CANADA PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL **N°: 500-11-058116-209**	**SUPERIOR COURT** (Commercial Division)

IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:

4406443 CANADA INC. (fka Spectra Premium Industries Inc.)

-and-

4406443 PREMIUM HOLDINGS (USA) CORP. (fka Spectra Premium Holdings (USA) Corp.)

-and-

4406443 PREMIUM (USA) CORP. (fka Spectra Premium (USA) Corp.)

-and-

4406443 PREMIUM PROPERTIES (USA) CORP. (fka Spectra Premium Properties (USA) Corp.)

Debtors / CCAA Parties

-and-

ERNST & YOUNG INC.

Monitor / Petitioner

MOTION FOR THE ISSUANCE OF (I) A DISTRIBUTION ORDER, (II) AN ORDER TERMINATING THE CCAA PROCEEDINGS AND (III) OTHER ANCILLARY ORDERS

(Section 11 and *ff.* of the *Companies' Creditors Arrangement Act* "**CCAA**"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION FOR THE DISTRICT OF MONTREAL, THE CCAA PARTIES RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. By the present motion (the "**Motion**"), the Monitor seeks from this Court the issuance of the following orders:

    a) An order for the final distribution of the proceeds held by the Monitor resulting from the realization of the residual assets of the Debtors (the "**CCAA Parties**" or the "**4406443 Group**") since November 2021 (i.e. assets excluded from the Sale Transaction closed on November 12, 2021) (the "**Distribution Order**");

    b) An order declaring that the present proceedings under the CCAA with respect to the CCAA Parties (the "**CCAA Proceedings**") are terminated upon the occurrence of the steps set forth therein (the "**Termination Order**");

c) An order **(i)** discharging and terminating the charges established by the CCAA Court in these CCAA Proceedings, namely the CCAA Charges (as defined below); **(ii)** discharging the Monitor from any further obligations, duties, liabilities and responsibilities in its capacity as Monitor pursuant to the Initial Order (as amended and restated), and any other orders issued in the context of these CCAA Proceedings; **(iii)** authorizing the Debtor 4406443 Canada Inc. ("**4406443 Canada**") to make an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**"), and the Monitor to proceed with such assignment on behalf of 4406443 Canada; **(iv)** extending the stay of proceedings until the earliest of July 31, 2023 or when the Termination Order becomes effective; and **(v)** an order simplifying the claims process in the bankruptcy proceedings of 4406443 Canada (items (iii), (iv) and (v), collectively, the "**Ancillary Orders**");

the whole as further detailed below.

II. <u>THE CCAA PROCEEDINGS</u>

2. The CCAA Parties, formerly known as the Spectra Group, filed their *Motion for the Issuance of an Initial Order* on March 9, 2020 (the "**Initial Motion**"), pursuant to which a CCAA Initial Order was issued on March 10, 2020 by the Superior Court of Québec (Commercial Division) (the "**CCAA Court**"). Subsequently, an Amended and Restated Initial Order was issued on March 24, 2020 by the CCAA Court (as further amended and restated on September 25, 2020, the "**Initial Order**"), the whole as appears from the Court record.

3. The Initial Order provided, *inter alia*, that all proceedings against the CCAA Parties were stayed until June 6, 2020, and appointed Ernst & Young Inc. as the Monitor (the "**Monitor**") of the CCAA Parties.

4. On June 5, 2020, the CCAA Court issued an Order extending the stay of proceedings until September 26, 2020.

5. On September 25, 2020, the CCAA Court issued a Second Amended and Restated Initial Order ordering, *inter alia*, that the stay of proceedings be extended until January 30, 2021.

6. On January 29, 2021, the CCAA Court issued a Third Order extending the stay of proceedings until May 31, 2021.

7. On May 31, 2021, the CCAA Court issued a Fourth Order extending the stay of proceedings until September 30, 2021.

8. On September 21, 2021, the CCAA Parties filed an *Application for i) the Issuance of an Approval* and *Vesting Order; ii) Issuance of an Assigned Contracts Order; and iii) a Fifth Extension of the Stay of Proceedings* (the "**AVO Application**").

9. On September 28, 2021, the CCAA Court granted the AVO Application and extended the stay of proceedings until April 30, 2022.

10. The sale transaction contemplated in the AVO Application closed on November 12, 2021, and substantially all of 4406443 Canada's and 4406443 Premium (USA) Corp.'s assets were transferred to the purchasers at closing.

11. On December 3, 2021, the powers of the Monitor were extended considering the resignation of all board members of 4406443 Group and the necessity to manage certain post-closing elements. The CCAA Court furthermore terminated the CCAA proceedings with respect to Spectra Premium Taiwan Co. Ltd., Spectra Premium (Shanghai) Automotive Technical Services Co. Ltd. and Spectra Premium (Chongqing) Automotive Services Co. Ltd.

12. On April 29, 2022, the CCAA Court issued a Sixth Order extending the stay of proceedings until December 2, 2022, and dispensed the Monitor from filing any further reports, including those required by Section 23(1)(d)(ii) of the CCAA, unless to inform the CCAA Court of any material development with respect to the remainder of the CCAA Proceedings, should the Monitor deem it necessary or advisable.

13. On December 2, 2022, the CCAA Court issued a Seventh Order extending the stay of proceedings until June 30, 2023.

III. UPDATE SINCE LAST EXTENSION

14. As of the last extension, the only asset of the CCAA Parties was the secured claim by 4406443 Canada against its Swedish subsidiary, Spectra Premium AB ("**Spectra AB**"), which filed for bankruptcy under Swedish insolvency and restructuring laws in May 2021.

15. On March 14, 2022, 4406443 Canada filed its proof of claim in the bankruptcy of Spectra AB in the amount of SEK 21 038 285 and CAD $11,094,193 ("**Spectra's Claim**").

16. Spectra AB's bankruptcy administrator has completed the liquidation of its assets and has reviewed Spectra's Claim.

17. Following the termination of the process for determination of claims, which process was outlined in further detail in the application for the seventh extension of the stay of proceedings, Spectra AB's bankruptcy administrator has proceeded with a distribution of SEK 45 851 705 (equivalent in $CAD 5 969 905) to 4406443 Canada on May 1st, 2023.

IV. FINAL DISTRIBUTION

18. Considering the foregoing, and as the present restructuring proceedings are completed and that the stay proceedings is expiring, the Monitor now seeks from this Court the issuance of an order authorizing the Monitor to proceed to the final distribution of the remaining proceeds of the realization efforts since November 2021 with respect to the remaining assets of the CCAA Parties (i.e. assets excluded from the Sale Transaction closed on November 12, 2021).

19. Such proceeds represent mainly the distribution received following the bankruptcy of Spectra AB in Sweden.

20. The details of the final distribution contemplated are provided in the Ninth Report of the Monitor, which shall be communicated to the Service List prior to the hearing of this Motion and shall carry the identification of **Exhibit R-1**.

21. Considering the absence of equity beyond the secured claims as evidenced by the outcome of the sale process conducted in this manner, the formal claims process that had been authorized by this court and initiated was interrupted prior to its completion.

22. In the absence of the completion of a formal claim process, it is respectfully submitted that it is appropriate for this Court to issue a distribution order, which is included in the draft order communicated herewith as **Exhibit R-2** (the "**Draft Order**"), in order to allow the Monitor to distribute such remaining amounts.

23. With respect to 4406443 Canada, the amount of Export Development Canada's ("**EDC**") outstanding secured claim is updated in the Ninth Report of the Monitor, Exhibit R-1.

24. The Monitor has obtained a security review from its counsels confirming the validity and enforceability of EDC's security interest.

25. In abundance of caution, all secured creditors as well as the tax authorities are receiving notification of the present Motion and of the Draft Order, Exhibit R-2.

V. TERMINATION OF THE CCAA PROCEEDINGS

26. The realization of all CCAA Parties' assets is now complete and the Monitor will have fulfilled its mandate pursuant to the Initial Order and subsequent orders of the CCAA Court once the distribution contemplated herein is effected.

27. Aside from filing and receiving the payment of Spectra's Claim, the activities of the Monitor since the last extension of the stay of proceedings were mainly the payment of certain remaining invoices of the professionals involved in the proceedings, follow up in order to end the Transition Services Agreement, dated November 12, 2021 with the Purchaser (Spectra NewCo), plan and prepare the end of the CCAA proceedings and to certain communications with 4406443 Group's creditors and in the context of the upcoming distribution.

28. That said, no other events required a material involvement of the Monitor in the context of the CCAA Proceedings of the CCAA Parties, as appears from the Ninth Report of the Monitor, Exhibit R-1.

29. Aside from the distribution, all of the other actions of the Monitor do not require to be handled within the CCAA Proceedings and should be managed within bankruptcy proceedings for 4406443 Canada.

30. Indeed, following the Sale Transaction that have taken place in this restructuring, the remaining CCAA Parties do not have operations, do not have employees or assets (aside from the funds to be distributed), and the Monitor do not expect any cash inflows or cash outflows, as appears from the Ninth Report of the Monitor, Exhibit R-1.

31. For these reasons, and considering the additional powers that had been granted to the Monitor, it is respectfully submitted that the Court should order termination of the present CCAA Proceedings, subject to the issuance of the ancillary orders mentioned below, which will allow the insolvency proceedings of 4406443 Canada to end in an orderly manner.

32. More specifically, it is contemplated that pursuant to the termination order sought, the termination would take effect upon the bankruptcy of 4406443 Canada to be initiated by the Monitor, once the distribution contemplated and other administrative matters are completed by the Monitor, and on or prior to July 31, 2023.

33. In parallel to the present application, the Monitor, acting as Foreign Representative in the Chapter 15 recognition proceedings taking place in the United States, has also instructed its counsels to proceed with the necessary proceedings before the U.S. Bankruptcy Court to seek the termination of the Chapter 15 proceedings, which termination is expecting to take place concurrently with the present CCAA proceedings prior or during the extended stay period sought herein (i.e. July 31, 2023).

VI. ANCILLARY ORDERS SOUGHT

34. The Monitor respectfully submits that in the context of the termination of the CCAA Proceedings, it is appropriate to issue the following Ancillary Orders, the whole as provided in the Draft Order, Exhibit R-2:

    a) An order discharging and terminating the charges established by the CCAA Court in these CCAA Proceedings, namely an administration charge for the benefit of certain professionals involved in the present matter, for an amount of $750,000, a directors and officers charge in the amount of $800,000, and a key employee retention plan charge in the amount of $850,000 (the "**CCAA Charges**");

    b) An order discharging the Monitor from any further obligations, duties, liabilities and responsibilities in its capacity as Monitor pursuant to the Initial Order and any other orders issued in the context of these CCAA Proceedings;

    c) An order authorizing 4406443 Canada to make an assignment in bankruptcy pursuant to the BIA, and authorizing the Monitor to proceed with such assignment on behalf of 4406443 Canada;

    d) An order extending the stay of proceedings until July 31, 2023, for the purpose indicated above; and

    e) An order dispensing unsecured creditors, excluding Scheduled Employees, who filed proofs of claim in the present proceedings from producing new proofs of claim in the bankruptcy proceedings of 4406443 Canada.

35. The termination and the discharge of the CCAA Charges is appropriate considering that the work of the professionals, which benefited from this charge, will be completed by the time this Motion is heard, and the payment of their fees will have been provided for as well.

36. There are currently no directors and officers, no key employee, and the Monitor is not aware of the existence of any claim by any parties pursuant to such charges, except the professional fees secured by the Administration Charge that will be paid at the same time as the final distribution mentioned above. As such the charge benefitting such parties is not required anymore.

37. Moreover, once the final distribution contemplated by this Motion will be completed, there will be no assets remaining in order to provide for the CCAA Charges.

38. As such, the CCAA Charges should be discharged and terminated in accordance with the Draft Order, Exhibit R-2.

39. As well, the Monitor has acted and fulfilled its duties at all times in accordance with the Initial Order and the various orders issued in this file, with diligence. The Monitor is respectfully submitting that it is appropriate that a release be issued in favour of the Monitor in accordance with the terms of the Draft Order, Exhibit R-2.

40. Furthermore, upon termination of the CCAA Proceedings, the CCAA Parties will not hold any asset and will remain inactive. However, 4406443 Canada and 4406443 Premium (USA) Corp. remains indebted towards its creditors and is insolvent.

41. As result, it is respectfully submitted that it is appropriate and in accordance with the proper administration of justice to authorize 4406443 Canada to file an assignment in bankruptcy upon the termination of the present CCAA Proceedings, and to further authorize the Monitor to proceed with such filings on behalf of 4406443 Canada upon completion of the distribution.

42. As expressed above, the Monitor requires a short extension of the stay of proceedings, until July 31, 2023, in order to proceed with the completion of the closing process of the Chapter 15 recognition proceedings taking place in the United States, the filing of the assignment in bankruptcy of 4406443 Canada and other related administrative and ancillary matters (including the distribution sought herein), at which moment the CCAA Proceedings shall be terminated and discontinued.

43. It is the position of the Monitor that no party will be materially prejudiced from the extension of the stay of proceedings and that the extension sought is appropriate under the present circumstances.

44. The Draft Order also provides for a retainer of $150,000 in connection with its anticipated fees and disbursements and the anticipated fees and disbursements of its counsel in the bankruptcy proceedings of 4406443 Canada. Following the conclusion of the bankruptcy of 4406443 Canada, any remaining amount held as retainer shall be remitted to Export Development Canada.

45. Lastly, the Draft Order provides for a simplified claims process in the bankruptcy proceedings of 4406443 Canada dispensing unsecured creditors, excluding Scheduled Employees, of 4406443 Canada who have filed a proof of claim in the present proceedings from filing a new proof of claim in the bankruptcy proceedings. Such streamlined claims process will allow the bankruptcy to proceed swiftly and is fair to the creditors.

46. In short, the issuance of the Ancillary Orders are appropriate in order to bring proper closure to the present CCAA Proceedings.

VII. CONCLUSION

47. Since the issuance of the Initial Order, the CCAA Parties and the Monitor have acted, and continue to act, in good faith and with due diligence.

48. It is respectfully submitted that the Draft Order, Exhibit R-2, should be issued, and that the present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

DECLARE that sufficient prior notice of the presentation of the Motion has been given to interested parties;

ISSUE an order substantially in the form of the draft Order (**Exhibit R-2**) communicated in support hereof;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montreal, June 19, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP
Mtre Guillaume Michaud and Mtre Arad Mojtahedi
Attorneys of the Monitor **ERNST & YOUNG INC.**

Suite 2500 - 1 Place Ville Marie
Montreal, Québec H3B 1R1
Telephone: 514.847. 4417
Facsimile: 514.286.5474
guillaume.michaud@nortonrosefulbright.com
arad.mojtahedi@nortonrosefulbright.com
Reference: 1001113411

AFFIDAVIT

I, the undersigned, Mario Denis, CPA, CIRP, LIT, of Ernst & Young Inc., having a place of business at 900 de Maisonneuve Blvd West, Suite 2300, in the City and District of Montreal, province of Quebec, H3A 0A8, solemnly declare the following:

1. I am a duly authorized representative of Ernst & Young Inc.;

2. I declare that all the facts contained herein are true.

AND I HAVE SIGNED, in Montreal, on June 19, 2023

Mario Denis

Signé numériquement par Mario Denis
DN : cn=Mario Denis, email=Mario.Denis@parthenon.ey.com
Raison : Approbation du transfert des fonds compte generalin trust à EY pour payer deux factures dna sle dossier Jeaniologie.
Date : 2023.06.19 14:04:30 -04'00'

Mario Denis

Solemnly affirmed before me by videoconference in Montreal, on June 19, 2023, in Montréal allowing me to recognize Mario Denis, and witnessing him having read the motion and the sworn declaration and having signed it. The document transferred by email is *Motion for the Issuance of (i) a Distribution Order, (ii) an Order Terminating the CCAA Proceedings and (iii) Other Ancillary Orders*

Nathalie Lemire

Commissaire à l'assermentation
110,884
Nathalie Lemire
Tous les districts judiciaires du Québec

Nathalie Lemire
Commissioner of oaths for the Province of Québec

NOTICE OF PRESENTATION

TO: **THE ATTACHED SERVICE LIST**

TAKE NOTE that the present *Motion for the Issuance of (i) a Distribution Order, (Ii) an Order Terminating the CCAA Proceedings and (iii) Other Ancillary Orders* will be presented before one of the honourable judges of the Superior Court sitting in commercial division and for the district of Montreal, on June 22, 2023, at a time and in a forum to be further announced to the Service List.

We ask that any party wishing to object to this motion to file a notice of objection no later than June 21, 2023 at 1 p.m. Montreal Time.

If there is no objection, judgment could be rendered without a hearing on June 22, 2023. If a notice of objection is filed, additional details will be circulated to the Service List prior to the hearing.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, June 19, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP
Mtre Guillaume Michaud and Mtre Arad Mojtahedi
Attorneys of the Monitor **ERNST & YOUNG INC.**

Suite 2500 - 1 Place Ville Marie
Montréal, Québec H3B 1R1
Telephone: 514.847. 4417
Facsimile: 514.286.5474
guillaume.michaud@nortonrosefulbright.com
arad.mojtahedi@nortonrosefulbright.com
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C A N A D A PROVINCE OF QUÉBEC DISTRICT OF MONTRÉAL **Nº: 500-11-058116-209**	**S U P E R I O R C O U R T** (Commercial Division) ***IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF:*** **4406443 CANADA INC.** (fka Spectra Premium Industries Inc.) -and- **4406443 PREMIUM HOLDINGS (USA) CORPS.** (fka Spectra Premium Holdings (USA) Corp.) -and- **4406443 PREMIUM (USA) CORP**. (fka Spectra Premium (USA) Corp.) -and- **4406443 PREMIUM PROPERTIES (USA) CORP.** (fka Spectra Premium Properties (USA) Corp.) Debtors / CCAA Parties -and- **ERNST & YOUNG INC.** Monitor

LIST OF EXHIBITS

Exhibit R-1: Ninth Report of the Monitor (to be communicated to the Service List).

Exhibit R-2: Draft Order.

Montreal, June 19, 2023

Norton Rose Fulbright Canada LLP

NORTON ROSE FULBRIGHT CANADA LLP
Mtre Guillaume Michaud and Mtre Arad Mojtahedi
Attorneys of the Monitor **ERNST & YOUNG INC.**

Suite 2500 - 1 Place Ville Marie
Montréal, Québec H3B 1R1
Telephone: 514.847.4417
Facsimile: 514.286.5474
guillaume.michaud@nortonrosefulbright.com
arad.mojtahedi@nortonrosefulbright.com
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S U P E R I O R   C O U R T
DISTRICT OF MONTRÉAL

4406443 CANADA INC. (fka Spectra Premium Industries Inc.)
-and-
4406443 PREMIUM HOLDINGS (USA) CORPS. (fka Spectra Premium Holdings (Usa) Corp.)
-and-
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Debtors / CCAA Parties

-and-

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Monitor / Petitioner

MOTION FOR THE ISSUANCE OF (I) A DISTRIBUTION ORDER, (II) AN ORDER TERMINATING THE CCAA PROCEEDINGS AND (III) OTHER ANCILLARY ORDERS, NOTICE OF PRESENTATION AND LIST OF EXHIBITS

ORIGINAL

BO-0042 # 1001113411

Mtre. Guillaume Michaud & Mtre. Arad Mojtahedi
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, suite 2500
Montréal (Quebec) H3B 1R1 CANADA
Telephone: +1 514.847.4417
Fax: +1 514.286.5474
guillaume.michaud@nortonrosefulbright.com
arad.mojtahedi@nortonrosefulbright.com
Notifications-mtl@nortonrosefulbright.com