

Court File No. 31-2710553
Estate No. 31-2710553

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

IN THE MATTER OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT*, RSC 1985, c B-3, AS**
AMENDED

AND IN THE MATTER OF THE PROPOSAL OF ROCKSHIELD
ENGINEERED WOOD PRODUCTS ULC OF THE CITY OF COCHRANE
IN THE PROVINCE OF ONTARIO

FACTUM OF ROCKSHIELD ENGINEERED WOOD PRODUCTS ULC
(Re: Charges & Extension of Time to File a Proposal)

February 9, 2021

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. Rockshield Engineered Wood Products ULC (the “**Debtor**” or “**Rockshield**”) seeks an Order, substantially in the form attached at **Tab “3”** of the Motion Record,¹ among other things:

- (a) granting an administration charge over the property, assets and undertakings (the “**Property**”) in favour of the Proposal Trustee, its counsel and the Applicant’s counsel (the “**Administration Charge**”) up to the maximum amount of \$150,000;
- (b) approving a debtor-in-possession financing term sheet (the “**DIP Term Sheet**”) between Hillmount Capital Inc. (“**Hillmount**” or the “**DIP Lender**”) and Rockshield, and a corresponding charge in favour of the DIP Lender (the “**DIP Charge**”) up to the maximum amount of \$1.5 million and subordinate only to the Administration Charge;
- (c) granting a charge over the Property in favour of the directors and officers in respect to post-filing obligations in their capacity as directors and officers of the Applicant up to the maximum amount of \$370,000 and subordinate to the DIP Charge (the “**Directors’ Charge**”);
- (d) authorizing the Debtor to pay, with the approval of Dodick Landau Inc. in its capacity as proposal trustee in these proceedings (the “**Proposal Trustee**”), amounts owing for goods or services actually supplied to it prior to the date of the filing of the Notice of Intention to Make a Proposal (“**NOI**”) if, in the opinion of the Debtor such payment is necessary to maintain the uninterrupted operations of the business; and

¹ [Motion Record of Rockshield Engineered Wood Products ULC \(Returnable February 10, 2021\)](#) [*Record*].

- (e) extending the time for the filing of a proposal and extending the stay of proceedings for a period of 45 days up to and including April 24, 2021.

PART II – FACTS

2. Rockshield is a privately held corporation incorporated in British Columbia and extra-provincially incorporated in Ontario.² It operates a plywood manufacturing mill (the “**Mill**”) in Cochrane, Ontario producing high quality hardwood core plywood products for use in residential and commercial construction and in furniture and cabinet manufacturing.³

3. The Mill is one of the largest sources of employment in Cochrane, a town of about 5,000 residents.⁴ Rockshield currently employs about 165 residents and provides indirect employment and income for a further 300 residents.⁵

4. The Mill is dependent on the supply of raw logs harvested from Crown lands to feed its manufacturing operations.⁶ Due to the seasonal variations in logging roads and poor transport truck access to the Mill and forests during the warmer months, Rockshield purchases the majority of its raw materials in the winter.⁷

5. During the winter months, Rockshield stockpiles approximately \$1 million worth of logs to feed its manufacturing operations over the summer.⁸

² Affidavit of Tom Scott affirmed February 8, 2021, at [Record](#) at Tab 2, page 14 (PDF page 19) at para 17 [*Scott Affidavit*].

³ Scott Affidavit, *ibid* at [Record](#) page 12 (PDF page 17) at paras 4-5.

⁴ Scott Affidavit, *ibid* at [Record](#) page 12 (PDF page 17) at para 6.

⁵ Scott Affidavit, *ibid* at [Record](#) page 12 (PDF page 17) at para 6.

⁶ Scott Affidavit, *ibid* at [Record](#) pages 12-13 (PDF page 17-18) at para 8.

⁷ Scott Affidavit, *ibid* at [Record](#) page 13 (PDF page 18) at para 9.

⁸ Scott Affidavit, *ibid* at [Record](#) page 13 (PDF page 18) at para 9.

6. Rockshield has historically financed the stockpile with shareholder capital.⁹ This bridge financing was typically paid down once the stockpile was processed and sold in the summer months.¹⁰

7. This year, shareholders have declined to extend financing for the stockpile.¹¹ The company will not be able to meet its obligations without financing and will be unable to pay its suppliers as early as the second week of February.¹²

8. In addition to the pending liquidity crisis, Rockshield's senior secured creditor, the Bank of Nova Scotia ("**Scotiabank**") issued a demand on its credit facilities, asserting a breach of a debt service ratio covenant and has taken steps to increase the interest rate on Rockshield's credit facilities.¹³

9. Rockshield filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, 1985, c. B-3 (the "**BIA**") on February 8, 2021 to, among other things:

- (a) obtain the breathing room necessary to deal with its obligations in an organized manner and avoid the catastrophic effects of a bankruptcy and liquidation on an Ontario town that is dependent on the Mill for employment;
- (b) obtain DIP financing to pay for the bulge, which financing is expected to be paid down within the next 6 months as the stockpiled inventory is processed and sold;

⁹ Scott Affidavit, *ibid* at [Record](#) page 13 (PDF page 18) at para 10.

¹⁰ Scott Affidavit, *ibid* at [Record](#) page 13 (PDF page 18) at para 10.

¹¹ Scott Affidavit, *ibid* at [Record](#) page 13 (PDF page 18) at para 12.

¹² Scott Affidavit, *ibid* at [Record](#) pages 13-14 (PDF pages 18-19) at paras 12, 15.

¹³ Scott Affidavit, *ibid* at [Record](#) pages 13-14 (PDF pages 18-19) at paras 13-14.

- (c) restructure its balance sheet to allow the company to become profitable on an EBITDA basis to ensure long-term viability; and
 - (d) plan and effect improvements and refurbishments to the Mill which are anticipated to double the Mill's capacity and achieve greater revenues.¹⁴
10. Rockshield has obtained a DIP financing commitment from Hillmount in the amount of \$1.5 million.¹⁵ It requires an advance under the DIP facility no later than February 12, 2021 to meet its obligations to suppliers and pay for its raw material inventory.¹⁶
11. The key terms of the Hillmount DIP facility are:
- (a) the maximum commitment is \$1.5 million in principal;
 - (b) the maturity date is the earlier of 6 months from the date the DIP Term Sheet is approved, the implementation of a sale, a proposal, or the expiry of the stay of proceedings;
 - (c) a commitment fee of 2% (amounting to \$30,000) is payable on the date the Court approves the DIP Term Sheet; and
 - (d) interest is payable at 11% per annum.¹⁷

¹⁴ Scott Affidavit, *ibid* at [Record](#) page 14 (PDF page 19) at para 16.

¹⁵ Scott Affidavit, *ibid* at [Record](#) page 22 (PDF page 27) at paras 47-49.

¹⁶ Scott Affidavit, *ibid* at [Record](#) page 22 (PDF page 27) at para 47.

¹⁷ Scott Affidavit, *ibid* at [Record](#) page 22 (PDF page 27) at para 49.

12. The DIP advances are intended to cover bulge payments to be made over the winter stockpiling period and will be paid down within 6 months once the raw material stockpile is processed and sold.¹⁸
13. Rockshield seeks a priority charge to secure the DIP advances up to a maximum of \$1.5 million. Rockshield also seeks an Administration Charge in favour of its counsel, the Proposal Trustee and its counsel up to the maximum amount of \$150,000 to facilitate the restructuring and a Directors' Charge up to the maximum amount of \$370,000, which amount is sufficient to satisfy director liabilities for one payroll cycle.¹⁹
14. The charges sought by Rockshield are to rank in the following priority, ahead of all other security interests, liens and encumbrances:

First – Administration Charge (to the maximum amount of \$150,000);

Second- the DIP Lender's Charge (to the maximum amount of \$1,500,000); and

Third – Director's Charge (to the maximum amount of \$370,000).²⁰
15. To permit Rockshield to secure the continued supply of raw materials, it seeks authorization to pay, with the approval of the Proposal Trustee, pre-filing amounts owed to suppliers that are in the opinion of Rockshield necessary for its continuing operations.
16. With the breathing room afforded to it by these NOI proceedings, Rockshield intends to:
 - (a) restructure its key contractual obligations;

¹⁸ Scott Affidavit, *ibid* at [Record](#) page 22 (PDF page 27) at para 50.

¹⁹ Scott Affidavit, *ibid* at [Record](#) page 21 (PDF page 26) at para 45.

²⁰ Draft Order: Extension of Time to File Proposal, Pre-Filing Payments, and Charges at [Record](#) at Tab 3, page 120 (PDF page 125) at para 16.

- (b) restructure or refinance its secured debt in cooperation with its secured lenders, primarily Scotiabank;
- (c) restructure its balance sheet through the potential conversion of shareholder debt to equity;
- (d) seek investment for the expansion of Mill capacity, whether from shareholders, financial institutions, government funds and bodies, or public interest or community groups.²¹

17. Rockshield intends to make a proposal to its creditors, and will require time to do so. The current time to make a proposal expires on March 10, 2021.²² Rockshield seeks an extension of 45 days up to and including April 24, 2021 pursuant to Section 50.4(9) of the BIA to permit it to develop a viable proposal.²³

18. The 13-week cash flow prepared by Rockshield with the supervision of the Proposal Trustee demonstrates that with DIP financing, the company will have sufficient cash to operate over the extended stay period.²⁴

19. In the meantime, Rockshield continues to work with due diligence and in good faith, and is not aware of any creditors who would be prejudiced by the extension of time sought.²⁵

PART III – ISSUES

20. The issues to be determined in this motion are as follows:

²¹ Scott Affidavit, *supra* at [Record](#) page 20 (PDF page 25) at para 40.

²² Scott Affidavit, *ibid* at [Record](#) page 23 (PDF page 28) at para 54.

²³ Scott Affidavit, *ibid* at [Record](#) page 23 (PDF page 28) at para 54.

²⁴ Scott Affidavit, *ibid* at [Record](#) page 23 (PDF page 28) at para 55.

²⁵ Scott Affidavit, *ibid* at [Record](#) page 23 (PDF page 28) at para 55.

- (a) Should this Court approve the Administration Charge?;
- (b) Should this Court approve the DIP Term Sheet and the DIP Charge?;
- (c) Should this Court approve the Directors' Charge?;
- (d) Should this Court approve the payment of pre-filing arrears on account of goods supplied prior to the date of the NOI?; and
- (e) Should this Court extend the period for the Debtor to file a proposal and the stay of proceedings, pursuant to section 50.4(9) of the BIA.

PART IV – LAW & ARGUMENT

A. Approval of the Administration Charge

21. As part of its motion, the Debtor seeks an Administration Charge over all of its Property in priority to all other charges in the maximum and aggregate amount of \$150,000 to secure payment of the fees and disbursements of the Proposal Trustee and its counsel as well as counsel to the Debtor incurred in relation to these BIA proceedings.

22. In a restructuring proceeding, the granting of an administration charge has become not only customary but a pre-requisite to the restructuring itself given the debtor company's need for assistance from insolvency professionals. Accordingly, administration charges are consistently approved in insolvency proceedings under the BIA.²⁶

23. Section 64.2 of the BIA provides statutory jurisdiction to grant such a charge:

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

²⁶ [Re Colossus Minerals Inc, 2014 ONSC 514](#) at paras 11-15.

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.

24. It is unlikely that insolvency professionals will participate in these proceedings without benefit of the Administration Charge to secure their fees and disbursements.

25. The following additional factors support the granting of the Administration Charge:

(a) the legal and financial advice to be provided by the professionals in this case are essential to the Debtor throughout the proposal proceedings;

(b) the roles of each of the various professionals are distinct and there is no anticipated unwarranted duplication;

(c) the Administration Charge does not purport to prime any secured party who has not received notice of the Debtor's motion; and

(d) none of the Debtor's creditors will be materially prejudiced as a result of the Administration Charge.

B. DIP Facility

26. The Debtor seeks approval of the DIP Term Sheet and the DIP Charge, which DIP Charge would rank ahead of all other charges and security interests except the Administration Charge.

27. The BIA codifies the availability of interim financing during proposal proceedings. Section 50.6 of the BIA confers on the Court the statutory jurisdiction to grant the DIP Charge:

50.6(1) Interim Financing: On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge - in an amount that the court considers appropriate - in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

[...]

50.6(3) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

28. Subsection 50.6(5) of the BIA sets out a non-exhaustive list of factors to be considered by the Court in deciding whether to grant the DIP Charge:

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;

- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

29. In the present case, it is submitted that the Court should approve the DIP Term Sheet together with the DIP Charge, both of which are essential to provide the Debtor with the financing it requires to continue to operate its business and make a viable proposal to its creditors.

30. The following factors support the approval of the DIP Term Sheet and the DIP Charge:

- (a) the availability of the DIP is contingent on this Court issuing an Order approving the DIP Term Sheet and the DIP Charge to secure any advances made thereunder;
- (b) the necessity for the DIP Term Sheet is demonstrated and supported by the Debtor's cash flow projections;
- (c) in the absence of a DIP, the Debtor will not be able to continue to carry on business or make a viable proposal to its creditors;
- (d) none of the Debtor's creditors will be materially prejudiced as a result of the DIP or the DIP Charge; and
- (e) the Proposal Trustee supports the DIP and the DIP Charge.

31. Accordingly, the Debtor submits that the Court should exercise its discretion to approve the DIP Term Sheet and grant the DIP Charge over the Property.

C. Directors' Charge

32. The Directors' Charge is sought to secure the Debtor's indemnification for possible liabilities which may be incurred by the Debtor's director and officers, whose continued participation during these proceedings is critical to the Debtor's successful restructuring.

33. The Directors' Charge is to rank in priority to all other charges and security interests in the Debtor's Property except the Administration Charge and the DIP Charge.

34. Section 64.1 of the BIA confers on the Court the statutory jurisdiction to grant the Directors' Charge:

64.1(1) Security or charge relating to director's indemnification: On application by 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) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge - in an amount that the court considers appropriate - in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

64.1(2) Priority: The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

64.1(3) Restriction - indemnification insurance: The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

64.1(4) Negligence, misconduct or fault: The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or willful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

35. The Directors' Charge is calculated to be sufficient to account for one payroll and source deduction period, with payroll being paid weekly in arrears. This gives rise to potential post-filing directors' liability for payroll and source deductions.

36. The following additional factors support the granting of the Directors' Charge:
- (a) the Debtor's directors have specialized expertise and relationships with suppliers, customers, employees and other stakeholders, as well as knowledge gained throughout the Debtor's business operations that cannot be replicated or replaced;
 - (b) the services provided by the directors are essential to the proposal proceedings;
 - (c) the Directors' Charge is fair and reasonable in the circumstances and advances the integral need of the Debtor to have fully functional, experienced and qualified advisors, directors and officers; and
 - (d) the Directors' Charge excludes obligations and liabilities incurred as a result of a director's or officer's gross negligence or wilful misconduct.

D. Payment of Pre-Filing Amounts

37. To ensure that business operations are not disrupted during the pendency of the NOI proceeding, Rockshield requires the uninterrupted supply of raw materials. It is unlikely that critical suppliers will continue to supply the Debtor without the payment of pre-filing amounts outstanding and/or the payment of deposits for go-forward supply.

38. Rockshield seeks authorization to make pre-filing payments where, in its opinion, a supplier is critical to the ongoing business operations. No pre-filing payments will be made without the review and approval of the Proposal Trustee.

39. Courts have routinely authorized charges for the benefit of critical suppliers in the context of a CCAA proceeding, particularly when overseen by the Monitor. A supplier is considered critical where the uninterrupted supply of goods and/or services is sufficiently integral to the

debtor's business that it would be prejudicial to the debtor's restructuring efforts for supply to be interrupted.²⁷

40. Even where no critical supplier charge is sought, Courts will consider the following factors in determining whether to approve payment of pre-filing amounts to such suppliers:

- (a) the goods and services are integral to the business of the debtor;
- (b) the debtor's need for the uninterrupted supply of the goods and services;
- (c) the effect on the debtor's ongoing operations and ability to restructure if it was unable to make pre-filing payments; and
- (d) the fact that no payments would be made without the consent of the proposal trustee.²⁸

41. The raw material purchased by Rockshield is integral to the operation of the Mill. Without it, no product can be manufactured. The summer season is approaching and Rockshield requires uninterrupted supply now to build its stockpile. Rockshield proposes only to make payment where approved by the Proposal Trustee. Most significantly, there is no business to save or jobs to preserve without the supply of raw material to be processed at the Mill. The supply of raw material is integral to the viability of these restructuring proceedings.

E. Extension of Time to File a Proposal

42. Under section 50.4(9) of the BIA, the Court has the authority to extend the period for filing a proposal and the stay of proceedings for a period of 45 days where it is satisfied that:

²⁷ [Re Prizm Income Fund, 2011 ONSC 2061](#) at para 31.

²⁸ [Re Cinram International Inc, 2012 ONSC 3767](#) at paras 66-71; [Re Performance Sports Group Ltd, 2016 ONSC 6800](#) at para 25.

- (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 were granted.²⁹
- (generally, the “**Section 50.4(9) Factors**”)

43. The fundamental purpose of NOI proceedings is the rehabilitation of the debtor.³⁰ In considering matters under the proposal provisions, an objective standard must be applied and matters should be judged on a rehabilitation rather than a liquidation basis.³¹

44. The Section 50.4(9) Factors are broadly construed, thus requiring the Court to consider the interests of a number of potentially affected parties, including employees and unsecured creditors, in addition to the interests of secured creditors.³²

45. Rockshield submits that each of the Section 50.4(9) Factors have been met:

- (a) Rockshield is acting in good faith and with due diligence to secure financing and taking steps to preserve the business for the benefit of creditors and stakeholders. Cash flow projections show that Rockshield has sufficient cash to continue operating over the proposed extension period with DIP funding;
- (b) Rockshield requires reasonable time to properly pursue a restructuring. It will likely be able to develop and advance a viable proposal if the extension of time is granted. With the breathing room afforded by the NOI proceeding, Rockshield is likely to

²⁹ BIA, *supra* at s. 50.4(9)

³⁰ [Century Services Inc v Canada \(Attorney General\), 2010 SCC 60](#) at para 15 (the main purpose of BIA proposal proceedings “is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets”)

³¹ [Re NWT Management Group Ltd., \[1993\] OJ No 621 \(WL\)](#) at para 22.

³² [In the Matter of the Proposal of Cantrail Coach Lines Ltd, 2005 BCSC 351](#) at para 12.

be able to undertake a balance sheet restructuring and a strategic refurbishment of the Mill to ensure long-term viability of the business;

- (c) no creditor will be materially prejudiced by the extension. Rockshield's primary secured creditor does not oppose the extension of time, nor is it reasonable for any creditor to oppose the extension given the devastating consequences of a liquidation under the circumstances.

46. Overarching policy weighs in favour of extending the stay of proceedings to facilitate a restructuring that will ensure the Mill is able to continue operating and to encourage its long-term viability. The Mill is the single largest employer in Cochrane, Ontario. A shutdown of the Mill would be devastating to the community.

47. Considering the circumstances and the merits of the continuing Rockshield's business, the interests of justice weigh in favour of the relief sought.

PART V – RELIEF REQUESTED

48. Based on the foregoing, Rockshield respectfully requests that this Court grant the proposed form of Order at Tab "3" of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th DAY OF FEBRUARY, 2021.



WEISZ FELL KOUR LLP

SCHEDULE "A"**List of Authorities**

1. <i>Re Colossus Minerals Inc</i>, 2014 ONSC 514.
2. <i>Re Prizm Income Fund</i>, 2011 ONSC 2061.
3. <i>Re Cinram International Inc</i>, 2012 ONSC 3767.
4. <i>Re Performance Sports Group Ltd</i>, 2016 ONSC 6800.
5. <i>Century Services Inc v Canada (Attorney General)</i>, 2010 SCC 60.
6. <i>Re NWT Management Group Ltd</i>, [1993] OJ No 621 (WL)
7. <i>In the Matter of the Proposal of Cantrail Coach Lines Ltd</i>, 2005 BCSC 351

SCHEDULE "B"

Statutory Authorities

Bankruptcy and Insolvency Act, RSC 1985, c B-3

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.

Order — interim financing

50.6 (1) On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

Priority

50.6(3) The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

Factors to be considered

50.6(5) In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

Security or charge relating to director's indemnification

64.1 (1) On application by 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) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

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

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the person could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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.

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC
1985, c B-3, AS AMENDED**

**Court File No. 31-2710553
Estate No. 31-2710553**

**AND IN THE MATTER OF THE PROPOSAL OF ROCKSHIELD
ENGINEERED WOOD PRODUCTS ULC OF THE CITY OF COCHRANE
IN THE PROVINCE OF ONTARIO**

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

Proceedings commenced at Toronto

**FACTUM OF ROCKSHIELD ENGINEERED
WOOD PRODUCTS ULC**

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