CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N°: 500-11-058116-209

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

TRUIST BANK

-and-

ADVANCE STORES COMPANY, INC.

- and –

O'REILLY AUTOMOTIVE STORES, INC.

Impleaded party

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS IN THE NORMAL COURSE OF BUSINESS

Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("**CCAA**")

INTRODUCTION

1. The Petitioners are debtor companies for whom a first day initial order under the CCAA was rendered in this file on March 10, 2020 (the "**First Day Order**") and an amended and restated initial order was rendered on March 24, 2020 (the "**A&R Initial Order**"), as appears from the court record.

2. Since the issuance of the First Day Order, the Petitioners, with the assistance of the Monitor, have been in contact with their suppliers and several other stakeholders to inform them of the fact that all proceedings regarding pre-filing debts are stayed and that the Petitioners are continuing their operations in the normal course of business.

3. The Petitioners, with the assistance of the Monitor, are notably having discussions with parties that might consider interrupting services provided to the Petitioners because of the present proceedings, thereby requiring the Petitioners and the Monitor to emphasize the content of the First Day Order and the A&R Initial Order that specifically provides for the non interference with the rights of the Petitioners and the continuation of services post-filing.

4. Most third parties understand the situation and the post-filing business terms are easily agreed upon between the parties (with the assistance of the Monitor, when necessary).

5. However, as detailed hereinafter, Truist Bank, formerly known as Branch Banking and Trust Company ("**Truist**") is refusing to continue providing services to the Petitioners because of a so-called risk and has requested that the Petitioners obtain a specific order regarding their situation in order to have the comfort level required to continue business with the Petitioners.

6. Although it is usually not for the Court to render orders simply to make third parties comfortable and that the terms of the A&R Initial Order are clear and should apply, the Petitioners request the intervention of the Court to allow a quick resolution of this situation that is presently very detrimental to the Petitioners cash flow.

CONTRACTS AT ISSUE

7. Truist provides factoring services for two specific clients of the Petitioners, namely Advance Stores Company, Inc. ("**Advance**") and O'Reilly Automotive Stores, Inc. ("**O'Reilly**"), as appears from the relevant contracts (collectively, the "**Contracts**") communicated under seal respectively as **Exhibit R-1** and **Exhibit R-2**;

8. The factoring programs provided in the Contracts are essential to Spectra Premium (USA) Corp. ("**Spectra US**") because they allow Spectra US to get paid by O'Reilly and Advance within 30 to 60 days, depending on where the goods are to be shipped. Without the factoring program, O'Reilly and Advance request terms of payment of 365 days from their suppliers, which would simply be impossible to support financially for the Petitioners.

9. The structure of the program can be summarized as follows:

a. Spectra US receives purchase orders from O'Reilly and Advance;

b. Once the goods are being shipped by Spectra US, an invoice is issued;

c. After the goods are received, O'Reilly and Advance prepare a bundle of invoices at the beginning of every two weeks and sends same to Spectra US for approval before payment;

d. The bundle of invoices is approved by Spectra US within 24 hours and Truist pays the invoices included in the bundle on the Friday of that same week;

e. Truist applies a discount rate varying between 2% and 3% on the payment of the invoices, which is essentially the cost assumed by Spectra US to get paid within 30 to 60 days instead of 365 days.

10. Since the signature of the Contracts in 2011, Truist has always paid the amounts owed to Spectra US on the Friday of every two weeks, in accordance with the structure described above.

11. For the year 2019, Spectra US sold more than 62 M US$ of goods to O'Reilly and more than 3,5 M US$ of goods to Advance. These goods were all paid by Truist in accordance with the factoring program provided for in the Contracts.

<u>POSITION OF TRUIST</u>

12. The First Day Order was issued on March 10, 2020. On March 16, 2020, O'Reilly submitted a bundle of invoices totalling US$ 1,537,436 for approval by Spectra US, as appears from the email and the attached bundle of invoices communicated as **Exhibit R-3**;

13. In the normal course of business, said bundle should have been paid by Truist to Spectra US on March 20, 2020.

14. On or around March 18,, 2020, Truist advised that it will not be purchasing said bundle, because of the First Day Order and the "risk" associated therewith.

15. The Petitioners immediately involved the undersigned attorneys in the discussion and tried to explain to Truist that there is no "risk" associated with the transactions to be made post-filing in accordance with the normal practice and Contracts that have been signed several years prior to the First Day Order.

16. It is only during a discussion that took place on March 24, 2020, that Truist confirmed that it had no intention to continue the factoring program with Spectra US, O'Reilly and Advance until it obtains comfort from the Court that these transactions could not later be attacked by other third parties.

17. Truist confirmed that should the court declare that the transactions to be made in accordance with the Contracts are specifically authorised, it will honour its obligations in accordance with the Contracts.

CONCLUSION

18. Despite what Spectra US might believe of Truist's position, Spectra US has no other real alternative but to request the Court's intervention to satisfy Truist's request for comfort and specifically confirm that the transactions provided for under the Contracts are authorised.

19. Said transactions are done in the normal course of Spectra US' business and are essential to the Petitioners' cash flow. There is no reason why it would or could be attacked by third parties.

20. Although the amount being blocked by Truist as of today totals a little more than 1,5 M US$, the amount of outstanding invoices totals over 11 M $ for O'Reilly and 287,000 $ for Advance. All these invoices will become payable under the factoring program in the coming weeks.

21. Without the factoring program allowing for the efficient payment of these invoices, these invoices are at risk of not being collected for several months which would have a major detrimental effect on the Petitioners business.

22. For this reason, the Petitioners request that are provided at paragraphs 54 and following of the A&R Initial Order be abridged so to allow the presentation of this motion as soon as practicable for the court.

23. The Monitor has been made aware of the situation described herein and has advised the Petitioners that it approves the factoring program in place with Truist and that it supports the present motion.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Motion regarding certain transactions in the normal course of business* (the "**Motion**")*;*

ABRIDGE the delays of presentation of the Motion;

DECLARE that Truist Bank, Spectra Premium (USA) Corp., Advance Stores Company, Inc. and O'Reilly Automotive Stores, Inc. are authorized to continue the factoring of invoices in accordance with the agreements filed as Exhibit R-1 and Exhibit R-2 in support of the Motion and the normal course of business.

THE WHOLE without costs, except in case of contestation.

MONTREAL, April 2nd, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

AFFIDAVIT

I, the undersigned, HENRI PAUL BOYER, Vice-President, Finance of the Petitioners, having a place of business at 1421 Ampère Street, Boucherville, Québec, J4B 5Z5, solemnly affirm that:

1. I am the authorized representative of the Petitioners and, as such, I have cognizance of all the facts in the present matter;

2. All the facts alleged in the *Motion for the issuance of an order regarding certain transactions in the normal course of business* are true.

AND I HAVE SIGNED:

HENRI PAUL BOYER

Solemnly declared before me by videoconference,
this 2nd day of April, 2020.

Nathalie Tremblay #119,696

Commissioner of Oaths for Province of Quebec

NOTICE OF PRESENTATION

TO: **THE SERVICE LIST**

TAKE NOTICE that the present ***Motion for the issuance of an order regarding certain transactions in the normal course of business*** will be presented for before the Honourable Justice Louis Gouin, S.C.J., on April 6, 2020 at 10 AM. Any party wishing to object to this motion shall file a notice of objection **no later than April 5, 2020 at 5 PM**. If no notice of objection is received, the judge will render judgment on April 6, 2020, without a hearing. If a notice of objection is filed within the aforementioned delay, hearing details will be arranged with the Court on April 6, 2020.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 2nd, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N^{o}: 500-11-058116-209

S U P E R I O R C O U R T
(Commercial Division)
(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1995, c. 36, as amended)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and-

SPECTRA PREMIUM HOLDINGS (USA) CORP.

-and-

SPECTRA PREMIUM (USA) CORP.

-and-

SPECTRA PREMIUM PROPERTIES (USA) CORP.

-and-

SPECTRA PREMIUM TAIWAN CO. LTD.

-and-

SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.

-and-

SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

TRUIST BANK

-and-

ADVANCE STORES COMPANY, INC.

- and –

O'REILLY AUTOMOTIVE STORES, INC.

Impleaded party

LIST OF EXHIBITS
(In support of the *Motion for the issuance of an order regarding certain transactions in the normal course of business)*

EXHIBIT R-1: *Under Seal* Contract intervened between Truist and Advance Stores Company, Inc.;

EXHIBIT R-2: *Under Seal* Contract intervened between Truist and O'Reilly Automotive Stores, Inc.;

EXHIBIT R-3: Copy of an email and the attaches bundle of invoices submitted by O'Reilly on March 16, 2020;

MONTREAL, April 2nd, 2020

Lavery De Billy

LAVERY, DE BILLY, L.L.P.
Lawyers for Petitioners

N°: 500-11-058116-209

SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

SPECTRA PREMIUM INDUSTRIES INC.
-and- **SPECTRA PREMIUM HOLDINGS (USA) CORP.**
-and- **SPECTRA PREMIUM (USA) CORP**.
-and- **SPECTRA PREMIUM PROPERTIES (USA) CORP.**
-and- **SPECTRA PREMIUM TAIWAN CO. LTD.**
-and- **SPECTRA PREMIUM (SHANGHAI) AUTOMOTIVE TECHNICAL SERVICES CO. LTD.**
-and- **SPECTRA PREMIUM (CHONGQING) AUTOMOTIVE SERVICES CO. LTD.**

Petitioners

AND

ERNST & YOUNG INC.

Monitor

MOTION FOR THE ISSUANCE OF AN ORDER REGARDING CERTAIN TRANSACTIONS IN THE NORMAL COURSE OF BUSINESS
(Sections 4, 5, 11 and *ff.* of CCAA),
AFFIDAVIT, LIST OF EXHIBITS AND EXHIBITS R-1 TO R-3

O R I G I N A L

O/file: 001320-00060 BL 1332

Me Jean Legault: 514 878-5561
Me Jonathan Warin: 514 878-5616

LAVERY, DE BILLY, L.L.P.
SUITE 4000, 1, PLACE VILLE MARIE, MONTREAL, QUEBEC H3B 4M4
TELEPHONE: 514 871-1522 FAX NUMBER: 514 871-8977
EMAIL NOTIFICATIONS: NOTIFICATIONS-MTL@LAVERY.CA