

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
HEMATITE HOLDINGS INC., HEMATITE MANUFACTURING INC.,
HEMATITE INDUSTRIAL PRODUCTS INC., CANADIAN PAVACO INC.,
PAVACO HOLDINGS U.S. INC., HEMATITE, INC. AND
HEMATITE AUTOMOTIVE PRODUCTS INC.

Applicants

FACTUM OF THE APPLICANTS
(Claims Procedure Order)
(Returnable October 13, 2020)

October 9, 2020

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PART I. INTRODUCTION

1. Hematite¹ brings this motion seeking approval of a claims procedure for the identification, quantification, and resolution of certain claims of creditors of Hematite and its directors and officers (the “**Claims Procedure**”).²

2. Hematite is primarily a tier 1 supplier of component parts to the automotive manufacturing industry. Hematite has operated in Canada since 1978, and currently operates from facilities in Brantford and Guelph, Ontario. Over the past several years, Hematite has pursued an expansion of its manufacturing operations into the United States. In order to finance

¹ For ease of reference, the Applicants will be collectively referred to herein as “**Hematite**”.

² Capitalized terms used and not defined herein have the meanings ascribed to them in the Affidavit of Jacques Nadeau, sworn October 7, 2020 (“**Nadeau Affidavit**”), Motion Record of the Applicants (Claims Procedure Order) dated October 7, 2020 (“**Motion Record**”), Tab 2, or the draft Claims Procedure Order (“**Claims Procedure Order**”), Motion Record, Tab 3.

the significant real estate, equipment and other capital expenditures for this expansion, Hematite was required to reduce its cash reserves and take on significant secured indebtedness.³

3. The COVID-19 pandemic and the resulting government-mandated shutdowns, including in the automotive industry, had a significant adverse impact on Hematite's financial position. The only viable path to preserving Hematite's business was a strategic transaction that included a capital injection and a restructuring on terms acceptable to Hematite's existing lenders and customers.⁴

4. On September 17, 2020, Hematite entered into a plan sponsor agreement (as amended, the "**Plan Sponsor Agreement**") with Woodbridge Foam Corporation ("**Woodbridge**") whereby Woodbridge agreed to provide interim financing (the "**DIP Facility**") during the pendency of proceedings under the *Companies Creditors' Arrangement Act*, ("**CCAA**") and support a CCAA plan that will allow Hematite to emerge as a going concern with a restructured business and balance sheet and fresh financing from Woodbridge.⁵

5. Hematite commenced these CCAA proceedings on September 18, 2020. KPMG Inc. was appointed to act as the Court-appointed monitor of Hematite (in such capacity, the "**Monitor**").⁶ On September 23, 2020, these proceedings were provisionally recognized as foreign main proceedings in the United States under chapter 15 of title 11 of the United States Code.⁷

³ Nadeau Affidavit at para. 4, Motion Record, Tab 2.

⁴ Nadeau Affidavit at para. 5, Motion Record, Tab 2.

⁵ Nadeau Affidavit at para. 6, Motion Record, Tab 2.

⁶ Nadeau Affidavit at para. 7, Motion Record, Tab 2.

⁷ Nadeau Affidavit at para. 17, Motion Record, Tab 2.

6. Hematite's restructuring plan with Woodbridge is supported by all of Hematite's key stakeholders, including its key secured lenders, major customers and certain key suppliers.

Hematite intends to emerge from these CCAA proceedings by the end of the year.⁸

7. The Plan Sponsor Agreement requires Hematite to obtain an order approving the Claims Procedure by October 13, 2020. Meeting this milestone is a precondition to further advances under the DIP Facility.⁹

8. In addition to being required under the Plan Sponsor Agreement, the Claims Procedure will allow Hematite and Woodbridge to ascertain the universe of claims that may exist against Hematite and the directors and officers of Hematite to facilitate the development of a CCAA plan with respect to Hematite.¹⁰

9. Pursuant to the Plan Sponsor Agreement, Hematite is required to obtain an order authorizing the filing of a CCAA plan and the conduct of a meeting of creditors affected thereby to vote on the CCAA plan (the "**Meeting Order**") by November 18, 2020. The various timelines set out in the Claims Procedure have been designed to facilitate Hematite achieving this milestone.¹¹

10. The Claims Procedure contemplates a notification process that will provide known and unknown potential Claimants with adequate notice of the Claims Procedure and an adequate opportunity to prove their Claims prior to the applicable claims bar date. The Claims Procedure

⁸ Nadeau Affidavit at para. 6, Motion Record, Tab 2.

⁹ Nadeau Affidavit at para. 12, Motion Record, Tab 2.

¹⁰ Nadeau Affidavit at para. 13, Motion Record, Tab 2.

¹¹ Nadeau Affidavit at para. 15, Motion Record, Tab 2. Following the swearing of the Nadeau Affidavit, the Plan Sponsor Agreement was amended on October 8, 2020 to extend the milestone dates for obtaining the Claims Procedure Order and the Meeting Order to October 13, 2020 and November 18, 2020, respectively.

also includes an adjudication procedure will facilitate the fair and expeditious resolution of any disputes regarding the Status and/or amount of each Claim.

11. Accordingly, as set out further below, the Claims Procedure Order is in the best interests of Hematite and its stakeholders and appropriate in the circumstances.

PART II. THE FACTS

12. The affidavit sworn by the Chief Treasury Officer of Hematite, Jacques Nadeau, on October 7, 2020 in support of this motion sets out in detail the facts concerning Hematite and the relief requested on this motion.¹²

PART III. ISSUES AND THE LAW

13. The sole issue before this Court is whether the order sought by Hematite approving the Claims Procedure (the “**Claims Procedure Order**”) is fair and reasonable in the circumstances and should be granted.

(i) Discretion to Approve Claims Procedures in CCAA Proceedings

14. Section 11 of the CCAA authorizes this Court to make “any order it considers appropriate in the circumstances.”¹³ In exercising this discretion, the Court should consider whether the relief sought will usefully further efforts to achieve the remedial purpose of the CCAA, which is to permit the debtor company to continue carrying on business and avoid the social and economic losses resulting from liquidation of an insolvent company.¹⁴

¹² Nadeau Affidavit, Motion Record, Tab 2.

¹³ CCAA, s. 11.

¹⁴ [Century Services Inc. v. Canada \(Attorney General\)](#), 2010 SCC 60 at paras. 15, 70.

15. Claims procedure orders approving a process for the solicitation and determination of claims against a debtor company and its directors and officers are routinely granted in CCAA proceedings pursuant to this general authority.¹⁵

16. In circumstances such as these, where Hematite intends to propose a plan of compromise or arrangement to its creditors, supported by Woodbridge, it is necessary to determine the precise number of creditors and the precise amount of their respective claims, so that the creditors can vote and/or receive distributions accordingly.¹⁶ Claims procedures, such as the one proposed by Hematite, are designed to “streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner.”¹⁷

17. The primary consideration to be taken into account by the Court when considering whether to approve a claims procedure is whether the process is both fair and reasonable in the facts and circumstances of the case.¹⁸

(ii) *Claims and Excluded Claims*

18. The Claims Procedure is an “open” claims process that is structured similarly to claims procedures that have been implemented in many other CCAA proceedings.

19. All Pre-Filing Claims, Restructuring Claims and D&O Claims other than Excluded Claims will be solicited.¹⁹ The Excluded Claims include intercompany claims, claims by Woodbridge and certain secured claims that are intended to be unaffected in any plan of

¹⁵ [Toys “R” Us \(Canada\) Ltd. \(Re\), 2018 ONSC 609](#) at para. 8 [*Toys “R” Us*]; [ScoZinc Ltd. \(Re\), 2009 NSSC 136](#) at para. 23 [*ScoZinc*].

¹⁶ [Toys “R” Us](#) at para. 6; [Timminco Limited \(Re\), 2014 ONSC 3393](#) at paras. 41-43 [*Timminco*].

¹⁷ [Canwest Global Communications Corp., 2011 ONSC 2215](#) at para. 40.

¹⁸ [Toys “R” Us](#) at para. 14.

¹⁹ Nadeau Affidavit at para. 22, Motion Record, Tab 2.

compromise or arrangement that is filed by Hematite in these proceedings, among other claims that are typically excluded from CCAA claims procedures.²⁰

(iii) Notification Process

20. Notice will be provided to all known and unknown potential Claimants with Pre-Filing Claims or D&O Claims (other than D&O Restructuring Claims) as follows:

- (a) Hematite will provide the Monitor a complete list of Known Claimants based on its books and records and the last known mailing address, email address or facsimile address of each Known Claimant;²¹
- (b) for Known Claimants located in Canada, the Monitor will send a Claims Package to each of the Known Claimants by no later than October 15, 2020 by email to the last known email address of the Known Claimant set out in the books and records of the Applicants. If an email address is not known by Hematite for a Known Claimant, the Monitor will send the Claims Package by either ordinary mail, courier or facsimile to the last known mailing address or facsimile address of the Known Claimant;²²
- (c) for Known Claimants located in the United States, the Applicants' U.S. counsel, in consultation with the Monitor, will arrange for the Claims Package to be sent by U.S. mail to each Known Claimant by no later than October 15, 2020, consistent

²⁰ Nadeau Affidavit at paras. 23-24, Motion Record, Tab 2; Claims Procedure Order at para. 2(q), Motion Record, Tab 3.

²¹ Nadeau Affidavit at para. 25, Motion Record, Tab 2; Claims Procedure Order at para. 12, Motion Record, Tab 3.

²² Nadeau Affidavit at paras. 26(a) and 27, Motion Record, Tab 2; Claims Procedure Order at para. 13, Motion Record, Tab 3.

with the usual practice of providing notice by that method in U.S. bankruptcy proceedings. The Monitor will also sent the Claims Package by email to Known Claimants in the United States where such e-mail address is known to facilitate more timely notice where possible;²³

- (d) the Monitor will cause the Notice to Claimants to be published for at least one Business Day in *The Globe and Mail* (National Edition) and USA Today (National Edition) by October 20, 2020;²⁴ and
- (e) the Monitor will cause the Notice to Claimants, Claims Package and Claims Procedure Order to be posted on the Monitor's Website as soon as reasonably possible following the issuance of the Claims Procedure Order.²⁵

21. Notice will be provided to potential Claimants with a Restructuring Claim (including D&O Restructuring Claims) by the Monitor sending a Claims Package to each Claimant with a Restructuring Claim no later than three (3) Business Days following the time the Monitor actually becomes aware of the effective date of a restructuring, disclaimer, resiliation or termination of any lease, contract or other agreement or obligation.²⁶

(iv) Claims Bar Dates

22. The Pre-Filing Claims Bar Date applicable to Pre-Filing Claims and D&O Claims (other than D&O Restructuring Claims) is 5:00 p.m. (Eastern Time) on November 9, 2020, which is 25

²³ Nadeau Affidavit at paras. 26(b) and 27, Motion Record, Tab 2; Claims Procedure Order at para. 13, Motion Record, Tab 3.

²⁴ Nadeau Affidavit at para. 29, Motion Record, Tab 2; Claims Procedure Order at para. 15, Motion Record, Tab 3.

²⁵ Nadeau Affidavit at para. 30, Motion Record, Tab 2; Claims Procedure Order at para. 16, Motion Record, Tab 3.

²⁶ Nadeau Affidavit at para. 28, Motion Record, Tab 2; Claims Procedure Order at para. 14, Motion Record, Tab 3.

days after the date by which all Known Claimants will be sent a Claims Package by the Monitor (October 15, 2020).²⁷ Claims procedures providing for shorter or similar notice periods prior to the general claims bar date have been approved in other CCAA proceedings, including:

- (a) *Canwest Publishing Inc.*, where the time period between the notice deadline and the claims bar date was 17 days;²⁸
- (b) *Invictus MD Strategies Corp.*, where the time period between the notice deadline and the claims bar date was 18 days;²⁹
- (c) *ScoZinc Ltd.*, where the time period between the claims procedure order and the claims bar date was 26 days;³⁰ and
- (d) *TELoIP Inc.*, where the time period between the notice deadline and the claims bar date was 26 days.³¹

23. The Restructuring Claims Bar Date is 5:00 p.m. (Eastern Time) on the later of: (i) the Pre-Filing Claims Bar Date; and (ii) the day which is 21 days after the Monitor sends a Claims Package with respect to a Restructuring Claim to the Claimant.³² Claims procedures providing

²⁷ Nadeau Affidavit at paras. 31(a) and 31(b), Motion Record, Tab 2; Claims Procedure Order at paras. 2(ff) and 19-20, Motion Record, Tab 3.

²⁸ [Canwest Publishing Inc., Re, Ontario Superior Court of Justice \(Commercial List\) File No. CV-10-8533-00CL, claims procedure order issued April 12, 2010](#) at paras. 2(q) and 17 [*Canwest Publishing Claims Procedure Order*].

²⁹ [Invictus MD Strategies Corp., British Columbia Supreme Court File No. S-201708, claims process order issued April 29, 2020](#) at paras. 10, Schedule B, definition of “Claims Bar Date” [*Invictus Claims Procedure Order*].

³⁰ [ScoZinc](#) at para. 4.

³¹ [TELoIP Inc., Re, Ontario Superior Court of Justice \(Commercial List\) File No. CV-18-600515-00CL, claims procedure order issued July 13, 2018](#) at paras. 2(f) and 10 [*TELoIP Claims Procedure Order*].

³² Nadeau Affidavit at para. 31(c), Motion Record, Tab 2; Claims Procedure Order at para. 2(jj), Motion Record, Tab 3.

for shorter or similar notice periods prior to the bar date for Restructuring Claims have been approved in other CCAA proceedings, including:

- (a) *Canwest Publishing Inc.*, where the deadline was similarly 21 days following the date the Monitor sent a claims package to the claimant;³³
- (b) *Cline Mining Corporation*, where the deadline was seven (7) days after the event giving rise to the Restructuring Claim;³⁴
- (c) *Invictus MD Strategies Corp.*, where the deadline was 10 days after the notice of disclaimer or resiliation pursuant to the CCAA was delivered to the claimant;³⁵
and
- (d) *Roberts Company Canada Limited*, where the deadline was 10 days following the date the monitor sent a claims package to the claimant.³⁶

24. If a Claimant does not file a Proof of Claim prior to the applicable bar date, the Claimant will not be entitled to receive further notice with respect to the Claims Procedure or these proceedings, will not be permitted to vote at any Meeting on account of such Claim, will not be permitted to participate in any distribution under any Plan and the Claimant's Claim will be barred and extinguished.³⁷

³³ [Canwest Publishing Claims Procedure Order](#) at para. 2(ff).

³⁴ [Cline Mining Corporation, Re, Ontario Superior Court of Justice \(Commercial List\) File No. CV-14-10781-00CL, claims procedure order issued December 3, 2014](#) at para. 2(zz) [*Cline Claims Procedure Order*].

³⁵ [Invictus Claims Procedure Order](#) at Schedule B "Restructuring Claims Bar Date".

³⁶ [Roberts Company Canada Limited, Re, Ontario Superior Court of Justice \(Commercial List\) File No. CV-20-00643158-00CL, claims procedure order issued July 28, 2020](#) at para. 2(ii).

³⁷ Nadeau Affidavit at para. 32, Motion Record, Tab 2; Claims Procedure Order at para. 23, Motion Record, Tab 3.

25. The establishment of a claims bar date is necessary to provide certainty to Hematite and other stakeholders regarding the universe of potential claims and the distribution that may be available under a proposed plan of compromise or arrangement.³⁸

(v) *Adjudication and Resolution of Claims*

26. The Monitor, in consultation with Hematite, will review the Proofs of Claim filed in accordance with the Claims Procedure. Among other things, the Monitor may accept or disallow (in whole or in part) the amount and/or Status of any Claim by notifying the Claimant in writing.³⁹

27. If a Claimant receives a Notice of Revision or Disallowance (“**NORD**”) and intends to dispute it, such Claimant will be required to deliver a Notice of Dispute within 10 days of the date that the Claimant is deemed to have received the NORD.⁴⁰ Similar or shorter dispute periods have been approved in other CCAA proceedings, including:

- (a) *TELoIP Inc.*, where the time period between the delivery of a NORD and the deadline to file a notice of dispute was five (5) business days;⁴¹
- (b) *Cline Mining Corporation*, where the time period between the delivery of a NORD and the deadline to file a notice of dispute was seven (7) days;⁴²

³⁸ [Timminco](#) at paras. 41-43.

³⁹ Nadeau Affidavit at paras. 33, Motion Record, Tab 2; Claims Procedure Order at paras. 24 and 26, Motion Record, Tab 3.

⁴⁰ Nadeau Affidavit at para. 34, Motion Record, Tab 2; Claims Procedure Order at para. 27, Motion Record, Tab 3.

⁴¹ [TELoIP Claims Procedure Order](#) at para. 27.

⁴² [Cline Claims Procedure Order](#) at para. 31.

- (c) *Stantive Technologies Group Inc.*, where the time period between the delivery of a NORD and the deadline to file a notice of dispute was 10 days;⁴³ and
- (d) *Invictus MD Strategies Corp.*, where the time period between the delivery of a NORD and the deadline to file a notice of dispute was 10 days.⁴⁴

(vi) ***The Claims Procedure is Fair and Reasonable in the Circumstances***

28. In the circumstances of this case, the Proposed Claims Procedure is fair and reasonable for the following reasons, among others:

- (a) the Claims Procedure contemplated in the Claims Procedure Order has been developed by Hematite with input from the Monitor and Woodbridge;⁴⁵
- (b) the Pre-Filing Claims Bar Date of November 9, 2020 is necessary in order for Hematite and Woodbridge, in consultation with the Monitor, to be able to develop a CCAA plan taking into account the universe of claims that may exist against Hematite and its directors and officers and obtain the Meeting Order by November 18, 2020, as required by the Plan Support Agreement;
- (c) obtaining the Claims Procedure Order by October 13, 2020 and the Meeting Order by November 18, 2020 is a precondition to further advances under the DIP Facility;

⁴³ [*Stantive Technologies Group Inc., Re, Ontario Superior Court of Justice \(Commercial List\) Court File No. CV-19-00614838-00CL, claims adjudication process order issued March 22, 2019*](#) at para. 12.

⁴⁴ [*Invictus Claims Procedure Order*](#) at para. 25.

⁴⁵ Nadeau Affidavit at para. 37, Motion Record, Tab 2.

- (d) Known Claimants will be provided with the Claims Package by email where an email address is known by Hematite, and will be able to submit a Proof of Claim by email, preventing delays in the transmission of notice and the filing of Claims to the greater extent possible;
- (e) unknown potential Claimants will be provided notice of the Claims Procedure by publication in national newspapers in Canada and the United States and the posting of the Claims Package on the Monitor's Website, as is typical in CCAA claims procedures;⁴⁶
- (f) the notice period for potential Claimants to file a Proof of Claim is greater than or similar to notice periods that have been approved in other CCAA claims procedures;
- (g) the vast majority of Known Claimants are trade creditors whose claims are readily calculated and supported with existing invoices;⁴⁷
- (h) the adjudication procedure is similar to that implemented in many other CCAA proceedings and will facilitate the fair and expeditious resolution of any disputes regarding the Status and/or amount of each Claim;⁴⁸ and
- (i) a restructuring pursuant to the Plan Support Agreement and the implementation of a CCAA plan is the only viable path to preserving Hematite's business, for the benefit of its employees, creditors and stakeholders generally, and the claims

⁴⁶ See e.g. [Canwest Publishing Claims Procedure Order](#) at para. 16.

⁴⁷ Nadeau Affidavit at para. 38, Motion Record, Tab 2.

⁴⁸ See e.g. [Invictus Claims Procedure Order](#) at paras. 23-26.

procedure is an important and necessary step in completing that restructuring in an expeditious manner.⁴⁹

PART IV. ORDER REQUESTED

29. For the reasons set out above, the Applicants request that this Court grant the Claims Procedure Order. The requested relief is appropriate in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of October, 2020.



McCarthy Téroult LLP

Lawyers for the Applicants

⁴⁹ Nadeau Affidavit at para. 6, Motion Record, Tab 2.

SCHEDULE “A”
LIST OF AUTHORITIES

1. [*Century Services Inc. v. Canada \(Attorney General\)*, 2010 SCC 60](#)
2. [*Toys “R” Us \(Canada\) Ltd. \(Re\)*, 2018 ONSC 609](#)
3. [*ScoZinc Ltd. \(Re\)*, 2009 NSSC 136](#)
4. [*Timminco Limited \(Re\)*, 2014 ONSC 3393](#)
5. [*Canwest Publishing Inc., Re*, Ontario Superior Court of Justice \(Commercial List\) File No. CV-10-8533-00CL, claims procedure order issued April 12, 2010](#)
6. [*Invictus MD Strategies Corp.*, British Columbia Supreme Court File No. S-201708, claims process order issued April 29, 2020](#)
7. [*TELoIP Inc., Re*, Ontario Superior Court of Justice \(Commercial List\) File No. CV-18-600515-00CL, claims procedure order issued July 13, 2018](#)
8. [*Cline Mining Corporation, Re*, Ontario Superior Court of Justice \(Commercial List\) File No. CV-14-10781-00CL, claims procedure order issued December 3, 2014](#)
9. [*Roberts Company Canada Limited, Re*, Ontario Superior Court of Justice \(Commercial List\) File No. CV-20-00643158-00CL, claims procedure order issued July 28, 2020](#)
10. [*Stantive Technologies Group Inc., Re*, Ontario Superior Court of Justice \(Commercial List\) Court File No. CV-19-00614838-00CL, claims adjudication process order issued March 22, 2019](#)

**SCHEDULE “B”
RELEVANT STATUTES**

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

s. 11

General power of court – Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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Court File No: CV-20-00647824-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
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Proceeding commenced at Toronto

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