Court File No. BK-26-03408761-0031
Estate File No. 31-3408761

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE PROPOSAL OF THOUGHTWIRE CORP.

FACTUM OF THOUGHTWIRE CORP.

August 31, 2026

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I – NATURE OF THE MOTION

1. On August 7, 2026, ThoughtWire Corp. (the "**Company**") filed a Notice of Intention to Make a Proposal ("**NOI**)" under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**"). Dodick Landau Inc. was named proposal trustee (in such capacity, the "**Proposal Trustee**").[1]

2. This factum is filed in support of a motion by the Company for an order, *inter alia*:

   (a) extending the time for the Company to file a proposal with the Official Receiver pursuant to section 62(1) of the BIA up to and including October 20, 2026;

   (b) approving a "stalking horse" sale and investment solicitation process (the "**SISP**") administered by the Proposal Trustee, including authorizing the Company to enter into the subscription agreement between the Company and 1426994 Ontario Inc. (the "**Stalking Horse Bidder**"), as subscriber, dated August 26, 2026 (the "**Stalking Horse Agreement**") as the "stalking horse" bid in the SISP;

   (c) granting a super-priority charge (the "**Administration Charge**") on the Company's assets, undertakings and properties in an amount not to exceed $100,000 in favour of the Company's legal counsel, the Proposal Trustee and the Proposal Trustee's legal counsel (collectively, the "**Professional Group**"), to secure payment of their reasonable fees and disbursements;

   (d) approving the interim financing term sheet between the Company and the Stalking Horse Bidder, as lender (in such capacity, the "**DIP Lender**"), dated August 26, 2026 (the "**DIP Loan Agreement**"), pursuant to which the DIP Lender will make available to the Company up to $300,000, to fund these proceeding and the Company's operating deficiencies during these proceedings; and

   (e) granting a super-priority charge (the "**DIP Lender's Charge**") against the Company's assets, undertakings and properties in favour of the DIP Lender, to

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[1] Motion Record of ThoughtWire Corp. dated August 28, 2026 ("**Motion Record**"), Tab 2, Affidavit of Loreto Saccucci, sworn August 27, 2026 ("**Saccucci Affidavit**") at para 3; the Proposal Trustee's First Report ("**First Report**") at para 1.

secure payment of all of the Company’s obligations to the DIP Lender under the DIP Agreement.

and, such further and other relief as counsel may advise and this Court may permit.

II - FACTS

BACKGROUND

3. The Company develops, markets and sells digital “twin” software services that provides real-time operational intelligence, workflow automation, and predictive decision support for customers. The Company’s key customer base is the medical service providers. The Company’s assets are primarily composed of its intellectual property.[2]

4. The Company is incorporated under the federal laws of Canada and has its registered office located at 166 King Street East in Toronto, Ontario.[3]

5. The Company’s private secured creditors include:

(a) approximately $435,415.50 indebted to Josip Kozar (“**Kozar**”) pursuant to a loan agreement dated December 30, 2025, which obligations are secured by a general security agreement registered under the *Personal Property Security Act* (Ontario) (“**PPSA**”); and

(b) approximately $376,500.00 indebted to Hole Medical Inc. (“**Hole**”) pursuant to a loan agreement dated January 10, 2025, which obligations are secured by a general security agreement, registered under the PPSA.[4]

6. In addition to the above, approximately $698,518.00 in favour of His Majesty in the Right of Ontario represented by the Minister of the Finance, arising due to employee-related obligations, issued and registered by the Ministry of Labour, Immigration, Training and Skills Development (the “**MOL Claim**”). At that time of the registration of the security interests of Kozar and Hole, the MOL Claim was registered in the amount of $97,919.00. The Company understands that such

[2] Saccucci Affidavit at paras 2 and 5; First Report at para 10.
[3] Saccucci Affidavit at para 6; Motion Record, Tab 2B, Exhibit “B” of the Saccucci Affidavit – Corporate Profile Report.
[4] Saccucci Affidavit at para 17; Motion Record, Tab 2D and 2E, Exhibit “D” and Exhibit “E” to the Saccucci Affidavit – Loan and Security Agreements of Kozar and Hole.

amount would rank in priority to the interests of Kozar and Hole, and will be paid in full under the proposed transaction.[5]

7. The Company owes approximately $2,175,000 in liabilities to its unsecured creditors, comprising of amounts owed to trade creditors, suppliers, now-terminated employees, investors and others.[6]

8. As of the date hereof, the Company owes at least $51,248.00 in unpaid employee source deductions.[7] Such amount will be paid in full under the proposed transaction.

9. As at the date of the NOI filing, the Company has three (3) full-time employees, as contractors and consultants, the President, the Chief Financial Officer and the Compliance and Privacy Manager. As of the date hereof, all wages are current in relation to these employees.[8]

10. The Company had up to nineteen (19) full-time employees before filing the NOI but reduced its workforce due to financial difficulties, with most employees terminated in March 2026. Eleven (11) employees are owed in the aggregate amount of $454,997.94 in unpaid wages (which amount is included in MOL Claim discussed above).[9]

NOI PROCEEDINGS

11. The Company filed the NOI on August 7, 2026, in order to facilitate the SISP, and to negotiate the Stalking Horse Agreement standing as the Stalking Horse Bid and the DIP Loan Agreement, with 1426994 Ontario Inc. ("**142Co**"). 142Co is the assignee of the secured debt of Kozar and Hole.[10]

12. The Company's liquidity challenges initially stem from the effects of COVID-19, along with significant accrued obligations under unfavourable contractual and financing arrangements established under prior management. Accordingly, the Company underwent an informal

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[5] Saccucci Affidavit at para 18; First Report at para 17.
[6] Saccucci Affidavit at para 20; Motion Record, Tab 2G, Exhibit "G" to the Saccucci Affidavit – List of Creditors.
[7] Saccucci Affidavit at para 26; First Report at para 22.
[8] Saccucci Affidavit at para 22.
[9] Saccucci Affidavit at para 23; First Report at para 20.
[10] Saccucci Affidavit at para 32; First Report at para 41.

restructuring in 2024, which resulted in new funding, subordination of various loans and conversion of the majority of the Company's existing debts to equity.[11]

13. Following this informal restructuring the Company continued to struggle and incur outsized operating costs, owing primarily to an oversized workforce. The Company's liquidity challenges were further exacerbated in November 2025 when services were interrupted due to outstanding unpaid obligations to service providers, whom the Company relied on to sustain certain operations. The Company was unable to negotiate an acceptable payment arrangement, which led the loss of a key customer in late 2025 to early 2026.[12]

14. Kozar (who is also the majority shareholder of the Company) and Hole had previously provided secured funding to the Company to maintain operations. However, Kozar and Hole advised they were no longer prepared to fund the Company.[13]

15. If the Company undertook formal restructuring by filing an NOI centered on sale and investment solicitation process, Kozar and Hole confirmed that they were prepared to provide interim financing to the Company.[14]

16. Kozar and Hole expressed an interested in acquiring the business through a stalking horse process or recouping the secured funds advanced to the Company.[15]

APPROVAL OF SALE SOLICITATION PROCESS

17. A key reason for filing the NOI was to facilitate the SISP. The Company has worked with the Proposal Trustee to develop the SISP, centered on the Stalking Horse Agreement standing as the Stalking Horse Bid.[16]

18. The SISP is attached as Exhibit "H" to the Saccucci Affidavit and will be appended as Schedule "A" of the draft order filed with the Court.[17]

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[11] Saccucci Affidavit at para 10; First Report at para 11.
[12] Saccucci Affidavit at para 13; First Report at para 13.
[13] Saccucci Affidavit at paras 29-30.
[14] Saccucci Affidavit at para 30.
[15] Saccucci Affidavit at para 31.
[16] Saccucci Affidavit at para 34.
[17] Saccucci Affidavit at para 34; Motion Record, Tab 2H, Exhibit "H" of the Saccucci Affidavit – SISP.

19. The salient terms of the proposed SISP include:

(a) a 4-week marketing process;

(b) identification of parties who may have a potential interest in acquiring the business or assets of the Company by the Proposal Trustee, the Company and the shareholders;

(c) solicitation of the identified interested parties by the Proposal Trustee;

(d) publication of the opportunity by the Proposal Trustee in *Insolvency Insider* and such other newspaper, journal or trade publication as the Proposal Trustee considers appropriate;

(e) preparation by the Proposal Trustee of a teaser letter describing the opportunity and outlining the process under the sale process and a non-disclosure agreement (the "**NDA**");

(f) the Proposal Trustee maintaining and providing access to a confidential data room to parties who have executed an NDA;

(g) a sale on an "as is, where is" basis;

(h) an offer deadline, on which interested parties are required to submit binding offers, with a definitive agreement on a template agreement to follow as soon as practicable thereafter;

(i) a review by the Proposal Trustee of any offers received to determine if any of them constitute a credible, reasonably certain and financially viable offer, the terms of which offer are more favourable and no more burdensome or conditional than the terms contained in the Stalking Horse Agreement and otherwise meets the definition of a Qualified Bid (*as defined in the SISP*);

(j) a Qualified Bid requiring, among other things, a purchase price not less than the purchase price set out in the Stalking Horse Agreement, plus a $50,000 overbid, plus a $25,000 Break Fee (*as defined in the SISP*);

(k) deeming the Stalking Horse Agreement to be a Qualified Bid;

(l) if more than one Qualified Bids is received, the establishment of an Auction by the Proposal Trustee to select the successful bid, and following the Auction, the Court approval of the Successful Bid (*as defined in the SISP*) and execution of all documents and steps required to complete the corresponding transaction; and

(m) a closing of the successful offer by as soon as after Court approval as possible, if applicable.[18]

20. In addition, the SISP includes a provision which converts the same to an open, non-stalking-horse bid process if the Stalking Horse Bidder is not satisfied as to the priority status of the MOL Claim within ten (10) business days of Court approval and elects to withdraw the Stalking Horse Agreement[19], which process is discussed below.

21. The purpose of the SISP is to maximize value for the business. Since the Stalking Horse Agreement is subject to a limited due diligence period in respect of the MOL Claim (discussed below), if the Stalking Horse Bidder is not satisfied as to the same, it may terminate the Stalking Horse Agreement, in which case the SISP will convert to an open, non-stalking-horse bid process.[20]

APPROVAL OF THE STALKING HORSE

22. The Company seeks the authorization to enter into the Stalking Horse Agreement.[21]

23. The Stalking Horse Bidder is a corporation, organized by Kozar and Hole. Kozar and Hold have each assigned their secured claims to the Stalking Horse Bidder (the "**Secured Debt**"), who will credit bid the same, along with all amounts owing under the DIP Loan Agreement (if approved by the Court), and pay all priority payables, to acquire the business of the Company.[22]

24. Additionally, the Company has more than $4,000,000 in carry forward tax losses. The Stalking Horse Bidder has advised that it requires that the transaction contemplated a "reverse vesting order" to maintain the designations above, but also so that it might potentially take advantage of these tax losses.[23]

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[18] Saccucci Affidavit at para 36; First Report at paras 36-37.
[19] Motion Record, Tab 2H, Exhibit "H" of the Saccucci Affidavit – SISP, at para 4; First Report at para 47.
[20] Saccucci Affidavit at para 37; First Report at para 47.
[21] Saccucci Affidavit at para 38; Motion Record, Tab 2I, Exhibit "I" of the Saccucci Affidavit – Stalking Horse Agreement.
[22] Saccucci Affidavit at para 39; First Report at para 41.
[23] Saccucci Affidavit at para 41; First Report at para 42.

25. If the SISP and Stalking Horse Agreement are approved, the Company will incorporate an Ontario numbered company ("**ResidualCo**"), as a wholly owned subsidiary, to stand as the residual company in connection with the proposed transaction.[24]

26. The Stalking Horse Agreement contemplates, *inter alia*:[25]

(a) a purchase price equal to:

(i) a credit bid equal to the Senior Secured Debt (approximately $783,000.00); plus

(ii) a credit bid equal to the amounts outstanding at closing under the DIP Loan Agreement and secured by the DIP Lender's Charge (the "**DIP Debt**"), plus

(iii) a cash payment sufficient to satisfy (a) any claim payable in legal priority to the Secured Debt; (b) all unpaid professional costs; and, (c) the fees and disbursements of the Proposal Trustee and its counsel required to administer ResidualCo and the excluded assets (including any wind-down or dissolution of ResidualCo);

(b) an acquisition on an "as is, where is" basis;

(c) the vesting of excluded assets in ResidualCo and the replacement of the Company in these proceedings by ResidualCo;

(d) a continuation of the business;

(e) offers of employment to existing employees; and

(f) a target closing by October 30, 2026.

27. The Stalking Horse Agreement also includes a limited diligence condition for a period or ten (10) business days, to allow the Stalking Horse Bidder to confirm the quantum of the MOL Claim that comprise an amount payable in priority to the Secured Debt. Such condition allows the Stalking Horse Bidder to elect to terminate the Stalking Horse Agreement, on written notice within ten (10) business days of Court approval to the Company and the Proposal Trustee, if the priority payable component of the MOL Claim is determined to be in excess $100,000.[26] In the event of

[24] Saccucci Affidavit at para 42; First Report at para 41.
[25] Saccucci Affidavit at para 43.
[26] Saccucci Affidavit at para 43; Motion Record, Tab 2I, Exhibit "I" of the Saccucci Affidavit – Stalking Horse Agreement, at Section 8.2; First Report at para 47.

such termination, the Stalking Horse Agreement is null and void but the SISP automatically converts to an open, non-stalking horse bid process, which will continue on the same Court-approved timelines, administered by the Proposal Trustee.

28. Upon closing of the transaction contemplated by the Stalking Horse Agreement, including the forgiveness of the Secured Debt and the DIP Debt by way of credit bid and the transfer of excluded assets and liabilities to ResidualCo, the Company shall be current on all obligations and shall no longer be insolvent.[27]

CASH FLOW FORECAST

29. The Company, in consultation with the Proposal Trustee, has prepared and filed a cash flow statement for the prior ending November 21, 2026, which shows that it will have sufficient cash flow to sustain itself through the requested extension period and beyond, subject to ability to access funding under the DIP Loan Agreement.[28]

DIP LOAN AGREEMENT & LENDER'S CHARGE

30. The Company requires additional financing to fund operations during these proceedings. To facilitate these proceedings, the DIP Lender has agreed to advance the maximum amount of $300,000, pursuant to the terms of the DIP Loan Agreement, conditional on, *inter alia*, granting the DIP Lender's Charge. The Proposal Trustee has reviewed the DIP Loan Agreement and approves it.[29]

31. In order to secure the repayment of the Company's obligations under the DIP Loan Agreement, the DIP Lender requires, and the Company is requesting, that the Court grant the charge in favour of the DIP Lender in the maximum principal amount of $300,000, over all assets, property and undertakings of the Company, ranking in priority to all claims and encumbrances, save and except for the Administration Charge below.[30]

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[27] Saccucci Affidavit at para 45;
[28] Saccucci Affidavit at para 46; Motion Record, Tab 2J, Exhibit "J" to the Saccucci Affidavit – Cash Flow Statement; First Report at paras 61-62.
[29] Saccucci Affidavit at paras 49 and 54; Motion Record, Tab 2K, Exhibit "K" to the Saccucci Affidavit – DIP Loan Agreement; First Report at para 23.
[30] Saccucci Affidavit at para 53; First Report at paras 27 and 59-60.

EXTENSION OF THE STAY

32. The statutory stay of proceedings expires on September 7, 2026. In order to facilitate the proposed sale process, the Company requests an extension of the stay up to and including October 20, 2026.[31]

ADMINISTRATION CHARGE

33. The Company is also seeking a first-ranking Administration Charge in the amount of $100,000 over all its assets, undertakings and property in order to secure the fees and disbursements of its counsel, the Proposal Trustee, and counsel to the Proposal Trustee.[32]

III – ISSUES

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

(a) *Should the Court approve the SISP and Stalking Horse Agreement?*

(b) *Should the Court approve an extension of time for the Company to file a proposal?*

(c) *Should the Court approve the DIP Loan Agreement and the Lender's Charge?*

(d) *Should the Court approve the Administration Charge?*

35. The Company respectfully submits that the answer to each question is – *yes*.

IV – LAW AND ARGUMENT

A. Should the Court approve the SISP and Stalking Horse Agreement?

The SISP

[31] Saccucci Affidavit at para 55; First Report at para 67.
[32] Saccucci Affidavit at para 56; First Report at paras 55-56.

36. The Court has jurisdiction to approve the proposed SISP pursuant to section 65.13 of the BIA.[33] Stalking horse sale processes are common in Canadian insolvency proceedings and have been recognized as reasonable and useful elements of a sale process.[34]

37. A decision to approve a form of sales process is distinct from the approval of a proposed sale. However, where a Court is to determine the approval of a sale process, such process should align with the factors outlined in *Royal Bank of Canada v Soundair Corp*, namely: whether the receiver has made sufficient effort to get the best price and has not acted improvidently; the efficacy and integrity of the process by which offers are obtained; whether there has been unfairness in the working out of the process; and, the interests of all parties.[35]

38. The Courts should therefore consider the following factors when reviewing a proposed sale process:

(a) the fairness, transparency and integrity of the proposed process;

(b) the commercial efficacy of the proposed process in light of the specific circumstances of the case; and,

(c) whether the sale process will optimize the chances of securing the best possible price for the assets up for sale.[36]

39. Each of the above factors, applied herein, support the Court's approval of the SISP and the Stalking Horse Agreement:

(a) the SISP is fair, open and transparent, provides sufficient market exposure for the Company. The SISP will be administered by the Proposal Trustee in order to maintain its integrity;

(b) the SISP will commence on September 7, 2026, and the anticipated timeline of four weeks is a sufficient timeline for bidders to perform the required due diligence. Further, there is no viable alternative to a SISP in the circumstances, and the SISP will allow for adequate canvassing of the market and ultimately the highest recovery for the Company's creditors, to the benefit of all stakeholders; and,

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33 *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 65.13 ("**BIA**").
34 *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750, ("***CCM***") at para 7.
35 *CCM* at para 6; *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA).
36 *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al*, 2024 ONSC 3739 at para 59, and *CCM* at para 6.

(c) the Proposal Trustee and the private secured creditors of the Company are supportive of the SISP and have been participated in the development of the SISP (and the Stalking Horse Agreement).

40. The SISP is fair and reasonable and provides sufficient market exposure for the Company. Moreover, it provides a transparent process that will allow the Company to continue operating and preserve the value as a going-concern, to the benefit of all stakeholders. The SISP is consistent with similar Court-approved sales processes in distressed scenarios and will be facilitated by the Proposal Trustee to maintain the integrity of the SISP. The estimated recovery under the SISP will be greater than in liquidation or auction.[37]

41. For the foregoing reasons, it is commercially reasonable and appropriate to approve the SISP.

The Stalking Horse Agreement

42. Stalking horse bids are supported by the Courts as they stimulate market interest and competition and ensure there will be a successful outcome to the sale process.[38]

43. In determining whether to approve a stalking horse bid, the Courts consider whether the bid is fair, reasonable, and in the best interests of the stakeholders, and whether the bid represents a fair and reasonable benchmark for all other bids.[39]

44. The terms of the Stalking Horse Agreement are fair and reasonable in the circumstances and set a "floor price" that would exceed the realizations that would be achieved in a liquidation. The Proposal Trustee believes that the Stalking Horse Agreement represents a more valuable alternative and is preferable to bankruptcy. The Stalking Horse Agreement will stimulate market interest and competition as it will demonstrate there is already a committed buyer.[40]

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[37] First Report at paras 31, 33 and 39-40.
[38] *CCM* at para 7.
[39] *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para 40.
[40] First Report at paras 43 and 46.

45. The ultimate approval of the transaction contemplated by the Stalking Horse Agreement (or any other offer received in the SISP) is subject to a further hearing before, and determination by, the Court.

46. The Company is unaware of any opposition to approval of the Stalking Horse Agreement.

B. The Court should approve the Stay Extension

47. The current stay of proceedings expires on September 7, 2026, and the Company will not be able to deliver a proposal to its creditors by such date. It seeks a 45-day extension of time up to and including October 20, 2026, to enable the implementation of the SISP and to assess potential proposals to its creditors and avoid a deemed bankruptcy.

48. Pursuant to section 50.4(9) of the BIA, the Court may grant an extension of time for filing of a proposal in 45-day increments, if it is satisfied that the debtor:

(a) has acted and is acting in good faith and with due diligence;

(b) would likely be able to make a viable proposal if the extension were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.[41]

49. The Company submits each of these criteria are met.

50. The Company has been acting with good faith and due diligence during these proceedings and has been working collaboratively with the Stalking Horse Bidder and the Proposal Trustee to pursue, create, and prepare the SISP.[42]

51. It has served also all key stakeholders with the within motion record.

52. Whether an applicant would likely be able to make a viable proposal if granted an extension is determined by whether the applicant *might* be able to present a proposal that seems reasonable

[41] BIA, s 50.4(9).
[42] First Report at para 69.

on its face to a reasonable creditor, not whether it is certain that it will.[43] This factor is not a difficult standard to meet in the context of a first extension.[44]

53. Moreover, Courts routinely grant extensions in NOI proceedings to allow an applicant to pursue a sale of its business to facilitate a possible proposal.[45]

54. Absent an extension of the NOI period, the Company will be unable to implement the anticipated SISP, unable to make a viable proposal to its creditors, and will become bankrupt to the detriment of all stakeholders.

55. The Proposal Trustee supports the extension of the stay, and no creditor would be materially prejudiced if the extension is granted. The Proposal Trustee and the Company are unaware of any opposition to the requested extension.[46]

C. The Court should approve the DIP Loan Agreement and the Lender's Charge

56. The DIP Loan Agreement is necessary to provide the Company with sufficient liquidity to fund these proceedings and to conduct the SISP.

57. It is a condition of the DIP Loan Agreement that it be approved by this Court, and that the DIP Lender be granted a priority Court-ordered charge over all of the Company's property, subject only to the Administration Charge.

58. The Court has authority under section 50.6(1) of the BIA to authorize the DIP Loan Agreement and the DIP Lender's Charge, subject to a consideration of the factors in section 50.6(5) of the BIA.[47]

59. Subsection 50.6(1) provides three threshold criteria that must be satisfied for a Court to approve interim financing: (a) notice must be given to secured creditors likely to be affected by

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43 *H&H Fisheries Limited, Re,* 2006 NSSC 364 at para 22.
44 *Scotian Distribution Services Limited (Re),* 2020 NSSC 131 at para 24 cited in *T & C Steel Ltd., Re*, 2022 SKKB 236 at paras 8 and 20.
45 See, for example: *In the Matter of the Notice of Intention to make a proposal of JointCraft Inc.,* 2026 ONSC 965 (CanLII); *Indeed Laboratories Inc. v. BDO Canada Limited*, BK-25-03213105-0032, Endorsement of Steele J. (May 2, 2025); *Kilne Inc. v. Hielte et. al.,* BK-25-03224600-0031, Endorsement of Steele J. (July 29, 2025).
46 First Report at paras 70-71.
47 BIA, s 50.6.

the DIP Lender's Charge; (b) the amount to be granted under the proposed DIP loan be appropriate and required having regard to the Company's cash flow statement; and (c) the DIP Lender's Charge must not secure an obligation existing before the DIP Order is made.[48]

60. Each of these criteria have been satisfied in this case. Notice has been given to the Company's secured creditors. The Company has prepared a cash flow forecast, in consultation with Proposal Trustee (the "**Cash Flow Statement**"). The Cash Flow Statement demonstrates that the quantum set out in the DIP Loan Agreement, is necessary to maintain the Company's operations and fund these NOI proceedings.

61. When determining whether to grant a charge securing interim financing, subsection 50.6(5) of the BIA requires the Court to consider, among other things:

(a) the period during which the debtor is expected to be subject to proceedings under the BIA;

(b) how the debtor's 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;

(e) the nature and value of the debtor's property;

(f) whether any creditor would be materially prejudiced as a result of the charge; and

(g) the trustee's report and support for the interim financing and charge.[49]

62. Applied here, the statutory considerations enumerated in subsection 50.6(5) of the BIA, the remedial purpose of the BIA's proposal provisions, and the instruction provided by courts in interpreting them, support the granting of the DIP Loan Agreement and DIP Lender's Charge. Namely:

(a) the Company is facing a liquidity crisis. The only way in which these obligations can be met is through the DIP Loan Agreement. The "Outside Date" in the SISP and the Stalking Horse Agreement is October 30, 2025. The Cash Flow Statement runs until the week ending November 21, 2026, and indicates that the Company

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[48] BIA, s 50.6(1).
[49] BIA, s 50.6(5).

will, if the DIP Loan Agreement is approved, have sufficient liquidity to maintain its operations until that time;

(b) the Company is unable to continue its operations, unless the DIP Loan Agreement is approved, providing the Company with the requisite liquidity to implement the SISP and Stalking Horse Agreement;

(c) the Company's private secured creditors, were consulted on the Cash Flow Statement and the quantum in the DIP Loan Agreement and the DIP Lender's Charge, with supervision of the Proposal Trustee;

(d) the DIP Facility is needed to conduct the SISP, which will enhance the prospect of a viable proposal being made to creditors;

(e) the Company's assets are primarily composed of its intellectual property, and should be preserved for the benefit of its stakeholders; and

(f) the Proposal Trustee supports the DIP Loan Agreement and the DIP Lender's Charge and does not believe that creditors will be prejudiced as a result of its approval.[50]

D. The Court should grant the Administration Charge

63. The Company seeks the Administration Charge in the amount of $100,000 in order to secure the fees and disbursements of the Professional Group, whose services are critical to these proposal proceedings. The requested Administration Charge is to rank in priority to all other claims and encumbrances in the Company's property.

64. The Court may order security or charge to cover certain costs in respect of a notice of intention or a proposal in an amount the court considers appropriate in respect of the fees and expenses of the trustee, including their legal counsel, and for financial, legal or other experts engaged by the debtor.[51] Such charge may rank in priority over the claim of any secured creditor or other person.[52]

65. The Company submits it is appropriate for the Court to grant the Administration Charge for the following reasons:

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[50] First Report at para 60.
[51] BIA, s 64.2(1).
[52] BIA, s 64.2(2).

(a) the continued services of the Professional Group are critical to the progress and success of these proceedings and the proposed SISP, and without a charge the professionals are unlikely to continue in their capacities to support these proceedings;

(b) the roles of the Professional Group are distinct and there is no unwarranted duplication; and,

(c) the quantum of the proposed Administration Charge is reasonable and appropriate in the circumstances of these NOI proceedings.

66. Each member of the Professional Group whose fees and disbursements are to be secured by the Administration Charge have played, and will continue to play, a critical role in these proceedings.[53]

V – ORDER SOUGHT

67. For the reasons set forth herein, the Company respectfully requests the granting of the order substantially in the forms attached to the Notice of Motion as Schedule "A", as may be amended and presented at the hearing of this Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: August 31, 2026

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[53] *Mustang GP Ltd. (Re)*, 2015 ONSC 6562 at para 33.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750
2. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA).
3. *KEB Hana Bank v. Mizrahi Commercial (The One) LP et al*, 2024 ONSC 3739
4. *Danier Leather Inc. (Re)*, 2016 ONSC 1044
5. *H&H Fisheries Limited, Re*, 2006 NSSC 364
6. *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131
7. *In the Matter of the Notice of Intention to make a proposal of JointCraft Inc.,* 2026 ONSC 965
8. *Indeed Laboratories Inc. v. BDO Canada Limited*, BK-25-03213105-0032, Endorsement of Steele J. (May 2, 2025)
9. *Kilne Inc. v. Hielte et. al.*, BK-25-03224600-0031, Endorsement of Steel J. (July 29, 2025)

SCHEDULE "B"

RELEVANT LEGISLATION

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.

Individuals

(2) In the case of an individual,

(a) they may not make an application under subsection (1) unless they are 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.

Priority

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

Priority — previous orders

(4) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(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.

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.

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.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE PROPOSAL OF THOUGHTWIRE CORP.

Court File No. BK-26-03408761-0031
Estate File No. 31-3408761

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

Proceedings commenced at Toronto

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