

Court File No.: 31-2551574
Estate File No.: 31-2551574

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

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

AND IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC.,
OF THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO

FACTUM

January 20, 2020

BRAUTI THORNING LLP
161 Bay Street, Suite 2900
Toronto, ON M5J 2S1

Sharon Kour LSO #: 58328D
Tel: 416.304.6517
Fax: 416.362.8410
Email: skour@btlegal.ca

Lawyers for Dodick Landau Inc.,
the Proposal Trustee

TO: SERVICE LIST

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

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

AND IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC.,
OF THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO

FACTUM
TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – FACTS	1
PART III – ISSUES	2
PART IV – LAW & ARGUMENT.....	2
PART V – RELIEF REQUESTED.....	4
Schedule "A" List of Authorities.....	1
Schedule "B" Statutory Authorities.....	2

PART I – OVERVIEW

1. This motion is brought by Dodick Landau Inc. in its capacity as proposal trustee of WISP Internet Services Inc. (the “**Proposal Trustee**”) seeking an order substantially in the form attached at Tab 5 of the Motion Record approving the proposal (the “**Revised Amended Proposal**”) made by WISP Internet Services Inc. (“**WISP**”) and approved by its creditors.
2. Capitalized terms not otherwise defined herein have the meanings ascribed in the Revised Amended Proposal.

PART II – FACTS

3. The relevant facts are set out in detail in the Report on Proposal of the Proposal Trustee dated November 18, 2019 (the “**Report on Proposal**”) and the Second Report of the Proposal Trustee dated January 17, 2020 (the “**Second Report**”).
4. WISP is in the business of delivering high-speed internet services to customers in rural communities in Ontario.¹ On August 29, 2019, WISP filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to the BIA.²
5. On November 12, 2019, WISP filed a proposal with the Official Receiver. Based on feedback received from its general unsecured creditor group, WISP filed an amended proposal with the Official Receiver on November 29, 2019.³
6. On December 3, 2019, a meeting of the creditors of WISP was held in Bowmanville, Ontario and presided over by the Proposal Trustee. At the meeting of creditors, further

¹ Report on Proposal at para. 12.

² Second Report at para. 1.

³ Second Report at para. 3.

amendments were made to the proposal at the request of creditors. This Revised Amended Proposal was accepted by a requisite majority of creditors comprising of approximately 74 percent in number and 75 percent in value of the creditors entitled to vote.⁴

PART III – ISSUES

7. The issue before this Court is whether to approve the Revised Amended Proposal that has been accepted by the requisite majority of the creditors of WISP entitled to vote at the meeting of creditors.

PART IV – LAW & ARGUMENT

8. Section 59(2) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (“**BIA**”) requires that the Court refuse to approve proposal where its terms are not reasonable or calculated to benefit the general body of creditors.

9. In deciding whether to approve a proposal, Courts have applied a three-pronged test:

- (a) the proposal must be reasonable;
- (b) the proposal must be calculated to benefit the general body of creditors; and
- (c) the proposal must be made in good faith.⁵

10. Courts have generally taken into account the interests of the debtor, the interests of creditors, and the interests of the public at large in the integrity of the bankruptcy system.⁶

⁴ Second Report at paras. 21 and 22.

⁵ *Kitchener Frame Ltd, Re*, 2012 ONSC 234 at para. 19. See also *FT ENE Canada Inc. (Re)*, 2019 ONSC 5793 at paras 47 and 65.

⁶ *Kitchener Frame* at para. 20.

11. It is appropriate for the Court to accord substantial deference to the vote of the required majority of creditors held at a meeting of creditors and the recommendation of the proposal trustee.⁷

12. The Proposal Trustee respectfully recommends that this Court grant the order approving the Revised Amended Proposal for the following reasons:

- (a) the Revised Amended Proposal was accepted by the requisite majority of creditors voting at the meeting of creditors to consider and vote on the Proposal;⁸
- (b) the distributions contemplated under the Revised Amended Proposal likely exceed the dividend available to creditors in a bankruptcy of WISP;⁹
- (c) the Revised Amended Proposal provides the General Unsecured Creditors an option to purchase shares in the company in order to participate in the equity of the company;¹⁰
- (d) the Proposal Trustee is not aware of WISP having committed any offenses set out in sections 198 to 200 of the BIA.¹¹

13. Sections 60(1), 60(1.1), and 60(1.3) of the BIA provide that a Court shall not approve a proposal that does not provide for the payment of the Proposal Trustee's fees, priority claims, certain preferred Crown claims, and certain claims of current and former employees of the company. Section 60(4) of the BIA provides that distributions under a proposal are subject to the levy payable to the Superintendent in Bankruptcy.

⁷ *Kitchener Frame* at para. 19. See also *Wasaya Airways Limited Partnership (Re)*, 2016 ONSC 5600 at para. 41.

⁸ Second Report at paras. 21 and 22.

⁹ Report on Proposal at paras. 64 and 65.

¹⁰ Second Report at para. 17(iii).

¹¹ Second Report at para. 25.

14. The terms of the Revised Amended Proposal are set out in detail in the Report on Proposal and Second Report. The Revised Amended Proposal complies with the requirements set out in the BIA. Among other things:

- (a) Administrative Fees and Expenses are to be paid in priority to other claims as required by s. 60(1) of the BIA;¹²
- (b) Crown Priority Claims will be paid in full within 6 months after court approval of the Revised Amended Proposal as required by s. 60(1.1) of the BIA;¹³
- (c) WISP is current on its post-filing source deductions remittances and returns pursuant to s. 60(1.1) of the BIA;¹⁴
- (d) Employee Preferred Claims will be paid in full without interest from the operating funds of the company in satisfaction of s. 60(1.3) of the BIA;¹⁵ and
- (e) distributions under the Revised Amended Proposal are subject to the Superintendent's Levy, which are payable in full in accordance with s. 60(4) of the BIA.¹⁶

PART V – RELIEF REQUESTED

15. Based on the foregoing reasons, the Proposal Trustee respectfully recommends that the Court grant the Approval Order.

¹² Report on Proposal at para. 42.

¹³ Report on Proposal at para. 31.

¹⁴ Report on Proposal at para. 41.

¹⁵ Report on Proposal at para. 34.

¹⁶ Report on Proposal at para. 41.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 20th DAY OF JANUARY
2020**



BRAUTI THORNING LLP

161 Bay Street, Suite 2900
Toronto, ON M5J 2S1

Sharon Kour LSO #: 58328D

Tel: 416.304.6517

Fax: 416.362.8410

Email: skour@btlegal.ca

**Lawyers for Dodick Landau Inc.,
the Proposal Trustee**

SCHEDULE "A"
LIST OF AUTHORITIES

1.	<i>Kitchener Frame Ltd, Re</i> , 2012 ONSC 234
2.	FT ENE Canada Inc. (Re), 2019 ONSC 5793
3.	<i>Wasaya Airways Limited Partnership (Re)</i> , 2016 ONSC 5600

SCHEDULE "B"
STATUTORY AUTHORITIES

59(2) *The Bankruptcy and Insolvency Act* ("BIA")

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 198 to 200.

60(1) BIA

- **60 (1)** No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

60(1.1) BIA

Certain Crown claims

(1.1) Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

- (a) subsection 224(1.2) of the *Income Tax Act*;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.

60(1.3) BIA

Proposals by employers

(1.3) No proposal in respect of an employer shall be approved by the court unless

- (a) it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt’s business during the same period; and
- (b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

60(4) BIA

Section 147 applies

(4) Section 147 applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

Court File No.: 31-2551574
Estate File No.: 31-2551574

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

**AND IN THE MATTER OF THE PROPOSAL OF WISP INTERNET SERVICES INC.,
OF THE TOWNSHIP OF SCUGOG, IN THE PROVINCE OF ONTARIO**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

FACTUM

BRAUTI THORNING LLP
161 Bay Street, Suite 2900
Toronto, ON M5J 2S1

Sharon Kour – LSO #: 58328D
Email: skour@btlegal.ca

Tel: 416.304.6517
Fax: 416.362.8410

**Lawyers for Dodick Landau Inc.,
the Proposal Trustee**