filing Claims; and (g) any Intercompany Claims.

22. To the extent not already paid, any Unaffected Claim that is a Claim secured by one of the CCAA Charges or a CCAA Priority Payment Claim, shall be paid within five (5) Business Days of the Effective Date by the Applicant from the Administrative Reserve Fund. All other Unaffected Claims will be satisfied in accordance with the applicable agreements and other arrangements between creditors with Unaffected Claims and the Applicant.

23. The implementation of the Plan is subject to the satisfaction or waiver of the following Conditions Precedent on or prior to the Effective Date:

- (a) the Plan will have been approved by the Required Majority of the Affected Creditors Class;
- (b) the Plan will have been approved and sanctioned by the Court;
- (c) all relevant Persons shall have executed, delivered and filed all documents and other instruments that, in the opinion of the Applicant, acting reasonably, are necessary to implement the provisions of the Plan or the Sanction Order; and
- (d) the maximum amount payable by the Applicant under Section 4.1(a), 4.1(b)(i) of the Plan, under and all Promissory Notes issued pursuant to Section 4.1(b)(ii) of the Plan, and under Section 4.3 of the Plan, shall be satisfactory to the ABL Lender.

24. Any of the Conditions Precedent, specified in paragraph 23 above, other than any statutory requirements regarding the voting, approval and sanctioning of the Plan pursuant to the provisions of the CCAA and the Condition Precedent in paragraph 23(d) hereof, may be waived by the Applicant with the consent of the Monitor. The Condition Precedent set out in paragraph 23(d) hereof may only be waived by the Applicant with the consent of the Monitor and the ABL Lender.

25. Upon being sanctioned and approved by the Court pursuant to the Sanction Order, the Plan, including the treatment of all Affected Claims and all Released Claims thereunder, will be

final and binding on all Persons including the Applicant, Affected Creditors, and any Person holding a Released Claim as of the Effective Time.

B. Releases

26. The Plan provides that, at the Effective Time, each of (a) the Applicant; (b) the Affiliates², including for greater certainty, the Parent³; (c) the Monitor; (d) any Person claimed to be liable derivatively through any or all of the foregoing Persons; and (e) the respective Representatives⁴ (including Responsible Persons) of any or all of the foregoing Persons (collectively, the "**Released Parties**") 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.

27. The Plan does not contemplate the release or discharge of the Non-Released Claims, which include:

- (a) any Unaffected Claim or the Applicant's obligations to Affected Creditors under the Plan;
- (b) a Released Party in respect of a claim whereby the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits by the Court or by a court of competent jurisdiction in a judgment recognized by the Court to have committed fraud or willful misconduct or to have been grossly

² Under the Plan, "Affiliate" means any affiliated body corporate as that term is defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. c-44, as amended.

³ Under the Plan, "Parent" means collectively, Q.E.P. Co. Inc. and Roberts Consolidated Industries, Inc.

⁴ Under the Plan, "Representatives" means, in relation to a Person, such Person's current and former directors, officers, partners, employees, consultants, legal counsel, actuaries, advisers and agents, including their respective heirs, executors, administrators and other legal representatives, successors and assigns, and each of their respective employees and partners.

negligent or, in the case of Directors, in respect of any claim referred to in section 5.1(2) of the CCAA; and

- (c) any BOA Claim.⁵

28. The Released Parties have made, and continue to make, significant contributions to the CCAA Proceedings, the Applicant's restructuring efforts and to the development of the Plan. The releases in favour of the Released Parties were negotiated among various constituents as part of the overall framework of the compromises in the Plan, constitute a fundamental element of the Plan, and are necessary to facilitate the successful completion of the Plan. Moreover, the releases in favour of the Released Parties are rationally connected to the Plan and are justified by the material contributions made by the Released Parties in the CCAA Proceedings, including, among other things, the following:

- (a) the Monitor has played an integral role in overseeing the Applicant's restructuring, including by (i) providing information to the Applicant, its stakeholders (including the ABL Lender), and the Court as required, (ii) resolving Claims filed against the Applicant, (iii) developing and negotiating the Plan, (iv) holding the Meeting, and (v) providing guidance and stability throughout the restructuring process;
- (b) the Representatives, which include, among others, the current and former directors, officers, partners, employees, consultants, legal counsel, actuaries, advisers and agents, have been involved in the Applicant's restructuring before

⁵ Under the Plan, "BOA Claim" means, any claim (including, without limitation, a Claim, Post-Filing Claim and/or Secured Claim) of BOA or the ABL Lender against any Person, including any claim arising in connection with the ABL Credit Agreement or the ABL Forbearance Agreement.

and/or during the CCAA Proceedings, including exploring restructuring alternatives, resolving Claims, and developing and negotiating the Plan;

- (c) the releases in favour of the Affiliates (including the Parent) are justified given the contributions they have made towards the development of the Plan, including, foregoing distributions in respect of Intercompany Claims in order to maximize distributions to Affected Creditors; and
- (d) all Released Parties have contributed fully to the development of the Plan by providing guidance and stability throughout the restructuring process and the CCAA Proceedings, and/or by continuing to support the implementation of the Plan.

29. The Applicant believes that it is appropriate that the Plan includes the releases in favour of the Released Parties, since their contributions were and are critical to the success of the Plan and the Applicant's restructuring. The Applicant is not aware of any objections to the releases provided for in the Plan.

30. I am advised that the Monitor believes that the releases contained in the Plan are fair, reasonable and appropriate in the circumstances.

IV. THE MEETING

31. In accordance with the Meeting Order, the Meeting was held on October 16, 2020 by videoconference. Two representatives of the Monitor acted as co-chairs of the Meeting. Representatives of the Monitor's counsel and the Monitor acted as secretary and scrutineer,

respectively, at the Meeting for the supervision and tabulation of the attendance, quorum and votes cast at the Meeting.

32. The Scrutineers and the Chair confirmed that the required quorum was present in person or by proxy at the Meeting. After calling the Meeting to order, the Chair outlined the purpose of the Meeting and provided an overview of the Plan. The Chair then outlined the Monitor's recommendation with respect to the Plan and reviewed the guidelines for the voting process as set out in the Meeting Order. Prior to voting on the Plan, Affected Creditors were given the opportunity to ask any questions in respect of the Plan or the voting process.

33. Pursuant to the Meeting Order, the Monitor separately tabulated the votes of the Voting Claims and the Unresolved Claims at the Meeting. The voting results were as follows:

Voting Claims				
	Number of Votes	Value of the Votes	Number of Votes as a percentage	Value of Votes as a percentage
In favour of approval of the Plan	110	\$7,606,934	98%	94%
Against approval of the Plan	2	\$509,465	2%	6%
Total	112	\$8,116,399	100%	100%

Unresolved Claims that Voted				
	Number of Votes	Value of the Votes	Number of Votes as a percentage	Value of Votes as a percentage
In favour of approval of the Plan	2	\$845,607	100%	100%
Against approval of the Plan	-	-	0%	0%
Total	2	\$845,607	100%	100%

34. To summarize, 98% percent in number representing 94% percent in value of the Affected Creditors Class that were present in person or by proxy at the Meeting voted to pass the Resolution approving the Plan. Accordingly, as required by the CCAA, the requisite double majority of creditors has approved the Plan.

35. In accordance with the Meeting Order, the Monitor's Fifth Report, which reports to Court with respect to, among other things, the results of the voting at the Meeting on the Resolution to approve the Plan, will be provided within two (2) Business Days following the Meeting.

36. Pursuant to the Meeting Order, if the Plan was approved by the Required Majority, the Applicant was to request Court approval of the Plan by seeking a Sanction Order before this Court on October 26, 2020, or as soon thereafter as practicable.

V. REQUEST FOR COURT APPROVAL OF THE PLAN

37. Since the inception of the CCAA Proceedings, the parties have expended considerable efforts and resources to find the best possible resolution to the various issues facing the Applicant. Those efforts have culminated in the formulation and creditor approval of the Plan. The Applicant now seeks Court approval of the Plan pursuant to the Sanction Order.

A. The Court Should Sanction the Plan

38. The Applicant believes that Court approval of the Plan is justified and appropriate for the following reasons:

- (a) *The Plan is fair and reasonable:* The Plan represents a fair, equitable and reasonable balance of the interests of the Applicant's stakeholders in the circumstances and is the result of extensive consultation with the Monitor and various stakeholders. The Plan will enable the Applicant to continue as a going concern and allow it to emerge from these CCAA Proceedings with a deleveraged balance sheet.
- (b) *Greater Recovery than Bankruptcy:* As will be discussed in the Fifth Report, the Plan is the best alternative for the Applicant and its stakeholders. The Plan provides greater recovery to creditors than would be available in a liquidation or bankruptcy of the Applicant.
- (c) *Classification of Creditors was Appropriate:* The classification of creditors was approved by this Honourable Court pursuant to the Meeting Order and such classification was not opposed at the hearing to approve the Meeting Order or at any time thereafter.
- (d) *The Meeting of Creditors was properly constituted:* As discussed herein and will be discussed in the Monitor's Fifth Report, the Meeting was properly constituted, the voting at the Meeting was properly carried out, and the Applicant's Plan was approved by the requisite double majority.

- (e) *The Releases:* The releases provided under the Plan are fair, reasonable, and appropriate in the circumstances, and the creditors voting on the Plan had knowledge of the nature and effect of the releases. The releases in favour of the Released Parties are not overly broad and contain the necessary and appropriate carve-outs.
- (f) *Approval by Creditors:* The Applicant has sought to achieve a fair and reasonable balance among its stakeholders under the Plan. The Resolution to approve the Plan was overwhelmingly approved by the Affected Creditors holding Affected Claims that are Proven Claims who voted at the Meeting in person or by proxy.
- (g) *Good Faith and Compliance with the CCAA and Court Orders:* Throughout the course of the CCAA Proceedings, the Applicant has acted, and continues to act, in good faith and with due diligence to advance its restructuring efforts with a view to maximizing recovery for its stakeholders. The Applicant has complied with all of the statutory requirements under the CCAA and all orders of the Court. The Plan complies with the requirements of the CCAA and all orders made in the CCAA Proceedings. The Applicant is not aware of any steps taken within the CCAA Proceedings that are not authorized by the CCAA.
- (h) *No Objections:* The Applicant is not currently aware of any party objecting to the Court's approval of the Plan.
- (i) *Monitor's Approval:* As outlined in the Monitor's various reports to the Court, and will be discussed in the Fifth Report, the Monitor has concluded that the Plan is fair and reasonable and supports the sanctioning of the Plan.

B. Ancillary Relief and Termination of the CCAA Proceedings

39. In addition to sanctioning the Plan, the Applicant seeks certain ancillary relief under the Sanction Order to assist with the implementation of the Plan and the termination of the CCAA Proceedings, as described below.

(a) Approval of the Administrative Reserve Fund

40. Pursuant to the Sanction Order, the Applicant seeks approval of the Administrative Reserve Fund⁶ and authorization to distribute and release funds from the Administrative Reserve Fund in accordance with the Plan. Any amounts remaining in the Administrative Reserve Fund, after all distributions from the Administrative Reserve Account contemplated by the Plan are made, will be released from the Administrative Reserve Account in accordance with the Plan.

(b) Approval of the fees and disbursements of the Monitor and its counsel

41. The Monitor seeks approval of its fees and disbursements, and those of its counsel, as described in the Fifth Report, as well as an estimate to completion. As contemplated in the Sanction Order, the Monitor and its counsel will not be required to pass their accounts in respect of such additional and anticipated further fees and disbursements. The Sanction Order authorizes the Applicant to pay any such additional fees and disbursements, subject to certain requirements.

⁶ Under the Plan, "Administrative Reserve Fund" means a Cash reserve in an amount to be agreed to by the Monitor and the Applicant, with the consent of the ABL Lender, at least two (2) Business Days prior to the Effective Date to be deposited by the Applicant into the Administrative Reserve Account for the purpose of paying the following Unaffected Claims: Claims secured by one of the CCAA Charges, and the CCAA Priority Payment Claims.

(c) KERP Escrow Fund, Termination of CCAA Proceedings, and Monitor's Discharge

42. As contemplated by the Plan, the Monitor shall, as soon as practicable following the Effective Time, serve on the Service List and post on the Monitor's Website, a certificate in the form attached as Schedule "B" to the Sanction Order (the "**Monitor's Certificate**") certifying that the Effective Date has occurred. At the Effective Time, among other things, the ABL Lender's DIP Charge (as provided for and defined in the Amended and Restated Initial Order and any subsequent Orders in the CCAA Proceedings) shall be terminated, discharged, expunged and released.

43. In order to ensure that amounts payable under the KERP to KERP beneficiaries are paid, and any other amounts secured by the KERP Charge are satisfied, the Sanction Order provides that the Monitor shall not deliver the Monitor's Certificate unless and until the Monitor has received, from or on behalf of the Applicant, in immediately available funds, an amount sufficient to be distributed to each of the KERP beneficiaries, in indefeasible payment in full of all amounts owing and outstanding under the KERP and any other amounts secured by the KERP Charge (the "**KERP Escrow Fund**"). The KERP Charge shall be terminated as against the Property other than the KERP Escrow Fund at the Effective Time but shall continue to apply as against the KERP Escrow Fund only and shall be terminated, discharged, expunged and released as against the KERP Escrow Fund upon service of the Monitor's Second Certificate (as defined below).

44. Pursuant to the Sanction Order, upon: (i) the fulfillment of the Monitor's duties under the Claims Procedure Order and the Sanction Order; (ii) the Monitor receiving acknowledgement of payment in full of the claims secured by the Administration Charge; and (iii) payment, by the

Applicant from the KERP Escrow Fund, to each of the KERP beneficiaries of all amounts owing and outstanding under the KERP and any other amounts secured by the KERP Charge, the Monitor shall serve on the Service List a certificate in the form attached as Schedule "C" to the Sanction Order (the "**Monitor's Second Certificate**"). Upon the filing of the Monitor's Second Certificate:

- (a) the CCAA Proceedings shall be terminated;
- (b) Richter shall be discharged and released from its duties, obligations and responsibilities as Monitor of the Applicant and shall be forever released, remised and discharged from any claims against it relating to its activities as Monitor; and
- (c) the Directors' Charge, the Administration Charge, and the KERP Charge (as each term is provided for and defined in the Amended and Restated Initial Order) shall be terminated, discharged, expunged and released.

VI. EXTENSION OF THE STAY PERIOD

45. Pursuant to an order dated August 26, 2020 (the "**Stay Extension Order**"), the Stay Period was extended until and including October 30, 2020. Pursuant to the Sanction Order, the Applicant seeks an extension of the Stay Period in respect of the Applicant to and including the date on which the Monitor serves the Monitor's Second Certificate on the Service List.

46. Since the granting of the Stay Extension Order, the Applicant has acted, and continues to act, in good faith and with due diligence, and has, either directly, or in conjunction with the Monitor, among other things:

- (a) provided notice of the Meeting, the Plan and the Sanction Hearing in accordance with the Meeting Order;
- (b) participated in the Meeting permitting Affected Creditors with Affected Claims to vote on the Plan;
- (c) negotiated and finalized arrangements with certain of its creditors in order to promptly proceed towards implementation of the Plan;
- (d) liaised with claimants, including the CRA, to discuss certain outstanding Claims pursuant to the Claims Process; and
- (e) prepared the motion materials to seek the relief sought at the hearing for the Sanction Order.

47. The extension of the Stay Period will provide the Applicant and the Monitor with an opportunity to, among other things, complete the necessary steps to implement the Plan, and fulfill the Monitor's duties under the Claims Procedure Order.

48. The Applicant's funding requirements were reviewed with the Monitor. I understand from the Monitor that the Applicant is forecast to have sufficient cash on hand to continue the CCAA Proceedings during the extended Stay Period.

49. I am not aware of any creditors of the Applicant who are likely to be materially prejudiced by the requested extension of the Stay Period and understand that the Monitor is supportive of the proposed extension to the Stay Period.

50. The Applicant has acted, and continues to act, in good faith and with due diligence in the CCAA Proceedings, and has acted in accordance with the CCAA and the various orders of the Court at all times.

51. For the foregoing reasons, I believe that the requested extension of the Stay Period is in the best interests of the Applicant and its stakeholders.

VII. CONCLUSION

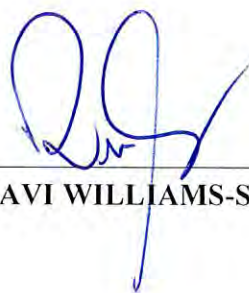
52. I swear this affidavit in support of the motion for the relief set out herein and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 20th day of October,)
2020. The affiant was located in the City of)
Brampton, in the Province of Ontario and)
the Commissioner was located in the City of)
Toronto, in the Province of Ontario. This)
Affidavit was commissioned remotely as a)
result of COVID-19 and was administered)
in accordance with *Ontario Regulation*)
431/20.)



DANISH AFROZ

A Commissioner for Oaths in and for the
Province of Ontario



RAVI WILLIAMS-SINGH

TAB "A"

**THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF RAVI WILLIAMS-SINGH SWORN
THE 20TH DAY OF OCTOBER, 2020**



A Commissioner for taking affidavits, etc.

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

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

THE HONOURABLE MADAM

)

WEDNESDAY, THE 8TH

JUSTICE DIETRICH

)

DAY OF JULY, 2020

)



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

(the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER

(Amending Initial Order dated June 29, 2020)

THIS MOTION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order amending and restating the Initial Order (the "**Initial Order**") issued on June 29, 2020 (the "**Initial Filing Date**") and extending the stay of proceedings provided for therein, was heard this day by way of video-conference due to the COVID-19 crisis.

ON READING the affidavit of Ravi Williams-Singh sworn June 26, 2020 (the "**Williams-Singh Affidavit**"), the affidavit of Ravi Williams-Singh sworn July 6, 2020 (the "**Second Williams-Singh Affidavit**") and the Exhibits thereto, the first report of Richter Advisory Services Inc. ("**Richter**") in its capacity as monitor (the "**Monitor**") dated July 6, 2020 (the "**First Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for Bank of America, N.A., as Agent under the Fourth Amended and Restated Loan Agreement, dated as of January 31, 2017 (as amended, supplemented and otherwise modified from time to time, the "**ABL Credit Agreement**") and those other parties

listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Danish Afroz sworn July 6, 2020,

INITIAL ORDER AND THE INITIAL FILING DATE

1. **THIS COURT ORDERS** that the Initial Order, reflecting the Initial Filing Date, shall be amended and restated as provided for herein.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to the provisions of this Order and further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by it, with liberty to retain such

further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicant shall be entitled to continue to utilise the central cash management system currently in place, in accordance with the ABL Forbearance Agreement dated as of June 26, 2020 (as amended, restated or otherwise modified from time to time, the “**ABL Forbearance Agreement**”), as described in the Williams-Singh Affidavit, or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that, subject to the terms of the ABL Forbearance Agreement, including the terms therein that refer to the Approved CCAA Cash Flow (as defined in the ABL Forbearance Agreement), the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the Initial Filing Date:

- (a) all outstanding and future wages, salaries, commissions, compensation, employee benefits, pension benefits, vacation pay and expenses (including, without limitation, payroll and benefits processing and servicing expenses) payable on or after the Initial Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

- (c) in consultation with the Agent and the Lenders (as defined in the ABL Forbearance Agreement) (collectively, the "**ABL Lender**"), and with the consent of the Monitor, amounts owing for goods and services actually supplied to the Applicant prior to the Initial Filing Date by third party suppliers, up to a maximum aggregate amount of \$700,000, if in the opinion of the Applicant the supplier is critical to the Business, ongoing operations of the Applicant, or preservation of the Property, and the payment is required to ensure ongoing supply.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the terms of the ABL Forbearance Agreement, including the terms therein that refer to the Approved CCAA Cash Flow, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after the Initial Filing Date, and in carrying out the provisions of this Order, which expenses shall include (subject to the terms of the ABL Forbearance Agreement), without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the Initial Filing Date.

9. **THIS COURT ORDERS** that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the Initial Filing Date, or where such Sales Taxes were accrued or collected prior

to the Initial Filing Date but not required to be remitted until on or after the Initial Filing Date, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("**Rent**"), for the period commencing from and including the Initial Filing Date, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the Initial Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the Initial Filing Date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the ABL Forbearance Agreement, or as otherwise ordered by this Court, have the right to:

- (a) in consultation with the ABL Lender and with the consent of the Monitor, permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets;

- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and
- (c) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. **THIS COURT ORDERS** that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

15. **THIS COURT ORDERS** that subject to paragraph 16(v) hereof, from the Initial Filing Date until and including August 31, 2020, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, (iv) prevent the registration of a claim for lien, or (v) prevent the ABL Lender from exercising any rights or remedies in accordance with the ABL Forbearance Agreement.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Initial Filing Date are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order or the Initial Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Initial Filing Date, nor shall any Person be under any obligation on or after the Initial Filing Date to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order or the Initial Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the Initial Filing Date and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such

obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicant shall indemnify its current and future directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the Initial Filing Date, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the current and future directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000 as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that Richter is, as of the Initial Filing Date, appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination to the ABL Lender and their counsel of financial and other information as agreed between the Applicant and the ABL Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the ABL Forbearance Agreement;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;
- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order or the Initial Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order or the Initial Order; and
- (i) perform such other duties as are required by this Order, the Initial Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the

Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or the Initial Order or anything done in pursuance of the Monitor's duties and powers under this Order or the Initial Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order or the Initial Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order or the Initial Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to, the date of the Initial Order, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Applicant and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant such reasonable retainers as may be requested to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$500,000, as security for their professional fees and disbursements, incurred at their standard rates and charges, both before and after the making of the Initial Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

33. **THIS COURT ORDERS AND DECLARES** that the ABL Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (Canada) 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 and the Applicant is authorized to continue to obtain and borrow, repay (including repayment of amounts owing as of the Initial Filing Date) and re-borrow additional monies under the credit facility established in the ABL Credit Agreement pursuant to the terms of the ABL Credit Agreement and the ABL Forbearance Agreement, in order to finance the Applicant's working capital requirements and expenses.

FORBEARANCE AGREEMENT

34. **THIS COURT ORDERS** that in addition to the existing liens, charges, mortgages and encumbrances in favour of the ABL Lender, as security for all of the obligations of the Applicant to the ABL Lender relating to advances made to the Applicant under the ABL Credit Agreement from and after

the date of this Order, the ABL Lender shall be entitled to the benefit of and is hereby granted a charge (the "ABL Lender's DIP Charge") on the Property. The ABL Lender's DIP Charge shall have the priority set out in paragraphs 38 and 40 hereof.

KERP, KERP CHARGE AND SEALING THE KERP SUMMARY

35. **THIS COURT ORDERS** that the Key Employee Retention Plan (the "**KERP**"), as described in the Second Williams-Singh Affidavit, is hereby approved and the Applicant is authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

36. **THIS COURT ORDERS** that the key employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000 to secure amounts owing to such key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 38 and 40 hereof.

37. **THIS COURT ORDERS** that the summary of the KERP (the "**KERP Summary**"), a copy of which is attached as Confidential Exhibit "A" to the Second Williams-Singh Affidavit, shall be and is hereby sealed, kept confidential, and shall not form part of the public record unless otherwise ordered by the Court.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the KERP Charge, the ABL Lender's DIP Charge and the Administration Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$500,000);

Second – Directors' Charge (to the maximum amount of \$250,000);

Third – KERP Charge (to the maximum amount of \$200,000); and

Fourth – ABL Lender's DIP Charge.

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge, the ABL Lender's DIP Charge or the KERP Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Charges, and the ABL Lender, or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges and the ABL Forbearance Agreement shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges and the execution and performance of the ABL Forbearance Agreement by the Applicant are hereby approved and shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or the entry into the ABL Forbearance Agreement; and
- (c) the payments made by the Applicant pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order or the Initial Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay from the Initial Filing Date, publish in *The Globe & Mail* (National Edition) a notice containing the information prescribed under the CCAA in respect of the Initial Order, (ii) within five days after the Initial Filing Date (A) make the Initial Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner (including by electronic message to the e-mail addresses as last shown in the Applicants' books and records), a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.richter.ca/insolvencycase/roberts-company-canada-limited/>.

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission or electronic message to the Applicant's creditors or other interested parties at their respective addresses (including email addresses) as last shown on the records of the Applicant and that any such service or distribution shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof, (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, and (c) if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicant and the Monitor and their respective counsel are at liberty to serve or distribute this Order, the Initial Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

48. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or the interpretation or the application of this Order.

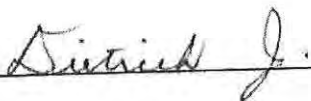
49. **THIS COURT ORDERS** that nothing in this Order or the Initial Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

52. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the ABL Lender shall be entitled to rely on this Order as issued for all advances made and payments received under the ABL Credit Agreement or the ABL Forbearance Agreement up to and including the date this Order may be varied or amended.

53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

 _____

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 09 2020

PER / PAR: 

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

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

ONTARIO

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

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL
ORDER**

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

RAJ SAHNI (LSO #42942U)
Tel: 416-777-4804
Email: SahniR@bennettjones.com

DANISH AFROZ (LSO #65786B)
Tel: 416-777-6124
Email: AfrozD@bennettjones.com

Fax: 416-863-1716

Lawyers for the Applicant

TAB "B"

**THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF RAVI WILLIAMS-SINGH SWORN
THE 20TH DAY OF OCTOBER, 2020**



A Commissioner for taking affidavits, etc.

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

**AFFIDAVIT OF RAVI WILLIAMS-SINGH
(Sworn June 26, 2020)**

I, Ravi Williams-Singh, of the City of Brampton, in the Province of Ontario, **MAKE
OATH AND SAY:**

1. I am the Chief Administrative Officer and Controller for Roberts Company Canada Limited (the “**Applicant**” or “**RCCL**”). I have been employed by RCCL for a total of 28 years and have held my current position with RCCL since October, 2007. I have also served on RCCL’s Board of Directors since October, 2006. As a result of my past and present roles with RCCL, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief, and where so stated, I believe such information to be true.

2. All references to currency in this Affidavit are to Canadian dollars, unless otherwise indicated.

I. RELIEF REQUESTED

3. I swear this affidavit in support of an Application by RCCL for an Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the “**CCAA**” and such proceedings, the “**CCAA Proceedings**”), *inter alia*:

- (i) declaring that the Applicant is a party to which the CCAA applies;
- (ii) appointing Richter Advisory Group Inc. (“**Richter**” or the “**Proposed Monitor**”) as an officer of this Court to monitor the assets, business, and affairs of the Applicant (once appointed in such capacity, the “**Monitor**”);
- (iii) authorizing the Applicant to remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the “**Property**”) and to continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property;
- (iv) staying, for an initial period of not more than ten (10) days (the “**Stay of Proceedings**”), all proceedings and remedies taken or that might be taken in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of the Court;
- (v) staying all proceedings and remedies taken or that might be taken in respect of claims against the directors or officers of the Applicant that relate to the liability of such Persons in their capacity as directors and officers of the Applicant; and

(vi) granting the following charges (collectively, the “**Charges**”) over the Applicant’s property:

- (a) an Administration Charge (defined below) in favour of the Monitor, counsel to the Monitor, counsel to the Applicant and other professionals; and
- (b) a Directors’ Charge (defined below) in favour of the directors and officers of the Applicant.

II. OVERVIEW

4. RCCL’s business consists of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives, accessories and other flooring-related products in Canada. It 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. (“**QEP**”).

5. QEP manufactures, markets and distributes a broad line of flooring, specialty tools, adhesives and other flooring-related products for the home improvement market in the United States of America and throughout the world.

6. For many years, RCCL operated as a profitable business that principally manufactured and sold its products, as well as those of its affiliates, to large Canadian retailers and distributors. In October 2018, RCCL sought to expand and diversify its business by acquiring substantially all of the Canada-based assets of the trading product sales division of the Kraus Group (defined below) which involved the distribution and sale of flooring products to commercial and residential customers, including carpet tiles, vinyl tiles, laminate, and hardwood (the “**TPS Business**”).

7. The synergies and benefits which RCCL believed would accrue from its acquisition of the TPS Business have not materialized. Rather than complement RCCL's business, the TPS Business has incurred substantial losses since its acquisition in October 2018 that now threaten the viability of RCCL. Projections demonstrate little or no prospect of improvement within a reasonable time.

8. While RCCL's losses are largely due to the inefficiencies in the TPS Business, the COVID-19 pandemic further complicated RCCL's management's ability to mitigate such losses. In particular, COVID-19 has caused significant market declines, uncertainty, and social dislocation, and the effects of the COVID-19 pandemic could impact demand and market prices for RCCL's products in the future. Similar to other businesses that are suffering from the effects of COVID-19 related disruptions, there is currently no timeline for when all of RCCL's operations will return to normalcy.

9. RCCL is party to the ABL Agreement (defined below). RCCL's obligations under the ABL Agreement are secured against all of RCCL's assets, as described below in further detail. On April 17, 2020, BOA, as the Agent (defined below) under the ABL Agreement, provided written notice of an Event of Default under the ABL Agreement resulting from the Borrowers' (defined below) violation of certain covenants under the ABL Agreement.

10. RCCL and the other Borrowers under the ABL Agreement have entered into the ABL Forbearance Agreement (defined below) pursuant to which the Agent and the Lenders (defined below) have agreed, in reliance upon the terms of the ABL Forbearance Agreement, to forbear from exercising their rights and remedies under the ABL Agreement with respect to existing defaults during the period from the effective date of the ABL Forbearance Agreement to the Forbearance Termination Date (defined below). Subject to the terms and conditions of the ABL

Forbearance Agreement, the Agent and the Lenders will, among other things, continue to make available the credit facilities under the ABL Agreement to meet RCCL's working capital requirements and extend credit and make advances in order to support the ongoing working capital needs of RCCL.

11. While certain segments of RCCL's business are viable and valuable, it is currently insolvent and urgently requires protection under the CCAA to maintain the status quo as it considers restructuring options for the benefit of its stakeholders.

12. RCCL also requires additional funding while it attempts to restructure its business. RCCL is not seeking debtor-in-possession ("**DIP**") financing as part of the proposed Initial Order; however, RCCL anticipates the need for DIP financing in the short term. As such, RCCL intends to return to this Court for approval of DIP financing at a subsequent hearing.

13. The Applicant's anticipated next steps include continuing discussions with its lenders and other stakeholders to pursue financing and/or sale options, with a view to achieving a viable path forward without the imminent threat of uncoordinated enforcement steps being taken that could result in an immediate loss of value.

14. If the Initial Order is granted, the Applicant intends to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an amended and restated Initial Order which, among other things, would:

- (a) extend the Stay of Proceedings granted in the proposed Initial Order;
- (b) approve DIP financing;

- (c) expand the Initial Order to include the more fulsome restructuring provisions found in the model order subcommittee of the Commercial List Users' Committee of the Ontario Superior Court of Justice ("**Model Order**"); and
- (d) seek such other relief as may be required to advance the Applicant's restructuring.

III. CORPORATE STRUCTURE AND BUSINESS OPERATIONS

A. Corporate Structure

15. RCCL is a privately held corporation that was incorporated under Ontario's *Business Corporation Act*, R.S.O. 1990, c. B. 16 (the "**OBCA**") on April 8, 1987. RCCL's registered head office is located at 34 Hansen Road South, Brampton, Ontario. RCCL has two directors: Leonard Gould and myself. A copy of the Ontario corporate profile report in respect of RCCL is attached hereto as **Exhibit "A"**.

16. To facilitate the operation of its business in Canada, RCCL is also extra-provincially registered under the laws of British Columbia, New Brunswick, Manitoba, Alberta, Saskatchewan, Nova Scotia, Quebec, and Newfoundland and Labrador.

17. RCCL is a direct wholly-owned subsidiary of RCI, and an indirect wholly-owned subsidiary of QEP. RCI is a direct wholly-owned subsidiary of QEP. RCCL does not have any subsidiaries and does not have any equity interests in other corporate entities in Canada.

B. Overview of RCCL's Business

18. RCCL's business consists of manufacturing, marketing and distributing a comprehensive range of flooring, installation tools, adhesives, accessories and other flooring-related products in Canada under various brand names including *ROBERTS*[®], *QEP*[®], *Capitol*[®], *Harris*[®] *Wood*, *Kraus*[®], and *Naturally Aged Flooring*[™].

19. RCCL's products are sold to retailers with multiple stores throughout Canada, including national home improvement chains such as *Home Depot*, *Lowes*, *Rona*, and *Home Hardware*, large distributors such as *Prosol*, and independent dealers and distributors for use by do-it-yourself consumers as well as construction, remodeling and installation professionals.

20. RCCL operates from a facility located at 34 Hansen Road South, in Brampton, Ontario, which serves as RCCL's headquarters and is also the site of RCCL's manufacturing, distribution, and administrative functions. In addition, RCCL leases office space in Waterloo, Ontario, and warehouse and distribution space in Mississauga, Ontario and Edmonton, Alberta. RCCL also utilizes the 3PLs (defined below) on a month-to-month basis.

C. Acquisition of the TPS Business from the Kraus Group

21. On October 5, 2018, RCCL acquired the Canada-based assets of the TPS Business from certain entities within the Kraus Group following a sale process undertaken by the Kraus Group to market the Kraus Group's assets. Certain relevant background information regarding RCCL's purchase of the Canada-based assets of the TPS Business from the Kraus Group is described below.

22. On September 11, 2018, Kraus Brands Inc., Kraus Canada Ltd., Kraus Carpet Inc., Kraus Properties Inc., Kraus USA Inc., and Strudex Inc. (the "**Kraus Applicants**") filed for and obtained

protection under the CCAA. Pursuant to the initial order granted by this Court in those CCAA proceedings, the stay of proceedings granted in respect of the Kraus Applicants was extended to certain partnerships affiliated with the Kraus Applicants (the “**Partnerships**” and together with the Applicants, the “**Kraus Group**”). At the time of its CCAA application, the Kraus Group was a vertically integrated manufacturer of premium carpet for the commercial and residential market, as well as a distributor in North America of flooring products produced by other manufacturers.

23. Pursuant to an Asset Purchase Agreement dated September 10, 2018 (the “**Purchase Agreement**”) between RCCL and QEP, as purchasers, and Kraus Canada LP, Kraus Properties LP and Kraus USA Inc., as vendors, RCCL and QEP acquired substantially all of the assets related to the TPS Business of the Kraus Group. In addition, RCCL and QEP, as purchasers, agreed to assume certain liabilities and obligations, including, among other things, certain assigned contracts, employee liabilities, and trade accounts payable.

24. The aspects and portions of the TPS Business purchased from the Kraus Group located in Canada are owned and operated by RCCL. Similarly, the aspects and portions of the TPS Business purchased from the Kraus Group located in the United States of America are owned and operated by QEP.

25. RCCL acquired the TPS Business in an effort to expand its sales distribution channels and its presence in the wood flooring market by adding approximately 1,200 dealers and distributors in Canada through which it could distribute its existing flooring and related products. Moreover, RCCL believed that the purchase of the TPS Business would allow it to reduce its customer concentration risk by diversifying its customer base.

D. RCCL's Business Segments

26. Following RCCL's acquisition of the TPS Business from the Kraus Group in October 2018, RCCL's business operations were broadly divided into two business segments:

- (a) ***Large Customer Segment*** – RCCL's historical business (prior to the acquisition of the TPS Business from the Kraus Group) primarily consisted of manufacturing and distributing a variety of flooring, installation tools, adhesives, and other flooring-related products, to large home improvement chains such as *Home Depot*, *Lowe's* and *Home Hardware*, as well as large distributors such as *Prosol* (collectively referred to hereinafter as the "**Large Customer Segment**") for use by do-it-yourself consumers as well as construction, remodeling and installation professionals. These products are predominantly sold under the *ROBERTS*[®], *QEP*[®], and *Capitol*[®] brands; and
- (b) ***TPS Business Segment*** – Under this business segment (acquired from the Kraus Group), RCCL sells flooring and related products to independent dealers and distributors predominantly under the *Kraus*[®], *Harris*[®] *Wood*, and *Naturally Aged Flooring*[™] brands (referred to hereinafter as the "**TPS Business Segment**").

27. Since acquiring the TPS Business Segment in October 2018, RCCL has operated in both the Large Customer Segment and the TPS Business Segment. However, integrating the TPS Business Segment into the existing RCCL business has proven to be difficult due to differences between the respective business models and customer bases. In contrast to the Large Customer Segment, the TPS Business Segment is significantly more capital intensive, with considerably more customers than the Large Customer Segment. Onerous overhead and other costs are required

to service such customers, including a large sales force, a large supply of product samples and product displays, and other logistics and freight costs.

E. Employees

28. As of April 29, 2020, RCCL employed approximately 87 people (85 on a full-time basis and 2 on a temporary basis). Approximately 61 employees are located in Ontario, 7 employees are located in Alberta and 19 employees at other locations. Approximately 60 of RCCL's employees are salaried employees and 27 are hourly employees.

29. RCCL's monthly payroll obligations are approximately \$452,975 for salary and hourly employees, and an additional approximately \$23,000 per month for temporary employees. All salaried employees are paid bi-weekly and all hourly employees are paid weekly. Some of RCCL's employees also participate in a sales incentive plan and/or a bonus plan which provides for payments in addition to their base salary. In addition to the payroll amounts above, certain salaried employees are also eligible to receive sales commissions on a monthly basis based on certain objectives/metrics. As at the date of this Affidavit, RCCL is current on its payroll obligations, including all source deductions.

30. In addition, all of RCCL's employees are eligible to participate in a standard group benefit plan, which is administrated by Manulife. RCCL pays approximately \$19,202 monthly in support of this benefit plan. RCCL also maintains a short-term disability plan through Manulife.

F. RCCL Pension Plan

31. RCCL maintains a defined contribution pension plan which is mandatory for all of RCCL's employees, which is provided by The Great West Life Assurance Company. There are currently

78 members of the RCCL Pension Plan. The defined contribution pension plan is registered, for pensions standards purposes, in the Province of Ontario, and bears registration number 0296277 (the “**RCCL Pension Plan**”). The RCCL Pension Plan is RCCL’s only pension plan.

32. Since the RCCL Plan does not guarantee any particular level of benefits to plan members, there can neither be a deficit nor a surplus and an actuarial valuation is not required. Under the RCCL Pension Plan, RCCL matches up to five percent (5%) of a participating employee’s earnings, but in no event more than what the employee contributes. RCCL pays approximately \$12,728 in monthly contributions.

33. RCCL is current on its contributions to the RCCL Pension Plan.

G. Real Property Leases

34. RCCL operates from the following four leased facilities:

- (a) premises located at 34 Hansen Road South, Brampton, Ontario, which is approximately 64,000 square feet and is used by RCCL for distribution, warehousing, and manufacturing of flooring related products;
- (b) premises located at 65 Northfield Dr., Waterloo, Ontario, which is approximately 20,000 square feet and is used by RCCL as a business office;
- (c) premises located at Unit#1, 375 Pendant Drive, Mississauga, Ontario, which is approximately 91,500 square feet and is used by RCCL for warehousing flooring inventory and associated products. RCCL currently subleases a certain portion of these premises (approximately 6,000 square feet) to a third party; and

- (d) premises located at 15210-135th Avenue NW, Edmonton, Alberta, which is approximately 53,000 square feet, and is used by RCCL as an office and showroom, and for storage, manufacturing and distribution of flooring and associated products.

35. RCCL also utilizes third party logistics providers in Vancouver, Edmonton, Winnipeg, Calgary and Toronto (the “3PLs”) on a month-to-month basis.

IV. RCCL’S FINANCIAL POSITION

36. A copy of RCCL’s internally prepared segmented unaudited Balance Sheet for the 12-months ended February 29, 2020 is attached hereto as **Exhibit “B”**. A copy of RCCL’s internally prepared segmented unaudited Balance Sheet for the 2-months ended April 30, 2020 is attached hereto as **Exhibit “C”**.

A. Assets

37. As of April 30, 2020, RCCL had total assets of approximately \$30,150,000. RCCL’s principal assets, as at April 30, 2020, consisted of, among other things, the following:

Asset Type	Value (CAD Currency 000’s)
<i>Current Assets</i>	
Cash	\$706
Accounts Receivable	\$7,273
Inventory	\$15,702
Other Current Assets	\$697
<i>Long Term Assets</i>	

Asset Type	Value (CAD Currency 000's)
Net Fixed Assets	\$602
Goodwill	\$1,040
Other Long Term Assets	\$4,130

B. Liabilities

38. As detailed in RCCL's unaudited Balance Sheet, as of April 30, 2020, RCCL had total liabilities of approximately \$40,489,000, consisting of, among other things, the following:

Liability Type	Value (CAD Currency 000's)
ABL Agreement Debt	\$23,053
Accounts Payables	\$6,924
Accrued Liabilities	\$5,344
Inter-company Liabilities	\$2,246
Other Long Term Liabilities	\$2,922

C. Profit and Loss

39. A copy of RCCL's internally prepared segmented unaudited Income Statement for the 12-months ended February 29, 2020 is attached hereto as **Exhibit "D"**. A copy of RCCL's internally prepared segmented unaudited Income Statement for the 2-months ended April 30, 2020 is attached hereto as **Exhibit "E"**.

40. For the 12-months ended February 29, 2020, RCCL generated net sales of approximately \$61.31 million, gross profit of approximately \$14.93 million, and a pre-tax net loss of approximately \$8.48 million, which included approximately \$21.64 million in total operating expenses. Comparatively, for the two months of fiscal year 2021 ended April 30, 2020, RCCL generated net sales of approximately \$8.26 million, gross profit of approximately \$1.76 million, and a pre-tax net loss of approximately \$1.13 million, which included approximately \$2.66 million in total operating expenses.

D. Debt Obligations

41. RCCL's primary funded debt obligations consist of amounts owed under the ABL Agreement which is discussed immediately below.

(i) ABL Agreement

42. RCCL is a party to the Fourth Amended and Restated Loan Agreement, dated as of January 31, 2017, as subsequently amended by amending agreements dated as of October 5, 2018, January 22, 2019, July 26, 2019, and January 27, 2020 (as amended, supplemented and otherwise modified from time to time, the "**ABL Agreement**"), that was entered into by and among RCCL (as "**Canadian Borrower**"), QEP, RCI, Roberts Holding International, Inc., Q.E.P. Zocalis Holding L.L.C., Boiardi Products Corporation, Roberts Capitol, Inc., QEP – California, Inc., QGrow Products, Inc., QEP – Tennessee, Inc., Liberty Creek, Inc., Imperial Industries, Inc., All-Force Tool Company, Q.E.P. Sun Valley, Inc., Q.E.P. Oklahoma, Inc., Faus Group, Inc., Premix-Marbletite Manufacturing Co., A C Products Co. (collectively, the "**U.S. Borrowers**" and together with the Canadian Borrower, the "**Borrowers**"), BOA and the lenders from time to time party to

the ABL Agreement (the “**Lenders**”), and BOA, as agent for the Lenders (in such capacity, “**Agent**”).

43. The ABL Agreement provides, among other things, a maximum revolving loan commitment of US \$85,000,000 (the “**ABL Commitment**”) to the Borrowers. The ABL Agreement is structured such that up to US \$23,000,000 of the ABL Commitment may be allocated to RCCL, as the Canadian Borrower under the ABL Agreement (the “**Canadian Revolving Loan Commitment**”). Specifically, the ABL Agreement makes available in revolving credit to RCCL the lesser of (a) the Canadian Revolving Loan Commitment (i.e. US \$23,000,000) and (b) a borrowing base (the “**Canadian Borrowing Base**”) determined by reference to, among other things, RCCL’s eligible accounts receivable and eligible inventory, less, in each case, the sum of certain aggregate outstanding principal amounts (the “**Canadian Credit Availability**”).

44. The ABL Agreement is structured as a typical asset-based loan facility governed by a borrowing base calculation, which in the case of RCCL, is comprised of, among other things, RCCL’s eligible accounts receivables and eligible inventory (collectively, the “**Eligible Collateral**”). Pursuant to this structure, RCCL submits a written request for an advance, and the Lenders make a revolving advance based on a borrowing base certificate and taking into account the amounts then outstanding under the ABL Agreement.

45. The outstanding and unpaid principal balance of revolving loans made under the ABL Agreement bear interest according to the terms and calculations contained in the ABL Agreement. The maturity date under the ABL Agreement is October 5, 2023 (the “**Maturity Date**”). The ABL Commitment shall automatically terminate on the Maturity Date.

46. As of April 30, 2020, the total outstanding principal balance under the Canadian Credit

Availability was \$23,053,000 (in Canadian dollars) (the “**RCCL ABL Debt**”). Pursuant to the ABL Agreement, as of any date of determination, U.S. Credit Availability (as defined in the ABL Agreement) in an amount not exceeding US \$10,000,000 may be designated by a U.S. Borrower in the calculation of the Canadian Borrowing Base. As of April 30, 2020, the RCCL ABL Debt is comprised of approximately \$8.5 million of designated U.S. Credit Availability.

47. The ABL Agreement contains various restrictive covenants that, *inter alia*, limit RCCL’s and the other Borrowers’ ability to incur additional indebtedness or encumber their assets. The ABL Agreement also requires that the Borrowers maintain certain financial ratios (the “**Fixed Charge Coverage Ratio**” as defined in the ABL Agreement). The ABL Agreement specifies that the failure to maintain the Fixed Charge Coverage Ratio is an Event of Default (as defined therein). Upon the occurrence of an Event of Default under the ABL Agreement, the Agent may, *inter alia*, declare the ABL Commitment to be terminated, and accelerate the payment of all outstanding indebtedness under the ABL Agreement (with certain limited exceptions).

48. The ABL Agreement was amended pursuant to Amendment No. 1 to Fourth Amended and Restated Loan Agreement dated October 5, 2018 (“**Amendment No. 1**”). As a result of the amendments made to Section 2.30 of the ABL Agreement pursuant to Amendment No. 1, each Borrower is jointly and severally liable for, and has absolutely and unconditionally guaranteed to the Agent and the Lenders the prompt payment and performance of all Obligations (as defined in the ABL Agreement), provided that RCCL (i.e. the Canadian Borrower) is not deemed to guarantee or be liable for any Obligations (as defined in the ABL Agreement) of the U.S. Borrowers.

49. To secure the payment and performance of any and all present or future indebtedness, obligations and liabilities owing by RCCL to the Agent and/or the Lenders, RCCL granted,

pursuant to a security agreement dated December 30, 2008 (the “**Security Agreement**”), in favour of BOA, as Agent, for itself and on behalf of the other Lenders. Pursuant to the Security Agreement, RCCL granted a continuing security interest in all of the present and after-acquired property, assets and undertakings (collectively, the “**Collateral**”) of RCCL. The obligations secured by the Security Agreement become immediately due and payable and the security interests constituted by the Security Agreement become enforceable if RCCL fails to make any payment of any of the obligations when due and if an Event of Default occurs under the ABL Agreement.

50. As previously stated, the ABL Agreement was amended pursuant to Amendment No. 1. At this time, RCCL and the other Borrowers entered into a Ratification and Reaffirmation of Security Agreements (the “**Ratification Agreement**”) pursuant to which RCCL ratified, reaffirmed and confirmed the terms and provisions of the Security Agreement. Pursuant to the Ratification Agreement, the obligations, covenants, duties, debts and liabilities incurred pursuant to the ABL Agreement (as amended by Amendment No. 1) constitute “Obligations” as defined in and secured pursuant to the Security Agreement. To secure the payment and performance of the “Obligations” (as defined in the Security Agreement), RCCL granted to the Agent a continuing security interest in and lien on, any and all right, title and interest of RCCL in and to all of the Collateral of RCCL.

51. As described below, the security interests granted by RCCL in favour of BOA, as Agent, for itself and on behalf of the other Lenders, are perfected by way of registrations pursuant to the various Personal Property Security Acts (or the applicable provincial equivalent) in Ontario, British Columbia, Manitoba and Alberta.

52. The ABL Agreement is an agreement that involves parties other than the Applicant, including QEP and BOA, and is therefore not attached to this Affidavit. A copy of the ABL

Agreement, including the amendments thereto, the Security Agreement, and the Ratification Agreement, will be provided to the Court on a confidential basis if requested by the Court.

(ii) *Security Registrations*

53. Personal property registry searches against RCCL were conducted under the *Personal Property Security Act*, R.S.O. 1990, c. P.10, as amended (the “**Ontario PPSA**”). Copies of the personal property registry searches conducted against RCCL in Ontario are attached hereto as **Exhibit “F”**. The Ontario PPSA search results, current as of June 21, 2020, disclosed the following:

- (a) Bank of America, N.A. as agent for itself and HSBC Bank USA, National Association has a security interest in “inventory”, “equipment”, “accounts”, “other” and “MV Incl” (PPSA File No. 073101969) originally registered on October 17, 1997. This registration has an expiry date of October 17, 2020.
- (b) Bank of America, N.A. as agent, has a security interest in “inventory”, “equipment”, “accounts”, “other” and “MV Incl” (PPSA File No. 650583792) originally registered on December 17, 2008. This registration has an expiry date of December 17, 2025.
- (c) LiftCapital Corporation has a security interest in “equipment” and “other” (PPSA File No. 713491911) originally registered on January 21, 2016, with the following general collateral description: “material handling equipment together with all parts, attachments, accessories, additions, batteries, chargers, repair parts, and other equipment placed on or forming part of the goods described herein with any

proceeds thereof and therefrom including, without limitation, all goods, securities, instruments, documents of title, chattel paper and intangibles (as defined in the Personal Property Security Act)”. This registration has an expiry date of January 21, 2024.

- (d) Bank of America, N.A. as agent, has a security interest in “inventory”, “equipment”, “accounts”, “other” and “MV Incl” (PPSA File No. 896821344) originally registered on July 28, 2003. This registration has an expiry date of July 28, 2025.

54. Personal property registry searches against RCCL were conducted under the respective personal property security legislation of Quebec, British Columbia, Nova Scotia, Manitoba, Alberta, Saskatchewan, Newfoundland and Labrador, and New Brunswick. Copies of the personal property registry searches conducted against RCCL in those jurisdiction are collectively attached hereto as **Exhibit “G”**. The searches, performed on June 22, 2022, disclosed the following:

- (a) Under the personal property registry of British Columbia, Bank of America, N.A., as agent, has a security interest (Base Reg. #: 055792L) originally registered on September 28, 2018, with the following general collateral description: “all present and after acquired personal property of the debtor”. This registration has an expiry date of September 28, 2025.
- (b) Under the personal property registry of Manitoba, Bank of America, N.A., as agent, has a security interest (Registration 201817611201) originally registered on September 28, 2018, with the following general collateral description: “all present and after acquired personal property of the debtor”. This registration has an expiry

date of September 28, 2025.

(c) Under the personal property registry of Alberta:

(i) Bank of America, N.A., as agent, has a security interest (Registration Number: 18092815152) originally registered on September 28, 2018, with the following general collateral description: “all present and after acquired personal property of the debtor”. This registration has an expiry date of September 28, 2025.

(ii) Bank of America, N.A., as agent, has a land charge (Registration Number: 18092816589) originally registered on September 28, 2018.

55. There are no registrations against RCCL made under the respective personal property registries of Quebec, Nova Scotia, Saskatchewan, Newfoundland and Labrador, and New Brunswick.

E. Intercompany Liability

56. In the ordinary course of business, RCCL has engaged in intercompany transactions with QEP resulting in the creation of intercompany receivables and payables. As reflected in the Balance Sheet, as of April 30, 2020, there is an intercompany liability of approximately \$2,246,000.

F. Litigation

57. On April 26, 2018, RCCL filed a claim as against 3942783 Canada Inc. o/a Dragona Carpet Supplies Ltd. (“**Dragona**”), a customer that ordered products from RCCL, in the Ontario Superior

Court of Justice, Court File No.: CV-18-1771 (as amended, the “**Statement of Claim**”). In the Statement of Claim, RCCL claims against Dragona, among other things, a liquidated debt in the amount of \$79,699.53 for amounts due and owing under invoices for goods sold and delivered by RCCL. RCCL also claims prejudgment and post-judgment interest thereon in accordance with the terms of the invoices, at a rate of 2% per annum calculated monthly, from the invoice dates, as well as, costs of the action on a substantial indemnity basis. A copy of the Statement of Claim is attached hereto as **Exhibit “H”**.

58. On August 23, 2018, Dragona filed a statement of defence and counterclaim (the “**Counterclaim**”) in which Dragona denies that, among other things, RCCL is entitled to any damages set out in the Statement of Claim. In the Counterclaim, Dragona claims from RCCL damages in the amount of \$2,000,000 for breach of contract, punitive damages in the amount of \$1,000,000, interest and costs, all as set out in the Counterclaim. A copy of the Counterclaim is attached hereto as **Exhibit “I”**.

59. On October 24, 2018, RCCL filed its reply and defence to counterclaim (the “**Reply**”), categorically denying Dragona’s allegations in the Counterclaim. A copy of the Reply is attached hereto as **Exhibit “J”**.

G. Cash Management System

60. RCCL uses a centralized cash management system to collect, manage and distribute funds used in RCCL’s business and to facilitate cash monitoring, forecasting, and reporting (the “**Cash Management System**”). RCCL maintains a total of eight (8) active cash operating bank accounts at TD Canada Trust, Royal Bank of Canada and BOA in Toronto. The accounts are in US and Canadian currency.

61. As previously described, RCCL utilizes the asset-based lending facility provided pursuant to the ABL Agreement as its senior credit facility, which is administered by BOA as agent on behalf of the Lenders. The Borrowers under the ABL Agreement obtain funding from BOA by making requests for such borrowings in accordance with the terms, conditions and requirements of the ABL Agreement. Pursuant to the terms of the ABL Agreement, certain of RCCL's cash, notes, cheques, and other proceeds of receivables, inventory and securities are deposited and collected into lockbox accounts maintained by BOA (collectively, the "**Lockbox Accounts**"), which has the effect of reducing the amount outstanding under the ABL Agreement.

62. The Cash Management System gives RCCL the ability to efficiently and accurately track and control corporate funds and ensure cash availability. The Cash Management System also includes the necessary accounting controls to enable the Applicant, the Applicant's creditors, the proposed Monitor, and this Court to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable.

63. RCCL needs to be able to continue using the existing cash management system during the CCAA Proceedings. Accordingly, the Applicant seeks the authority to continue to use, in accordance with the ABL Forbearance Agreement, the existing Cash Management System and to maintain the funding and banking arrangements already in place.

V. EVENTS LEADING TO THE APPLICANT'S CURRENT CIRCUMSTANCES

64. As discussed below, RCCL's financial and operational difficulties are primarily due to the inherently high costs of operating the TPS Business Segment in Canada in comparison to the Large Customer Segment, as well as macroeconomic conditions in Canada including those resulting from the COVID-19 pandemic.

A. Poorly Performing TPS Business Segment Affecting RCCL's Financial Position

65. RCCL's financial position has been particularly impacted by losses incurred in connection with the TPS Business Segment. As previously discussed, many of the advantages that RCCL envisioned would flow from RCCL's acquisition of the TPS Business have failed to come to fruition. Since its acquisition, the TPS Business Segment has proved difficult to improve and make profitable. Furthermore, the synergies that RCCL hoped to realize from the transaction did not materialize. On the contrary, the TPS Business Segment has had a material negative impact on RCCL's bottom line. For the two months ended on April 30, 2020, the TPS Business Segment had pre-tax net losses of approximately \$1,211,000, and RCCL (on a consolidated basis) had pre-tax net losses of approximately \$1,125,000.

66. Over the last few months, RCCL has made various efforts to improve its financial and/or operational issues including, but not limited to, a reduction in its workforce and temporary layoff of employees in Canada as well as limiting expenditures on product samples and displays. The efficacy of these efforts have been hampered by the public health emergency caused by COVID-19 and the states of emergency and public health orders requiring social distancing, self-isolation and restricting gatherings that have been declared in Canada by the federal and provincial governments.

B. QEP is no Longer Willing to Financially Support RCCL

67. RCCL requires significant and continued funding from QEP's operations in the United States. Without such funding, RCCL, as currently structured, is unable to financially support all of its operations and is unable to meet its obligations as they come due. Projections demonstrate little or no prospect of improvement in RCCL's business within a reasonable time to enable RCCL

to financially support its business independently of QEP. Given RCCL's current business prospects, QEP is not willing to provide financial assistance to RCCL absent a significant restructuring.

C. COVID-19 Related Difficulties

68. As has been well publicized, the COVID-19 pandemic has resulted in full or partial closure of retailers and distributors, and has brought about government imposed limits on travel. The COVID-19 pandemic has had an immediate negative impact on RCCL's business as sales figures relating to RCCL's business have declined in comparison to RCCL's sales figures in the ordinary course as RCCL's customers were forced to temporarily close or significantly reduce their ability to sell products to end customers.

D. Default under the ABL Facility

69. On April 17, 2020, BOA provided written notice to QEP of an Event of Default under the ABL Agreement resulting from the Borrowers' violation of certain covenants under the ABL Agreement (the "**Reservation of Rights Letter**"). In the Reservation of Rights Letter, BOA as lender and Agent expressly reserved all of their rights, powers, privileges and remedies under the ABL Agreement, other loan agreements, applicable law and otherwise.

70. As previously noted, RCCL relies upon the restricted availability under the ABL Agreement, including the allocation of U.S. Credit Availability made available pursuant to the ABL Agreement, in order to finance its operations. Absent such availability under the ABL Agreement and the accommodations provided by QEP to RCCL, RCCL is unable to carry on business in the ordinary course and to meet all of its obligations as they come due and is insolvent.

E. ABL Forbearance Agreement

71. BOA was properly notified of RCCL's intention to apply for relief under the CCAA and to seek the appointment of Richter as Monitor from the Ontario Superior Court of Justice (Commercial List). Following extensive discussions between, among others, RCCL, Richter, the Agent, and each party's respective counsel, RCCL entered into the Forbearance Agreement and Amendment No. 5 to Fourth Amended and Restated Loan Agreement, dated as of June 26, 2020, by and among the Borrower, the Lenders and the Agent (the "**ABL Forbearance Agreement**"). Pursuant to the ABL Forbearance Agreement, the Agent and the Lenders have agreed, in reliance upon the terms of the ABL Forbearance Agreement, to forbear during the Forbearance Period (defined below) from exercising their rights and remedies against the Borrowers with respect to existing defaults during the period (the "**Forbearance Period**") from the effective date of the ABL Forbearance Agreement to the Forbearance Termination Date (defined below).

72. Under the ABL Forbearance Agreement, the "**Forbearance Termination Date**" is the earlier to occur of:

- (a) (i) October 31, 2020 or (ii) such later date as may be approved by the Agent in its discretion, and
- (b) the date on which any Termination Event (defined below) occurs.

73. The Agent and the Lenders will, subject to the terms and conditions of the ABL Forbearance Agreement, continue to make available to the Borrowers, the credit facilities under the ABL Agreement to meet the Borrowers' working capital requirements and extend credit and make advances to the Borrowers in order to support the ongoing working capital needs of the

Borrowers.

74. Pursuant to the ABL Forbearance Agreement, RCCL agreed that, except for RCCL's non-BOA deposit accounts (the "**Non-Lender Accounts**"), all of RCCL's deposit accounts shall be Lockbox Accounts maintained with BOA. The full amount of all credit balances in the Non-Lender Accounts shall be transferred each business day to a Lockbox Account (subject to certain exceptions). Each of the Non-Lender Accounts are only to be used for the Large Customer Segment of RCCL's business.

75. Among other terms, the ABL Forbearance Agreement is conditional upon:

- (a) the payment of a forbearance fee by the Borrowers;
- (b) approval by the Agent of the Cash Flow Forecast (defined below) filed in connection with RCCL's application for the Initial Order;
- (c) a CCAA Initial Order being granted in form and substance satisfactory to the Agent and the Lenders which, among other terms (i) provides that the Agent and the Lenders shall be treated as an "unaffected creditor" in RCCL's CCAA proceedings and in any plan of compromise and/or arrangement with respect to RCCL, and (ii) the stay of proceedings ordered by the CCAA Court in RCCL's CCAA proceedings shall not apply to the Agent and the Lenders.

76. The "**Forbearance Termination Date**" may occur as a result of, among other things, the occurrence of certain termination events set out in the ABL Forbearance Agreement, which include, among other things, the following: (a) any event of default (other than existing defaults) under the ABL Agreement and other loan documents; (b) default in the observance or performance

of any covenant in the ABL Forbearance Agreement, including any covenants to obtain Orders by this Court; and (c) termination of RCCL's CCAA proceedings or the stay of proceedings granted in RCCL's CCAA proceeding. On the Forbearance Termination Date, the ABL Forbearance Agreement shall automatically terminate and the Agent and Lenders may, among other things, (a) declare all amounts due under the ABL Agreement and ABL Forbearance Agreement to be due and payable forthwith, or (b) appoint a receiver over RCCL.

77. The ABL Forbearance Agreement is an agreement that involves parties other than the Applicant, including QEP and BOA, and is therefore not attached to this Affidavit. A copy of the ABL Forbearance Agreement, will be provided to the Court on a confidential basis if requested by the Court.

F. Strategic Review

78. In light of the impact of some of the events described above on RCCL's business, management started a review of RCCL's business operations in and around the first quarter of 2019. Management considered various options with respect to RCCL's business, including downsizing parts of RCCL's business, reducing RCCL's footprint in certain jurisdictions, and making further investments to bolster parts of RCCL's business.

79. On April 24, 2020, RCCL engaged Richter to provide advisory services and to assist RCCL in reviewing and analyzing its various strategic options. The services and support provided by Richter, included, among other things, the following:

- (a) working with RCCL to complete its strategic review, and outline its restructuring options for consideration by RCCL's management team, board of directors, and

RCCL's lender (i.e. BOA);

- (b) supporting RCCL in its communication with BOA regarding its strategic review and restructuring options; and
- (c) reviewing RCCL's cash flow and other forecasts and assisting with any modifications that may be required by the lender.

80. I understand that Richter will be filing a pre-filing report with the Court as the Proposed Monitor in conjunction with the Applicant's request for relief under the CCAA (the "**Pre-Filing Report**").

VI. NEED FOR CCAA RELIEF

81. I am advised by Raj Sahni, a partner at Bennett Jones LLP, the lawyers for RCCL, and do verily believe, that, for the purposes of the CCAA, a company is insolvent if, among other things:

- (a) the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient to enable payment of all its obligations, due and accruing due; or
- (b) it is, for any reason, unable to meet its obligations as they generally become due.

82. In light of the present circumstances:

- (a) RCCL is insolvent because it appears that the realizable value of its assets is not sufficient to satisfy its existing liabilities and its contingent liabilities; and
- (b) with the cessation of ongoing financial support by QEP, RCCL is not cash flow

positive and is accordingly unable to meet its obligations as they become due.

83. Based on RCCL's Balance Sheet, as at April 30, 2020, RCCL had assets with a net book value of approximately \$30.1 million, and liabilities with a net book value of approximately \$40.5 million. Accordingly, the assets of RCCL are insufficient to satisfy its potential liabilities.

84. Further, the realizable value of certain categories of RCCL's assets may be lower than the book values reported in RCCL's financial statements. Given the TPS Business Segment's performance, it is reasonable to expect that the realizable value of the assets of RCCL at a fairly conducted sale would be less than the above-noted book value.

85. In addition, with the cessation of ongoing support from QEP, RCCL is unable to meet its obligations as they generally become due, including its employee obligations, trade debt, rent payments and other contractual commitments.

86. Despite RCCL's efforts to manage the unprecedented economic circumstances and significant financial challenges facing RCCL in general and the TPS Business more particularly, it became apparent that urgent relief was needed to manage supplier, customer and employee relationships and otherwise stabilize RCCL's business. In particular, the CCAA Proceedings are needed by RCCL to:

- (a) use the time and stability afforded by the CCAA to continue to manage RCCL's operating business in accordance with the proposed Initial Order;
- (b) facilitate an orderly reduction in RCCL's financial obligations; and
- (c) reduce RCCL's overextended Canadian footprint;

in each case with a view to maximizing value for RCCL's creditors and eventually having RCCL emerge from creditor protection.

VII. RELIEF SOUGHT

A. Reduced Restructuring Provisions in the Proposed Initial Order

87. I am advised by Mr. Sahni that, in line with the current practice after the amendments to the CCAA came into force on November 1, 2019, RCCL is seeking a form of Initial Order which contains certain limited relief that is reasonably necessary for the first ten (10) days until the Comeback Hearing, and does not contain the more fulsome restructuring provisions found in the Model Order. As previously noted, it is anticipated that RCCL will seek an expansion of the Initial Order to include the more fulsome restructuring provisions found in the Model Order at the Comeback Hearing.

B. Stay of Proceedings

88. In the present circumstances, RCCL is currently unable to satisfy all of its liabilities as they become due and is therefore insolvent. RCCL requires the Stay of Proceedings to maintain the status quo in order to preserve the value of RCCL's business, its undertakings and assets, and to ensure that no creditor of RCCL obtains preferred treatment relative to other creditors. It would be detrimental to RCCL's business if proceedings were commenced or continued or rights and remedies were executed against RCCL. Without the benefit of the protection afforded under the CCAA, there could be an immediate and significant erosion of value to the detriment of stakeholders.

89. With the benefit of the breathing room afforded by the Stay of Proceedings, RCCL will be

able to continue to operate as a going concern with minimal disruption to its current business operations. The Stay of Proceedings will thus serve to stabilize and preserve the value of RCCL's business for the benefit of RCCL's stakeholders, including its employees, suppliers, landlords and customers. The Stay of Proceedings will also:

- (a) provide a forum to explore a plan of compromise or arrangement under the CCAA that would maximize creditor and stakeholder recoveries; and
- (b) facilitate the potential exploration of sale or other strategic transaction(s) in addition to, or as an alternative to, a plan of arrangement or compromise under the CCAA.

90. Under the circumstances, the Stay of Proceedings is in the best interests of RCCL and its stakeholders.

C. Proposed Monitor

91. Richter has consented to act as the Monitor of the Applicant in the CCAA Proceedings. I understand that a copy of Richter's consent to act as Monitor will be attached to the Pre-Filing Report.

92. As previously noted, I understand that Richter will be filing the Pre-Filing Report with the Court in conjunction with the Applicant's request for relief under the CCAA.

93. I am advised by Paul van Eyk, a partner at Richter, that as the Proposed Monitor, Richter is supportive of the relief being sought by RCCL, including the quantum of the Charges discussed in greater detail below.

VIII. REQUESTED CHARGES

A. Administration Charge

94. In connection with its appointment, it is contemplated that the Proposed Monitor, along with the Proposed Monitor's counsel and RCCL's counsel, will be granted a Court-ordered charge on all of the present and future assets, property, and undertakings of RCCL, to secure payment of their fees and disbursements incurred in connection with services rendered both before and after the commencement of the CCAA Proceedings up to a maximum amount of \$500,000 (the "**Administration Charge**"). The Administration Charge is proposed to rank ahead of and have priority over all other charges and security interests.

95. The Applicant requires the expertise, knowledge, and continuing participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to complete a successful restructuring. All of the beneficiaries of the Administration Charge have contributed and will continue to contribute to the restructuring of RCCL. Each of the beneficiaries of the Administration Charge will have distinct roles and there is no duplication as between the roles.

96. RCCL has worked with the Proposed Monitor to estimate the quantum of the Administration Charge sought. In light of the foregoing, I believe that the Administration Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances.

B. Directors' Charge

97. A successful restructuring of RCCL will only be possible with the continued participation of its directors and officers. RCCL's directors and officers have specialized expertise, significant

knowledge that cannot be easily replaced, and relationships with RCCL's stakeholders that make them essential to the viability of the Applicant's business and the preservation of its enterprise value.

98. I am advised by Mr. Sahni, and do verily believe that, in certain circumstances, directors and officers can be held liable for certain obligations of a company, including obligations of a company owing to employees and government entities, which may include unpaid accrued wages and unpaid accrued vacation pay, together with unremitted excise, sales, goods and services, and harmonized sales taxes.

99. It is my understanding that the Applicant maintains an insurance policy in respect of the potential liability of its directors and officers (the "**D&O Insurance Policy**"). Although the D&O Insurance Policy insures the directors and officers of RCCL for certain claims that may arise against them in their capacity as directors and/or officers of the Applicant, coverage is subject to several exclusions and limitations and there is a potential for insufficient coverage in respect of potential director and officer liabilities. The directors and officers of RCCL have expressed their desire for certainty with respect to potential personal liability if they continue in their current capacities in the proposed CCAA Proceedings.

100. RCCL requires the active and committed involvement of the directors and officers during the CCAA Proceedings. Given the potential liabilities and the uncertainty surrounding available indemnities and insurance, it is contemplated that RCCL's directors and officers would be granted a Court-ordered charge on the assets, property, and undertakings of the Applicant (the "**Directors' Charge**") up to a maximum of \$250,000. The Directors' Charge would act as security for indemnification obligations for the directors' and officers' potential liabilities as set out above.

The Directors' Charge will also allow RCCL to benefit from the efforts and knowledge of their directors and offices, and it will promote the stability of RCCL's business during the CCAA Proceedings.

101. RCCL believes that the Directors' Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is supportive of the Directors' Charge and its quantum.

C. Priority of Charges

102. It is proposed that the priorities of the Administration Charge and Directors' Charge be as follows:

- (a) First – Administration Charge (up to the maximum amount of \$500,000); and
- (b) Second – Directors' Charge (up to the maximum amount of \$250,000).

103. The proposed Initial Order provides for the Charges to rank in priority to all other security interests, trust, liens, charges, encumbrances, and claims of secured creditors, statutory or otherwise (collectively, the “**Encumbrances**”) in favour of any person. I am advised by Mr. Sahni that this motion will be served on every party that is believed could have a secured claim in respect of RCCL, as well as upon representatives of the federal government and certain provincial tax authorities. Accordingly, RCCL believes that the Charges should have priority over all Encumbrances.

IX. CASH FLOW PROJECTIONS

104. RCCL, with the assistance of the Proposed Monitor, has conducted a cash flow analysis to

determine the amount required to finance its operations over the next 13 weeks assuming the relief sought is granted (the “**Cash Flow Forecast**”). It is expected that a copy of the Cash Flow Forecast will be appended to the Pre-Filing Report.

105. RCCL is projected to incur approximately \$3.9 million of additional losses between the period of May 2020 to February 2021 and is expected to run out of liquidity in the near future. Accordingly, DIP financing will be required to provide RCCL with the liquidity necessary for its continued business operations in the ordinary course.

X. CONCLUSION

106. The Initial Order sought by RCCL is in the best interests of RCCL and its stakeholders. Therefore, the Applicant respectfully seeks the relief set out in the within Application.

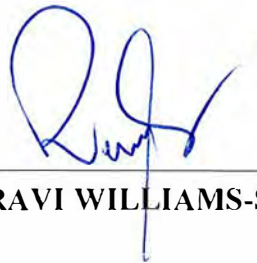
107. I swear this Affidavit in support of an Application for the relief set out herein and for no other or improper purpose.

SWORN BEFORE ME over
videoconference on this 26th day of June,
2020. The affiant was located in City of
Brampton, in the Province of Ontario and the
Commissioner was located in the City of
Mississauga, in the Province of Ontario. This
Affidavit was commissioned remotely as a
result of COVID-19



DANISH AFROZ

A Commissioner for Oaths in and for the
Province of Ontario



RAVI WILLIAMS-SINGH

**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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

AFFIDAVIT OF RAVI WILLIAMS-SINGH
(Sworn July 6, 2020)

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Raj Sahni (LSO #42942U)
Tel: 416-777-4804
Fax: 416-863-1716

Danish Afroz (LSO #65786B)
Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Applicant

**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

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

Proceedings commenced in Toronto

**MOTION RECORD
(Returnable October 26, 2020)**

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

RAJ SAHNI (LSO #42942U)

Tel: 416-777-4804

Email: SahniR@bennettjones.com

DANISH AFROZ (LSO #65786B)

Tel: 416-863-1200

Email: AfrozD@bennettjones.com

Fax: 416-863-1716

Lawyers for the Applicant