

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE MR. )  
JUSTICE HAINEY )  
 )  
 ) THURSDAY, THE 12<sup>th</sup> DAY OF  
 )  
 ) FEBRUARY, 2020



**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3, AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED  
STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH  
RESPECT TO CELADON GROUP, INC. AND THE AFFILIATED ENTITIES LISTED  
IN FOOTNOTE "1" HERETO**

**APPLICATION OF CELADON GROUP, INC. PURSUANT TO PART XIII OF  
THE *BANKRUPTCY AND INSOLVENCY ACT* AND SECTION 101 OF THE *COURTS  
OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED**

**ORDER  
(Employee Representation Order)**

**THIS MOTION**, made by Jeff Sippel, for an Order appointing him as Representative pursuant to Rules 10.01 and 12.07 of the *Rules of Civil Procedure*, of all current and former employees of Hyndman Transport Limited, an Ontario corporation ("**Hyndman Canada**"), including those drivers referred to as "owners/operators" (collectively the "**Employees**" or individually, "**Employee**") and to appoint Koskie Minsky LLP ("**KM**") as Representative Counsel to the Employees, in these proceedings or in any other insolvency proceeding which may be brought before this Honourable Court pertaining to Hyndman Canada (the

"Proceedings"), was heard on January 23, 2020, at 330 University Avenue, Toronto, Ontario, with decision being reserved until this day.

**ON READING** the Affidavit of Jeff Sippel sworn on January 16, 2020 and on hearing the submissions of counsel for Jeff Sippel and certain other employees, counsel to Celadon Group, Inc., counsel to KSV Kofman Inc., in its capacity as Receiver of certain property of Hyndman Canada, counsel to Blue Torch Finance LLC, and counsel to Midcap Financial Trust.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion record is hereby abridged and validated so that this Motion was properly returnable on January 23, 2020 and that further service is hereby dispensed with.
2. **THIS COURT ORDERS** that Jeff Sippel is hereby appointed as Representative pursuant to Rules 10.01 and 12.07 of the *Rules of Civil Procedure* of the Employees in the Applicants' proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA"), or in any other proceeding which has been or may be brought before this Honourable Court (the "**Proceedings**") with respect to the Applicants.
3. **THIS COURT ORDERS** that KM is appointed as Representative Counsel for the Employees in the Proceedings for the purpose of determining and/or settling any Claim (as defined herein) in respect of an individual Employee, or group or class of Employees, arising out of the employment, former employment or termination of employment of the Employees by Hyndman Canada.
4. **THIS COURT DECLARES** that a Claim is any amount owing which has now arisen or may arise under (a) law or equity and/or, or (b) federal or provincial legislation or

regulations thereunder, including but not limited to, claims under employment standards legislation or any other provincial or federal legislation, or regulation applicable to the Employees (collectively, "**Labour Laws**"), including vacation pay or unpaid bonuses, and which qualify for a payment to the Employee under the *Wage Earner Protection Program* ("**WEPP**"); and/or qualify as a secured claim under sections 81.3 and/or 81.4 of the BIA, as applicable; or certain claims of owner/operators in respect of which the Receiver is holding the approximate total amount of \$107,000.

5. **THIS COURT ORDERS** that Representative Counsel shall have access to and be provided with copies of all relevant records and data with respect to the Employees kept by Hyndman Canada as an employer of the Employees under Labour Laws, whether on paper, electronic or any other form.
  
6. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5, the Receiver and Hyndman Canada are authorized and permitted to disclose personal information of identifiable individuals who are believed to be Employees to Representative Counsel, and Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel in the Proceedings.
  
7. **THIS COURT DECLARES** that any individual Employee who does not wish to be represented by KM in the Proceedings shall, within 30 days of the issuance of this Order, notify the Receiver and KM in writing that he or she is opting out of representation by KM and shall thereafter not be bound by the actions of KM and is free to represent

himself or herself, or be represented by any other counsel that he or she may retain at his or her own expense.

8. **THIS COURT ORDERS** that the Receiver shall forthwith from the date of issuance of this Order, send a notice ("**Notice**") substantially in the form attached hereto as "**Schedule A**" to all of the Employees for which contact information is available based on the addresses and contact information provided by Hyndman Canada, by email or regular mail. The Notice shall also be posted on the Receiver's and KM's websites, respectively, in respect of the Proceedings.
9. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of this Order, including dealing Service Canada, the administrator of WEPP, or any successor thereto, and to take all such steps as are necessary or incidental thereto.
10. **THIS COURT ORDERS** that the professional fees incurred by Representative Counsel on behalf of the Employees up to and including January 23, 2020 shall be paid by the Applicant in the total amount of \$77,618.25 CAD, inclusive of taxes and disbursements, which amounts shall be paid from the proceeds of sale of the Ayr property, municipally described as 2616 Cedar Creek Road, Ayr, Ontario.
11. **THIS COURT ORDERS** that Jeff Sippel and KM shall not have any liability as a result of their appointment or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.

12. **THIS COURT ORDERS** that KM shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge or variation of its powers and duties as Representative Counsel in the Proceedings.

SUPERIOR COURT OF JUSTICE  
ENTERED  
MAR 16 2020 C.D.  
COUR SUPÉRIEURE DE JUSTICE  
ENTRÉ

*Hainey J. per McE.T.*  
NAINEX, J.  
*due to Covid-19 crisis*

**Schedule "A"**

Court File No. CV-20-00634911-00CL

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

**THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,  
AS AMENDED**

**AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED  
STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH  
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OF JUSTICE ACT*, R.S.O. 1990, c. C.-43, AS AMENDED**

**NOTICE TO EMPLOYEES**

On January 23, 2020, Celadon Group, Inc., an affiliate of Hyndman Transport Limited ("**Hyndman Canada**"), commenced proceedings in the Ontario Superior Court of Justice – Commercial List (the "**Court**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. On that date, the Court also appointed KSV Kofman Inc. as Receiver of Hyndman Canada.

**TAKE NOTICE THAT**, pursuant to Order of the Court dated February 12, 2020:

The law firm of Koskie Minsky LLP ("**KM**") was appointed as Representative Counsel of all current and former employees of Hyndman Canada in the proceeding, including those drivers referred to as "owners/operators". A copy of the Order is enclosed for your reference. Contact Information for Representative Counsel is below:

**Website: ●**  
**Email: ●**  
**Toll-free Hotline: ●**

**IF YOU DO NOT WISH TO BE REPRESENTED** in the proceeding by **KM** as Representative Counsel and wish to represent yourself or be represented by another

lawyer at your own cost, you must, before ●, 2020, provide notice in writing (by letter or email) to both KM and KSV Kofman Inc. indicating that you wish to opt-out of such representation:

Koskie Minsky LLP  
Attention: Hyndman Canada  
Employee Representative Counsel  
20 Queen Street West  
Suite 900, Box 52  
Toronto, ON M5H 3R3

E-mail: ●

KSV Kofman Inc.

Attention: Receiver of Hyndman Canada  
150 King Street West, Suite 2308  
Toronto, Ontario, M5H 1J9

E-mail: ●

Court File No. CV-20-00634911-00CL

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AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE WITH  
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**ONTARIO**

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

Proceeding commenced at Toronto

**ORDER**

(Employee Representation Order)

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Counsel to Jeff Sippel and certain other employees of  
Hyndman Transport Limited