Court File No.: BK25-3207793-0033

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL TO CREDITORS OF 11449346 CANADA INC. o/a P3 PANEL COMPANY AND 12574764 CANADA LTD. o/a UNITED EDGE STRUCTURAL COMPONENTS

SUPPLEMENTARY FACTUM OF THE MOVING PARTIES
(Approval and Vesting Order)
(Motion Returnable July 30, 2025)

July 29, 2025

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TO: THE SERVICE LIST

I. OVERVIEW

1. Capitalized terms not otherwise defined in this supplementary factum have the meanings given to them in the first factum of the Companies dated July 27, 2025.

2. This supplementary factum is delivered in response to Royal Bank of Canada's Responding Motion Record served at 6:17pm the night before this motion, i.e. on July 29, 2025.

3. Counsel are attempting to resolve the matters raised therein. In case there is no resolution, this supplementary factum:

   a. describes the law confirming that this Honourable Court **does** have jurisdiction to vest the Vehicles in and to the Purchaser free and clear of RBC's rights pursuant to the Sale Agreements, if any (as those capitalized terms are defined below); and

   b. sets out why any adjournment is unnecessary, inappropriate, and opposed.

4. In addition, the Companies reiterate, rely on and and refer to the facts, law and arguments set out in their factum delivered on July 27, 2025.

II. FACTS

5. Royal Bank of Canada ("**RBC**") was served with the notice of motion on July 23, 2025, was provided with a copy of the APA on the morning of July 24, 2025, and was provided a copy of AVO later that day.

6. On July 29, 2025, RBC sent to the Proposal Trustee copies of two sale agreements (the "**Sale Agreements**") whereby RBC financed the Companies' purchase of two pick-up trucks (the "**Vehicles**").

7. RBC states that the Sale Agreements are conditional sale agreements, meaning that the Sale Agreements provide that RBC holds title to the Vehicles until full payment. According to RBC, $112,139.49 remains to be paid under the Sale Agreements.

8. For purposes of this factum, it is assumed, but not admitted, that RBC does retain title to the Vehicles pursuant to the Sale Agreements.

9. Pursuant to the APA, the Vehicles are Purchased Assets. Accordingly, the AVO provides that, upon closing, all the Companies' "*right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all*" Claims and Encumbrances. The Sale Agreements are not Assumed Contracts and will not be assigned to the Purchaser on closing.

10. The AVO also provides that all Claims and Encumbrances vested out of the Purchased Assets are transferred onto the proceeds of the Purchased Assets "*with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of*" the Companies.

III. LAW AND ARGUMENT

A. The rights of a seller under a conditional sale contract are a "*security, charge or other restriction*" that the Court has jurisdiction to vest out pursuant to Section 65.13 of the BIA

11. Section 65.13(7) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") provides that the Court may order that a sale be "*free and clear*" of any "*security*", "*charge*", or "*other restriction*." Specifically:

> (7) The court may authorize a sale or disposition **free and clear of any security, charge or other restriction** and, if it does, it shall also order that

> other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.
>
> [Emphasis added.]

12. The rights of a seller under a conditional sale contract are a "*security, charge or other restriction*." This is clear based on:

a. the Ontario *Personal Property Security Act* (the "**PPSA**");

b. the BIA's definition of "*secured creditor*"; and

c. the plain and ordinary meaning of "*security, charge or other restriction*."

i. <u>The Law in Ontario Is that a Seller's Retention of Title in Goods Sold Pursuant to a Conditional Sale Agreement Is a Security Interest in the Property Sold</u>

13. The BIA does not define "*security, charge or other restriction*." This is because the BIA lets provincial law govern, among other things, the existence of property and security interests.[1]

14. The law of Ontario is that a seller's retention of title in goods sold pursuant to a conditional sale agreement is a security interest in the property sold. Specifically:

a. the Ontario *Personal Property Security Act* (the "**PPSA**") defines "*security interest*" as "*an interest in personal property that secures payment or performance of an obligation*."[2]

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[1] See Section 72(2) of the BIA and *Giffen (Re)*, [1998] 1 S.C.R. 91, para. 64.
[2] PPSA, s. 1.

b. the PPSA provides that it applies to "*every transaction that in substance creates a security interest*," "*without regard to its form* ***and without regard to the person who has title to the collateral.***" (emphasis added)[3]

c. the PPSA expressly provides that **"a *conditional sale contract*" is "*a transaction that in substance creates a security interest.*"** (emphasis added) [4]

15. Accordingly, the rights of RBC with respect to the Vehicle, pursuant to the Sale Agreements,, including any retention of title, are a "*security interest*" under Ontario law and therefore a "*security, charge or other restriction*" that may be vested out pursuant to Section 65.13 of the BIA.

ii. The BIA's Definition of "Secured Creditor" Includes Sellers Under Conditional Sale Contracts

16. While the BIA does not define "*security, charge or other restriction*," it defines "*secured creditor*." This definition is consistent with and supports the above analysis in two ways.

17. First, the definition of "*secured creditor*" rests on the notion of "*security.*" This sends us back to the above analysis and conclusion, namely, that RBC holds a "*security*" in the trucks sold pursuant to the Sale Agreements. Any other conclusion would not be appropriate because it would mean that the BIA is internally inconsistent. The relevant part of the definition is reproduced below.

> *secured creditor* means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that

[3] PPSA, s. 2.
[4] PPSA, s. 2.

> property as security for a debt due or accruing due to the person from the debtor.
>
> [Emphasis added]

18. Second, the definition of "*secured creditor*" gives examples of parties that are considered "*secured creditors*" for purposes of the Act. One of those examples is "*the vendor of any property sold to the debtor under a conditional or instalment sale if the exercise of the person's rights is subject to [the Civil Code of Québec]*." (emphasis added)

19. The fact that Parliament included language specific to the Civil Code does not indicate that, in other provinces, a conditional sale is not a security. There is no basis to conclude that Parliament intended that vendors under conditional sale agreements be secured creditors in Quebec but not in other provinces. That would be absurd.

20. Rather, the fact that Parliament did not include language specific to conditional sales for common law provinces indicates that there was no need to do so. The clarification was only necessary with respect to the Civil Code because of its unique nature and the civil law notion of "real right".[5] Vendors under conditional sale agreements in common law provinces are already comprised in the definition of "*secured creditors*" because they hold "*security.*" This is also internally consistent with Section 65.13 and the above analysis.

21. Accordingly, the rights of RBC in Vehicles, including any retention of title, make RBC a "*secured creditor*" who holds a "a "*security*" that may be vested out pursuant to Section 65.13 of the BIA.

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[5] The undersigned is called to the Barreau du Québec.

iii. The Plain and Ordinary Meaning, and the Proper Interpretation, of "*Security, Charge or Other Restriction*"

22. When interpreting a statute, the Court "*considers the words used in legislation in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.*" This unified principle applies to the BIA: *Piekut v Canada (National Revenue)*, 2025 SCC 13, para. 42.

23. The ordinary sense of "*other restriction*" is broad. There is no compelling reason to interpret these words restrictively.

24. As stated by the Ontario Court of Appeal, "*The BIA is remedial legislation and should be given a liberal interpretation to facilitate its objectives*": *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 ("***Dianor***"), para. 43.

25. It is trite that the objective of the Canadian restructuring statutes is "*to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets*": *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 ("***Century Services***"), para. 15.

26. Regarding vesting orders specifically, the Ontario Court of Appeal recently underlined their importance to the restructuring regime: "*It is the cornerstone of the modern restructuring age of corporate asset sales and secured creditor realizations ... If Canadian courts elected to stop granting vesting orders, the effect on the insolvency practice would be immediate and extraordinary. Simply put, the system could not function in its present state without vesting orders*." (emphasis added): *Dianor*, para. 27, cited with approval by appeal courts across Canada,

including, for example, in *Manitok Energy Inc (Re)*, 2022 ABCA 260, para. 38, and *Séquestre de Media5 Corporation*, 2020 QCCA 943, para. 74.

27. An interpretation that restricts the Court's ability to support the statute's purpose is, in the absence of compelling reasons, inappropriate. Rather, when assessing the appropriateness of an order under the BIA, "*The question is whether the order will usefully further efforts to achieve the remedial purpose of the [Act] — avoiding the social and economic losses resulting from liquidation of an insolvent company*": *Century Services*, para. 70.

28. This is clearly the case of the AVO, for the reasons expressed in the Companies' first factum. RBC does not hold a veto over a transaction that is in the interest of virtually all stakeholders simply because RBC asserts a security interest in two pick-up trucks.

29. Accordingly, the Court has jurisdiction to issue the AVO, notwithstanding any opposition from RBC.

B. Any Adjournment Request from RBC Should be Denied

30. Any adjournment request from RBC should be denied for the following reasons, among others:

a. the Proposed Transaction should be approved, the AVO should be issued, and the relief sought on this motion should be granted, for the reasons expressed in the Companies first factum, the motion record, and the Proposal Trustee's Fourth Report.

b. the issuance of the AVO, and the completion of the Proposed Transaction, are urgent. Any adjournment jeopardizes the Proposed Transaction. The Companies are facing extreme financial pressure. There is no more interim financing available. Professionals

have not been paid in months. The Purchaser has had to make an advance of $85,000 on the purchase price, at its own risk, so that the Companies could make payroll this week. Any adjournment, even a short one, increases the risk of the Companies' business imploding before the Proposed Transaction can be completed.

c. many customer projects are stalled because the Companies cannot acquire supplies. Pursuant to the Proposed Transaction, the Purchaser is taking an assignment of all Customer Contracts. Therefore, any delay in completing the Proposed Transaction unnecessarily increases the delays and disruption suffered by customers. To the contrary, the earlier the Proposed Transaction is completed, the earlier the Purchaser can get those projects going again.

d. given the above and the record before the Court, any RBC opposition is unlikely to succeed.

e. the fact that RBC "needs more time" is not determinative. Restructuring proceedings are real-time processes that require every stakeholder to act diligently in providing the relevant evidence and argument to the Court and other parties. Not doing so is either failing to act with the required diligence, or trial by ambush. Neither of these justify an adjournment.

f. RBC's counsel were served with the notice of motion on July 23, 2025, and were provided a copy of the APA and draft AVO on July 24, 2025. This is **six (6) days** in advance of the motion. RBC is represented by some of the most competent restructuring lawyers in Ottawa and in Ontario. They regularly participate in restructuring proceedings and can give

this Court a full responding record and factum in much less time than six (6) days. There is no compelling or sufficient reason why RBC should be granted an adjournment.

31. For those reasons, there should be no adjournment.

RELIEF REQUESTED

32. The Companies therefore request orders in the form of the drafts appended at **tabs 3** and **5** of the motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of July, 2025

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SCHEDULE "A"
LIST OF AUTHORITIES

1.	*Piekut v Canada (National Revenue)*, 2025 SCC 13.
2.	*Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508.
3.	*Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60

SCHEDULE "B"
RELEVANT STATUTES

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3:

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

> **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> **(b)** whether the trustee approved the process leading to the proposed sale or disposition;
>
> **(c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> **(d)** the extent to which the creditors were consulted;
>
> **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Assets may be disposed of free and clear

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of

the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Act to apply

66 (1) All the provisions of this Act, except Division II of this Part, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Division.

Application of other substantive law

72 (1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

Personal Property Security Act, R.S.O. 1990, c. P.10:

Definitions

1 (1) In this Act,

"*security interest*" means an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or performance of an obligation,

> **(a)** the interest of a transferee of an account or chattel paper, and
>
> **(b)** the interest of a lessor of goods under a lease for a term of more than one year; ("sûreté")

Application of Act, general

2 Subject to subsection 4 (1), this Act applies to,

> (a) every transaction without regard to its form and without regard to the person who has title to the collateral that in substance creates a security interest including, without limiting the foregoing,
>
> > (i) a chattel mortgage, conditional sale, equipment trust, debenture, floating charge, pledge, trust indenture or trust receipt, and

(ii) an assignment, lease or consignment that secures payment or performance of an obligation;

(b) a transfer of an account or chattel paper even though the transfer may not secure payment or performance of an obligation; and

(c) a lease of goods under a lease for a term of more than one year even though the lease may not secure payment or performance of an obligation.

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ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY

Proceeding commenced at Ottawa

SUPPLEMENTARY FACTUM

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