

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
MENDOCINO CLOTHING COMPANY LTD., A CORPORATION WITH A HEAD OFFICE
IN THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**FACTUM OF MENDOCINO CLOTHING COMPANY LTD.
(Motion Returnable August 10, 2020)**

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Company Ltd.**

TO: SERVICE LIST

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I – NATURE OF THE MOTION

1. This factum is filed by Mendocino Clothing Company Ltd. (the “**Company**” or “**Mendocino**”) in support of its motion for an order, among other things:

- (a) approving the sale process in respect of Mendocino’s remaining inventory, intellectual property and other assets (collectively, the “**Sale Process**”) as set out in the First Report of KSV Kofman Inc. (“**KSV**”) in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), including a stalking horse bid from a related party (the “**KSV Report**”);
- (b) extending the time for filing a proposal (the “**Proposal Period**”) pursuant to the *Bankruptcy and Insolvency Act*, RSC 1983, c B-3, as amended (the “**BIA**”), to September 28, 2020;
- (c) approving the Administration Charge (as defined below) in the amount of \$250,000; and

- (d) authorizing the Company to continue using the Cash Management System (as defined below).

II - FACTS

Background

2. The Company is a fashion apparel retailer that carries on business from leased locations under the trade names “Mendocino” and “M Boutique”.¹

3. Over time, the Company transitioned away from the “Mendocino” branded stores and opened stores under the brand “M Boutique”.² Prior to the government-mandated shutdown due to the Covid-19 pandemic, the Company operated 27 retail locations in the Greater Toronto Area and surrounding areas.³

4. Before businesses were required to shut down, the Company employed approximately four hundred (400) people, all of whom were non-unionized. Of these employees, approximately twenty (20) occupied senior management and administrative positions and the balance were retail sales staff and supervisors.⁴ On March 15, 2020, as a result of the Covid-19 pandemic, the Company laid off all or substantially all of its store sales staff.⁵ Employees were offered the opportunity to return to work when certain store locations were permitted to re-open by government directives starting in June 2020.⁶

¹ Affidavit of Jan Kaplan sworn July 30, 2020 (the “**Kaplan Affidavit**”) at para. 4.

² *Ibid* at para. 4.

³ *Ibid*.

⁴ *Ibid* at para. 7.

⁵ *Ibid* at para. 8.

⁶ *Ibid*.

5. The Company has an online retail platform that allows customers to order online and ship directly to their homes.⁷

6. The Company owns intellectual property which includes trade names and customer lists.⁸

7. The Company is indebted to The Toronto Dominion Bank (“**TD Bank**”) in the amount of approximately \$1.2 million (as of July 30, 2020) pursuant to an operating line facility and various term loan facilities.⁹ As security, TD Bank holds a first-ranking security interest over all of the Company’s assets.¹⁰

8. Aside from a registration against the Company by TD Bank under the Personal Property Security Registration System, there are also registrations against the Company’s personal property by landlords at two store locations in respect only of their respective locations, and for leased vehicles.¹¹

9. The Company has liabilities to unsecured creditors totaling approximately \$5.8 million as of the Filing Date (defined below), including claims by landlords for rent arrears but not including any claims they may have in connection with lease terminations.¹²

10. Due to the Covid-19 pandemic, the Company was forced to shut down its locations as of March 15, 2020.¹³ The closure of its stores for over three months and the resulting severe impairment of the Company’s cash flow has resulted in the Company being unable to sustain payments owed to creditors.¹⁴ For the period of February to June 2020, the Company lost over \$10

⁷ *Supra note 1* at para. 10.

⁸ *Ibid* at para. 11.

⁹ *Ibid* at para. 12.

¹⁰ *Ibid*.

¹¹ *Ibid* at para. 13.

¹² *Ibid* at para. 15.

¹³ *Ibid* at para. 16.

¹⁴ *Ibid* at para. 17.

million in sales compared to the same period in 2019.¹⁵ For the month of June 2020 alone, the Company lost over \$2.8 million in sales compared to the same month in 2019.¹⁶

11. The Company stopped paying rent for its retail stores in April 2020. Based on the rates and terms under the Company's leases, the Company is in arrears of rent of approximately \$2.7 million (not including HST) for the period of April to July 2020.¹⁷

12. While the Company started reopening certain stores as legally permitted, only 11 stores are currently open, and these stores are operating in a highly constrained retail environment.¹⁸ The Company does not have sufficient funds to pay amounts owing for rent arrears at all locations.¹⁹

The NOI Proceeding

13. On July 14, 2020 (the "**Filing Date**"), the Company filed a Notice of Intention to File a Proposal ("**NOI**") under the BIA.²⁰ The NOI filing was necessary in order to provide stability to the Company and to permit the implementation of the liquidation of the Company's inventory and a process for the sale of the Company's remaining inventory, intellectual property and other assets.²¹

14. KSV is the trustee in the NOI Proceeding.²²

¹⁵ *Supra note 1* at para. 17.

¹⁶ *Ibid.*

¹⁷ *Ibid* at para. 18.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid* at para. 21.

²¹ *Ibid.*

²² *Ibid* at para. 22.

Cash Flow Forecast

15. The Proposal Trustee has assisted the Company in preparing a cash flow forecast for the period from August 2, 2020 to September 28, 2020 (the “**Cash Flow Period**”).²³ The Company is expected to have sufficient liquidity to operate to the end of the Cash Flow Period provided that it continues to have access to the cash in its current accounts.²⁴

Sale Process

16. The Company has determined that realizations from the Company’s current inventory holdings can be maximized through store sales conducted by the Company at certain locations.²⁵ The Company currently expects that the store inventory liquidation process should be substantially completed by August 30, 2020.²⁶

17. During this period, the Company expects to continue to generate revenue from online sales.²⁷

18. The Sale Process is described in detail in the First Report and includes approval of a stalking horse bid from a related party (the “**Stalking Horse Agreement**”).²⁸

19. The key terms and conditions of the Stalking Horse Agreement are as follows²⁹:

- **Purchaser:** Shop Mboutique Ecomm Ltd. (the “**SH Purchaser**”), a company related to Mendocino.

²³ *Supra note 1* at para. 23; First Report to the Court of KSV Kofman Inc. as Proposal Trustee of Mendocino Clothing Company Ltd. dated August 4, 2020 (the “**KSV Report**”) at section 4.0(1).

²⁴ *Ibid* at para. 24; KSV Report at section 4.0(2).

²⁵ *Ibid* at para. 25.

²⁶ *Ibid*; KSV Report at section 3.2.

²⁷ *Ibid* at para. 26.

²⁸ *Ibid* at para. 27.

²⁹ All capitalized terms not defined herein shall have the meaning ascribed to them in the KSV Report.

- **Purchased Assets:** substantially all of the Company’s assets.
- **Purchase Price:** the purchase price payable by the Purchaser to the Company for the Purchased Assets shall be the sum of: (a) \$400,000; and (b) the assumption on a dollar-for-dollar basis of the cost of all inventory ordered subsequent to the NOI filing but not received as at the Closing Date.
- **Deposit:** the SH Purchaser has not been required to pay a deposit given its connection with the Company and that its sole shareholders is also the sole shareholder of the Company and a personal guarantor of the TD Bank debt.
- **Expense Reimbursement:** up to \$20,000 (including HST) in respect of actual legal, diligence and other costs incurred by the SH Purchaser in respect of the Sale Process, including drafting and negotiating the Stalking Horse Agreement (the “Expense Reimbursement”).
- **Representation and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.
- **Closing:** the date that is three (3) Business Days after the date that the Approval and Vesting Order is obtained or such other date as may be agreed by the Parties.
- **Material Conditions:**
 - i. the Approval and Vesting Order shall have been obtained and shall not have been stayed, varied or vacated (or any such appeal shall have been dismissed with no further appeal therefrom);
 - ii. no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction; and
 - iii. no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction.³⁰

³⁰ KSV Report at section 3.1.

20. A summary of the proposed Sale Process is as follows³¹:

Summary of Stalking Horse Sale Process		
Milestone	Description of Activities	Timeline
Phase 1 – Pre-marketing		
Marketing materials	<input type="checkbox"/> Proposal Trustee to: <ul style="list-style-type: none"> o prepare a teaser; o populate a virtual data room (“VDR”); and o prepare a Confidentiality Agreement (“CA”). 	Ongoing
Prospect Identification	<input type="checkbox"/> Proposal Trustee to identify strategic and financial prospects.	
Phase 2 – Marketing		
Stage 1	<input type="checkbox"/> Mass market introduction, including: <ul style="list-style-type: none"> o teaser to be sent to identified prospects; o telephone canvass of leading prospects; and o meet with and interview bidders. 	Week 1
Stage 2	<input type="checkbox"/> Proposal Trustee to provide detailed information to qualified prospects that sign the CA, including access to the VDR; <input type="checkbox"/> Proposal Trustee to facilitate diligence by interested parties; and <input type="checkbox"/> Proposal Trustee to make Stalking Horse Agreement available to prospective purchasers in the VDR.	Week 2-4
Stage 3	<input type="checkbox"/> Bid deadline – in order to submit an offer, a prospective purchaser must submit a “Qualified Bid” (as discussed in section 3.2.2 below).	September 1, 2020 (the “Bid Deadline”)
Phase 3 – Auction, if applicable		
Auction	<input type="checkbox"/> Proposal Trustee to conduct Auction; <input type="checkbox"/> Leading Bid shall constitute the "Opening Bid" for the first round; <input type="checkbox"/> Qualified bidders, including the SH Purchaser, to be invited to participate.	By September 10, 2020
Sale Approval Motion and Closing	<input type="checkbox"/> Motion for sale approval and close transaction.	On or before September 18, 2020, or as soon as possible thereafter

³¹ KSV Report at section 3.2(2).

21. If a Qualified Bid is received by the Bid Deadline, an auction will be held virtually on September 10, 2020 at 10:00 a.m. or such later date as the Proposal Trustee may determine is advisable in the circumstances.³²

Cash Management

22. In the ordinary course of its business, the Company uses a centralized cash management system (the “**Cash Management System**”) to, among other things, collect funds and pay expenses associated with its operations. The Company maintains its bank accounts with TD Bank, where revenue from online sales and sales made in store are deposited.³³ Disbursements for operating expenses and payroll are also made from the TD Bank accounts.³⁴

23. The Company proposes to continue to use the existing Cash Management System with the consent of TD Bank.³⁵

Administration Charge

24. The Company seeks an order granting a charge over its property securing the fees and disbursements of counsel to the Company, the Proposal Trustee and its counsel (the “**Administrative Professionals**”) in the amount of \$250,000 (the “**Administration Charge**”).³⁶ The amount of the Administration Charge contemplates that professionals are paid on a current basis during these proceedings.³⁷

³² KSV Report at section 3.2.3(2)(a).

³³ *Supra note 1* at para. 30-31.

³⁴ *Ibid* at para. 31.

³⁵ *Ibid* at para. 32.

³⁶ *Ibid* at para. 33.

³⁷ *Ibid* at para. 34; KSV Report at section 5.0.

Extension of NOI Period

25. The Proposal Period is set to expire on August 13, 2020.³⁸

26. The Company requests a 45-day extension of the Proposal Period which would give the Company the time needed to move forward with implementation of the steps described above with a view to maximizing realizations for the benefit of the Company's stakeholders and to make progress towards achieving the terms of a proposal for consideration of the Company's creditors.³⁹

27. The Company will likely be able to make a viable proposal to its creditors if the extension is granted, provided that sufficient funds are generated from store sales during the liquidation period.⁴⁰

III – ISSUES

28. The issues to be determined on this motion are:

- whether this Court should approve the Sale Process;
- whether this Court should approve the Administration Charge; and
- whether this Court should grant an extension of time to file a proposal.

³⁸ *Supra note 1* at para. 36.

³⁹ *Ibid* at para. 37.

⁴⁰ *Ibid* at para. 38.

IV – LAW AND ARGUMENT

The Court Should Approve the Sale Process

29. This Court has authority and jurisdiction to approve the Sale Process pursuant to, among other things, Section 65.13 of the BIA.

30. Courts have routinely granted approval of stalking horse sales processes both in the context of NOI proceedings and under the equivalent provisions of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36.⁴¹

31. In *Brainhunter Inc. (Re)*, Justice Morawetz (as he then was) expanded on his decision in *Nortel Networks Corporation (Re)* and identified a number of factors to be considered in determining whether to authorize a stalking horse sale process in the context of the CCAA. Those factors include:

- (a) whether a sale is warranted at the given time;
- (b) whether the sale is to benefit the whole “economic community”;
- (c) whether any of the debtors’ creditors have a *bona fide* reason to object to the sale of the business; and
- (d) whether there is a better viable alternative.⁴²

⁴¹ *Brainhunter Inc. (Re)*, Ont. Sup. Ct. No. 09-8482-00CL (December 18, 2009), [2009 CanLII 72333](#) (O.N.S.C.) (“*Brainhunter*”); *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) (O.N.S.C.) (“*Danier Leather*”); Ashley Taylor and Yannick Katirai, “An Analysis of Stalking Horse Processes in Canadian Insolvency Proceedings”, I.I.C. Art. Vol. 2-5.

⁴² *Brainhunter*, at para. 13.

32. These factors have also been applied and considered by this Court when determining whether to approve a sale process in the context of NOI proceedings.⁴³

33. The criteria as to whether to approve a sale set out in section 65.13(4) of the BIA are also relevant to the Court's consideration of approval of a sale process.⁴⁴ Those factors include:

- whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- whether the trustee approved the process leading to the proposed sale or disposition;
- 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;
- the extent to which the creditors were consulted;
- the effects of the proposed sale or disposition on the creditors and other interested parties; and
- whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

⁴³ *Danier Leather*, at paras. 20-40.

⁴⁴ See *Danier Leather*, at para. 34. As to the non-exhaustive nature of this list of factors, see *Proposition de Collette*, 2019 QCCS 2684 (Q.C.C.S.), at para. 39.

34. Further, where the proposed sale is to a person who is related to the insolvent person, the court must consider the factors set out in section 65.13(5) of the BIA. Those factors include:

- whether good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

35. Stalking horse agreements have become commonplace in Canadian sale processes including in the context of NOI proceeding sale processes.⁴⁵

36. The Company, along with the Proposal Trustee, are of the view that the Sale Process is the most viable alternative for the Company in the circumstances.⁴⁶

37. All of the criteria set out above are met here, *inter alia* for the following reasons:

- the Sale Process is commercially reasonable;⁴⁷
- stalking horse sale processes are a recognized mechanism in restructuring proceedings to maximize recoveries, while creating stability for the business;⁴⁸

⁴⁵ *Brainhunter*, at para. 13; *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 (O.N.S.C.) (“*Mustang*”), at para. 37; *Danier Leather*, at para. 20; *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 (O.N.S.C.) (“*CCM*”), at para. 7.

⁴⁶ KSV Report at section 3.2-3.3.

⁴⁷ *Ibid* at section 3.3(1)(a).

⁴⁸ *Ibid* at section 3.3(1)(b).

- it is in the best interests of the Company's stakeholders that the stalking horse agreement be preserved in order to have the opportunity to maximize value and to protect downside risk in the event that a superior offer is not submitted;⁴⁹
- the Sale Process will be run exclusively by the Proposal Trustee to ensure fairness and impartiality in the process;
- the Company's assets are largely comprised of intellectual property, which is difficult to value. Putting the assets through a competitive sale process will result in the marketplace determining the value of the Company's intellectual property;
- the Expense Reimbursement is minimal and will include costs incurred which will benefit prospective purchasers in the Sale Process.⁵⁰ The Proposal Trustee does not believe that the Expense Reimbursement will discourage potential purchasers from participating in the Sale Process;⁵¹ and
- the duration of the Sale Process is sufficient to allow interested parties to perform diligence and submit offers.⁵²

The Court Should Approve the Administration Charge

38. The Company also seeks the Administrative Charge to secure the fees of the Administrative Professionals, whose services are critical to this proceeding. This charge is to rank in priority to all other security interests in the Company's property and assets.

⁴⁹ KSV Report at section 3.3(1)(d).

⁵⁰ *Ibid* at section 3.3(1)(e).

⁵¹ *Ibid*.

⁵² *Ibid* at section 3.3(1)(f).

39. The BIA confers on the court the statutory jurisdiction to grant an administration charge.

Specifically, section 64.2 provides as follows:

64.2 (1) *Court may order security or charge to cover certain costs:* On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

64.2 (2) *Priority:* The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

40. Administrative charges have been approved in BIA proposal proceedings, where, as in the present case, the participation of insolvency professionals is necessary to ensure a successful proceeding under the BIA as well as for the conduct of a sale process.⁵³

41. The Company submits that this is an appropriate circumstance for the Court to grant the Administration Charge with priority over pre-existing security interests and other encumbrances.⁵⁴ The quantum of the proposed Administration Charge is both fair and reasonable given the size and complexity of the Company's business and the Sale Process. Each of the professionals whose fees are to be secured by the Administration Charge has played and will continue to play a critical role in these proposal proceedings and in the Sale Process.⁵⁵

⁵³ *Mustang*, at paras. 32-33.

⁵⁴ The Administration Charge will not have priority over BMW Canada Inc.

⁵⁵ The Proposal Trustee outlines this in the KSV Report at section 5.0 and states that the Administration Charge is appropriate.

The Court Should Grant an Extension of the Proposal Period

42. The Company filed its NOI on July 14, 2020. By operation of section 50.4(8) of the BIA, the Company is required to file a proposal within 30 days unless it otherwise obtains an extension of time from the Court within that 30-day period. The Company is seeking to extend the time within which a proposal must be filed to and including September 28, 2020.

43. Pursuant to section 50.4(9) of the BIA, a debtor in a proposal proceeding may, before the expiry of the time to file a proposal, apply to the court for an order extending the time to file a proposal, by a maximum of 45 days, and the court may extend the time if it is satisfied that:

- the insolvent person has acted, and is acting, in good faith and with due diligence;
- the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- no creditor would be materially prejudiced if the extension being applied for were granted.

44. In order to commence and advance the Sale Process, the Company is seeking an extension of time to file a proposal for 45 days until September 28, 2020. The Company respectfully submits that the extension sought ought to be approved for, *inter alia*, the following reasons:

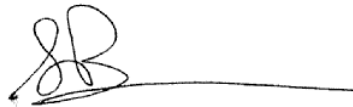
- the Company is acting in good faith and with due diligence;
- an extension of time is required in order to commence and carry out the Sale Process for the benefit of all of the Company's stakeholders;

- without the extension, the Company will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted; and
- the proposed extension is supported by the Proposal Trustee.⁵⁶

V – RELIEF SOUGHT

45. For the reasons set out above, the Company requests that this Court grant an order for the relief sought in its Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of August, 2020.



**George Benchetrit, Sanea Tanvir,
CHAITONS LLP**

**Lawyers for Mendocino Clothing
Company Ltd.**

⁵⁶ KSV Report at section 6.0.

SCHEDULE “A”

LIST OF AUTHORITIES

1. Ashley Taylor and Yannick Katirai, “*An Analysis of Stalking Horse Processes in Canadian Insolvency Proceedings*”, I.I.C. Art. Vol. 2-5
2. *Brainhunter Inc. (Re)*, Ont. Sup. Ct. No. 09-8482-00CL (December 18, 2009), 2009 CanLII 72333 (O.N.S.C.)
3. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 (O.N.S.C.)
4. *Danier Leather Inc. (Re)*, 2016 ONSC 1044 (O.N.S.C.)
5. *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 (O.N.S.C.)
6. *Proposition de Collette*, 2019 QCCS 2684 (Q.C.C.S.)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

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.

Additional factors — related persons

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

- (a) a director or officer of the insolvent person;
- (b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and
- (c) a person who is related to a person described in paragraph (a) or (b).

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.

Restriction — employers

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Restriction — intellectual property

(9) If, on the day on which a notice of intention is filed under section 50.4 or a copy of the proposal is filed under subsection 62(1), the insolvent person is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (7), that sale or disposition does not affect the other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

(a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

Individual

(3) In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

...

Notice of intention

Where assignment deemed to have been made

50.4 (8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.