

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

IN THE MATTER OF H WORK, LLC, RGN-GROUP HOLDINGS, LLC, RGN-NATIONAL BUSINESS CENTRES, LLC, RGN-FORT LAUDERDALE III, LLC, RGN-COLUMBUS IV, LLC, RGN-CHICAGO XVI, LLC, AND RGN-CHAPEL HILL II, LLC

APPLICATION OF RGN-NATIONAL BUSINESS CENTRES, LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

(Applicant)

**FACTUM OF THE APPLICANTS
(Re: Termination of Recognition Proceedings)
(Returnable September 1, 2021)**

August 26, 2021

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PART I - OVERVIEW

1. RGN-National Business Centres, LLC is the foreign representative (in such capacity, the “**Foreign Representative**”) of itself and seven other debtors in this Part IV proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).
2. This factum in support of a motion by the Applicant for an Order (the “**Recognition Termination Order**”), substantially in the form of the draft Order attached to the Applicant’s Motion Record at Tab 3, *inter alia*:
 - (a) terminating and discharging the Recognition Proceedings (as defined below);
and
 - (b) discharging the Information Officer (as defined below) and approving the fees and activities of the Information Officer and its counsel.

PART II - THE FACTS

3. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn August 24, 2021 in connection with the Recognition Proceedings (the “**Feltman**”).

Affidavit”). Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Feltman Affidavit.

A. The Recognition Proceedings

4. The Applicant is part of the IWG multinational corporate group that offers a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.

Feltman Affidavit at para. 2, Applicant’s Motion Record, Tab 2.

5. On July 30, 2020, certain of the Applicant’s affiliates in the United States (the “**Chapter 11 Debtors**”) filed voluntary petitions for relief pursuant to title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”, and such proceedings, the “**Chapter 11 Cases**”).

Feltman Affidavit at para. 5, Applicant’s Motion Record, Tab 2.

6. One of the Chapter 11 Debtors, RGN-National Business Centers, LLC, in its capacity as foreign representative, and on behalf of certain of the Chapter 11 Debtors, sought recognition of the Chapter 11 Cases under Part IV of the CCAA (such proceedings, the “**Recognition Proceedings**”).

Feltman Affidavit at para. 6, Applicant’s Motion Record, Tab 2.

7. On August 24, 2020, this Court recognized the Chapter 11 Cases as “foreign main proceedings”. KSV Restructuring Inc. (f/k/a/ KSV Kofman Inc.) (“**KSV**”) was appointed as Information Officer in respect of the Recognition Proceedings (the “**Information Officer**”).

Feltman Affidavit at para. 6, Applicant’s Motion Record, Tab 2.

8. The Foreign Representative expected to get recognized in the Recognition Proceedings an Order from the U.S. Court approving certain lease termination notice procedures, however,

the U.S. Court refused to grant the Order. The Order would have required Landlords to provide 15 business days' notice prior to terminating a Lease held by any affiliate of the Chapter 11 Debtors that was guaranteed by certain Chapter 11 Debtors (the "**Guarantor Debtors**").

Feltman Affidavit at para. 6, Applicant's Motion Record, Tab 2.

9. Following the denial of the relief, certain of the Chapter 11 Debtors' Canadian affiliates were granted protection under the CCAA pursuant an initial order dated August 31, 2020 (such proceedings, the "**CCAA Proceedings**"). Following the commencement of the CCAA Proceedings, the Recognition Proceedings were not pursued.

Feltman Affidavit at para. 6, Applicant's Motion Record, Tab 2.

B. The Chapter 11 Cases

10. On June 11, 2021, the Chapter 11 Debtors filed a joint plan of reorganization (as amended from time to time, the "**U.S. Plan**") in the Chapter 11 Cases with the U.S. Court.

Feltman Affidavit at para. 7, Applicant's Motion Record, Tab 2.

11. On August 19, 2021, the U.S. Court held a hearing (the "**Confirmation Hearing**") in respect of confirmation of the U.S. Plan. Following the Confirmation Hearing, the U.S. Court granted an Order confirming the U.S. Plan (the "**Confirmation Order**"). Confirmation of the U.S. Plan will allow the Chapter 11 Debtors to emerge from the Chapter 11 Cases following the satisfaction or waiver of the conditions precedent contained in the U.S. Plan.

Feltman Affidavit at paras. 7, Applicant's Motion Record, Tab 2.

12. The Foreign Representative is not expected to seek any further relief in the Recognition Proceedings.

Feltman Affidavit at paras. 8, Applicant's Motion Record, Tab 2.

PART III - ISSUES

13. The issues before this Court are:
- (a) Should this Court terminate the Recognition Proceedings?
 - (b) Should this Court approve the activities of the Information Officer and the fees of the Information Officer and its counsel?

PART IV - THE LAW

A. This Court should terminate the CCAA Proceedings

14. The Applicant submits that this Court should grant the proposed Recognition Termination Order approving the termination and discharge of the Recognition Proceedings. This Court has the jurisdiction to terminate the Recognition Proceedings with respect to the Applicant pursuant to s. 49 of the CCAA.

CCAA, s. 49.

15. The U.S. Court entered an Order confirming the U.S. Plan. The Chapter 11 Debtors expect to implement the U.S. Plan shortly. Upon emergence, the Chapter 11 Debtors will no longer be insolvent and will no longer require protection from their creditors. There is no need for the Recognition Proceedings.

Feltman Affidavit at para. 7, Applicant's Motion Record, Tab 2.

16. Under the proposed Recognition Termination Order, the termination of the Recognition Proceedings will occur on the Information Officer filing a certificate confirming that the conditions precedent to the effectiveness of the U.S. Plan have been satisfied or waived. This Court has previously granted orders that include a similar mechanism for terminating a Part IV proceeding at a future date. The proposed mechanism is consistent with furthering the efficient resolution of these Recognition Proceedings and being respectful of valuable court time. The proposed

mechanism will avoid the cost and time of a further motion to seek termination of the Recognition Proceedings.

See *In the matter of Jack Cooper Ventures Inc et al*, (October 18, 2019), Toronto CV-19-625200-00LC (Ont. Sup. Ct.) Sale Recognition and Vesting Order ([Monitor's Website](#)).

B. The Court should approve the activities of the Information Officer and the fees of the Information Officer and its counsel

17. As part of the Recognition Termination Order, the Applicant is seeking approval of the Information Officer's activities as detailed in the First Report of the Information Officer filed in the Recognition Proceedings. This Court has not previously approved the Information Officer's activities.

18. In *Target Canada Co. (Re)*, the Court suggested that a request to approve a Court-appointed officer's (in that case a monitor's) report "is not unusual" and that "there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process."

Target Canada Co. (Re), 2015 ONSC 7574 at paras. 2 and 22 ([CanLII](#)).

19. In this case, the Information Officer's activities as described in its report should be approved. The Information Officer carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Recognition Order (Foreign Main Proceeding) and Supplemental Order (Foreign Main Proceeding).

Feltman Affidavit at para. 42, Applicant's Motion Record, Tab 2.

20. The Applicant further seeks approval of (a) the fees and disbursements of the Information Officer and counsel to the Information Officer that have been incurred; and (b) the fees and disbursements of the Information Officer and counsel to the Information Officer that will be incurred in performance of the duties of the Information Officer up to the termination of the

Recognition Proceedings. In approving the fees and disbursements of the Information Officer and its counsel, the Court must consider whether those fees were “fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.”

Nortel Networks Corp. et al. (Re), 2017 ONSC 673 at para. 13 ([CanLII](#)), citing *Winalta Inc. (Re)*, 2011 ABQB 399 at para. 30 ([CanLII](#)).

21. The Applicant believes that the fees and disbursements of the Information Officer and its counsel, including future fees and disbursements up to the fixed maximum, are fair and reasonable and commensurate with the size and complexity of the Recognition Proceedings. The Information Officer’s and its counsel’s professional rates are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services regarding commercial restructuring matters. In light of the foregoing, the Applicant supports the approval of the fees and disbursements of the Information Officer and its counsel.

22. The Applicant also seeks to discharge and relieve KSV from its role as Information Officer with respect to the Applicant and a release in favour of the Information Officer and its counsel related to their activities carried out in the Recognition Proceedings. This Court has previously granted a release in favour of an information officer and its counsel upon its discharge and such a release is consistent with the releases granted when discharging court officers analogous to information officers.

Re syncreon Group B.V. et al., (19 September 2019), Toronto CV-19-624659-00CL (Ont. Sup. Ct. [Comm. List]) Discharge and Termination Order ([Monitor’s Website](#)).

Re Chemtura Canada Co., (25 February 2011), Toronto 10-CL-8846-00CL (Ont. Sup. Ct. [Comm. List]) ([WestLaw](#)).

Re Relay Blocker, LLC et al. (24 January 2019), Toronto CV-18-597987-00CL (Ont. Sup. Ct. [Comm. List]) ([Monitor’s Website](#)).

PART V - ORDER SOUGHT

23. The Applicant respectfully requests that this Court grant the requested relief substantially in the form of the draft Recognition Termination Order attached at Tab 3 of the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of August, 2021.

A handwritten signature in black ink, appearing to read "L. Ni", is positioned above a horizontal line.

Stikeman Elliott LLP
Lawyers for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

Cases

1. *Nortel Networks Corp. et al. (Re)*, 2017 ONSC 673 ([CanLII](#))
2. *Target Canada Co. (Re)*, 2015 ONSC 7574 ([CanLII](#))
3. *Winalta Inc. (Re)*, 2011 ABQB 399 ([CanLII](#))

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**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a)** if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b)** respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company’s property, business and financial affairs, debts, liabilities and obligations; and
- (c)** authorizing the foreign representative to monitor the debtor company’s business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

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Court File No.: CV-20-00646084-00CL

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(RETURNABLE SEPTEMBER 1, 2021)

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