

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

THE HONOURABLE REGIONAL) WEDNESDAY, THE 8th
)
SENIOR JUSTICE MORAWETZ) DAY OF JUNE, 2016
)



**IN THE MATTER OF THE PROPOSAL OF WASAYA
AIRWAYS LIMITED PARTNERSHIP AND WASAYA
GENERAL PARTNER LIMITED OF THE CITY OF
THUNDER BAY IN THE PROVINCE OF ONTARIO**

Applicants

ORDER

(Approving Proposal – Sec. 60(5))

THIS MOTION, made by Vine and Williams Inc., the trustee (in such capacity, the “**Proposal Trustee**”) in the joint proposal (the “**Joint Proposal**”) of Wasaya Airways Limited Partnership and its general partner Wasaya General Partner Limited (collectively, the “**Debtors**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report on the Joint Proposal of the Proposal Trustee dated May 27, 2016 (the “**Report**”), and the Exhibits thereto, and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Debtors, and counsel for those other parties listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Service of Maggi Smith, sworn June 1, 2016, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF PROPOSAL

2. **THIS COURT ORDERS** that defined terms not otherwise defined herein, shall have the meanings attributed to them in the Joint Proposal.

3. **THIS COURT ORDERS AND DECLARES** that the Joint Proposal of the Debtors as set out at **Exhibit "A"** to the Report and Annexed hereto as **Schedule "A"** is hereby approved.

4. **THIS COURT ORDERS AND DECLARES** that, pursuant to paragraph 1 of the Joint Proposal, the Unsecured Creditors will be deemed to have released and discharged all claims that arose prior to the NOI Filing Date against the former and current officers and directors of the Debtors, to the extent that these claims relate to the obligations of the Debtors where the directors and officers of the Debtors, as applicable, are liable in their capacity as directors and/or officers of the Debtors for the payment of such obligations, but shall exclude any such claims as described in s.50(14) of the BIA.

APPROVAL OF REPORT ON THE JOINT PROPOSAL

5. **THIS COURT ORDERS** that the Report, and the conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

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Schedule "A"

**Joint Proposal of Wasaya Airways Limited Partnership and its general partner Wasaya
General Partner Limited**

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE PROPOSAL OF
WASAYA AIRWAYS LIMITED PARTNERSHIP and WASAYA GENERAL
PARTNER LIMITED OF THE CITY OF THUNDER BAY
IN THE PROVINCE OF ONTARIO**

PROPOSAL

WHEREAS:

- A. Wasaya General Partner Limited ("WGPL") is the general partner of Wasaya Airways Limited Partnership ("WALP" and, collectively, with WGPL, the "Debtors" and each individually a "Debtor").
- B. WALP carries on a commercial aviation business in Northern Ontario;
- C. Each of WALP and WGPL filed a Notice of Intention to Make a Proposal ("NOI") on April 12, 2016, (the "NOI Filing Date") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "BIA");
- D. The operational restructuring of the Debtors has been undertaken and is substantially complete. The Debtors wish to effect a restructuring of their financial affairs in the expectation that all creditors will derive a greater benefit from this Proposal and the continued operation of the Debtors than if there was a forced liquidation of the Debtors' assets;
- E. Each of the Debtors hereby submits the following Proposal to all of their respective unsecured creditors (the "Unsecured Creditors"), in accordance with the BIA;
- F. This Proposal is presented in parallel with the concurrent Proposal filed separately by Wasaya Airways Leasing Ltd. ("Leasing").

Effect of Proposal

- 1. This Proposal restructures the financial affairs of the Debtors and amends the terms of any and all agreements between the Debtors and their creditors existing as at the NOI Filing Date and provides the essential terms on which all claims will be fully and finally resolved and settled. During the Proposal period, all creditors will be stayed from commencing or continuing any proceeding or remedy against the Debtors or any of their property or assets in respect of all unsecured claims including, without limitation, any proceeding or remedy to recover payment of any monies owing, to recover or enforce any judgment against the Debtors in respect of a claim or to commence any formal proceedings against them other than as provided for under this Proposal. Upon acceptance by the creditors and approval by the Court, Unsecured Creditors will be deemed to have released and discharged all claims that arose prior to the NOI

Filing Date against the Debtors and the Debtors' current and former officers and directors, as applicable.

Persons Affected

2. This Proposal will, as of the Effective Date (as defined in paragraph 10(a) below), be binding on the Debtors and the Unsecured Creditors.
3. Substantially all of the indebtedness owing to the Unsecured Creditors is owed directly by WALP. However, since WGPL is the general partner of WALP, it is also liable at law for any claim against WALP. In order to reconcile the above and avoid unnecessary duplication, the following rules apply to the claims made by Unsecured Creditors under this Proposal:
 - i. All claims asserted by Unsecured Creditors against either Debtor will be treated as claims in each Debtor's estate;
 - ii. Unsecured Creditors only need to submit one proof of claim form with respect to their claim;
 - iii. Only one joint meeting of the Unsecured Creditors of the Debtors will be held to consider and vote on this Proposal;
 - iv. If an unsecured creditor wishes to submit a proxy or voting letter, only one proxy or voting letter needs to be submitted; and
 - v. Dividends will be based on the proven claims submitted by Unsecured Creditors (without duplication) and only one distribution will be made to each unsecured creditor with a proven claim. Distributions will be made or issued by WALP; however, WGPL will be jointly liable for all payments.

Benefit of Proposal

4. This Proposal is the best option for the Debtors and their stakeholders at this time. If this Proposal is not approved by the Unsecured Creditors, the Debtors will be deemed bankrupt and affected stakeholders, including suppliers and the Unsecured Creditors, will receive nothing and be worse off than if this Proposal is implemented.

Secured Creditors

5. Payment of the claims of the secured creditors will be made in the following manner: the holders of secured claims will be paid in accordance with the present arrangements existing between the Debtors and the holders of secured claims or as may be arranged between the Debtors and the holders of secured claims. For greater certainty, the Debtors have acknowledged and agreed that the claims of Royal Bank of Canada ("RBC") and the Business Development Bank of Canada ("BDC") in particular are not affected by this Proposal.

Preferred Claims

6. Payment in priority to all other claims as directed by the Act to be so paid in the distribution of the property of a bankrupt will be provided for as follows:

Preferred claims, without interest, shall be paid in full in priority to all claims of unsecured creditors.

Fees and Expenses

7. Provision for payment of all proper fees and expenses of the Proposal Trustee, the legal costs of the Proposal Trustee and the Debtors and other fees incurred on and incidental to the proceedings arising out of this Proposal, including the preparation of this Proposal, will be made in the following manner:

All such fees and expenses will be paid in priority to all claims of preferred and Unsecured Creditors.

Crown Claims

8. All claims of Her Majesty in right of Canada or a province of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or under any substantially similar provision of provincial legislation and that were outstanding as at the NOI Filing Date will be paid in full within six (6) months of the date this Proposal is approved by the Ontario Superior Court of Justice [Commercial List] (the "Court").

Employees

9. In the case of employees and former employees of the Debtors, amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the *BIA* if the Debtors became bankrupt on the NOI Filing Date together with all wages, salaries, commissions or compensation for services rendered after the NOI Filing Date and before the date of Court approval of this Proposal will be paid to the employees and former employees of the Debtors immediately after Court approval of this Proposal. For greater certainty, employees will continue to be paid in the normal course and, as such, will be unaffected by this Proposal.

Unsecured Creditors — Unsecured Claims

10. Provision for payment of all claims of Unsecured Creditors, being those persons with claims not referred to in paragraphs 5 to 9 of this Proposal, including claims of every nature and kind whatsoever, whether due or not due for payment as of the date of this Proposal, and including contingent or unliquidated claims arising out of any transaction entered into by the Debtors prior to the NOI Filing Date will be made as follows:
 - (a) Unsecured Creditors with proven claims in the amount of \$1,000 or less will receive payment in full of their proven claims on a date which is not later than thirty (30) days after the Effective Date. For the purposes of this Proposal, "Effective Date" means the date of approval of this Proposal by the Court, provided that the appeal period relating thereto has expired with no appeal taken therefrom or, in the event of an appeal, the date such appeal is finally dismissed or withdrawn;
 - (b) Unsecured Creditors with proven claims in an amount greater than \$1,000 but less than \$10,000 will receive a dividend in the amount of \$1,000 payable not later than thirty (30) days after the Effective Date;

- (c) all other Unsecured Creditors will receive a dividend equal to ten (10) cents on the dollar on the amount of their proven unsecured claims in four (4) equal instalments over a twelve (12) month period, without interest, payable as follows:
 - (i) the initial instalment no later than thirty (30) days after the Effective Date; and
 - (ii) thereafter, additional instalments on each of the dates which are 4, 8, and 12 months after the Effective Date;
- (d) any unsecured creditor holding a proven claim in an amount in excess of \$10,000 that has been accepted by the Proposal Trustee may elect in writing at any time after the meeting of creditors up to the first dividend payment date to receive the sum of \$1,000 payable on the first payment date referenced in subparagraph (a) in full and final satisfaction of its claim and in lieu of the amounts otherwise payable under subparagraph (c);
- (e) on the Effective Date or within twenty (20) days thereafter, WALP will pay to the Proposal Trustee an amount sufficient to enable the payment of the aggregate dividends payable as set out in subparagraphs (a), (b), (c)(i) and (d); and
- (f) thereafter, WALP shall pay to the Proposal Trustee an amount sufficient to enable the payment of the dividend instalments payable to all remaining Unsecured Creditors on or before each of the dates referenced in subparagraph (c)(ii).

Claims Procedure

Filing Proofs of Claim

11. Unsecured Creditors are required to file a completed proof of claim ("Proof of Claim") with the Proposal Trustee prior to the commencement of the Creditors Meetings in order to vote on this Proposal.

Allowance or Disallowance of Claims by the Proposal Trustee

12. Upon receipt of a completed Proof of Claim, the Proposal Trustee shall examine the Proof of Claim and shall allow or disallow same, all in accordance with the provisions of the BIA. As provided in paragraph 3 of this Proposal, all claims asserted against either Debtor will be accepted as claims in both Debtors' estates (subject to being proven to the satisfaction of the Proposal Trustee and the Debtors).

Post Filing Goods and Services

13. All amounts due and payable for goods supplied and services rendered to the Debtors on or after the NOI Filing Date shall be paid for in full by the Debtors in the ordinary course.

Proposal Trustee

14. Vine and Williams Inc. of the City of Hamilton, in the Province of Ontario will be the proposal trustee (the "Proposal Trustee") under this Proposal and all monies payable pursuant to this Proposal will be paid to the Proposal Trustee, who will distribute all such payments in accordance with the terms of this Proposal.

Inspectors

15. At the statutory meetings of creditors to be held to consider this Proposal, the creditors may appoint one or more, but not exceeding five, inspectors under this Proposal whose powers will be restricted to advising the Proposal Trustee in respect of such matters as may be referred to the inspectors by the Proposal Trustee.

Waiver of Dividends by Related Party Creditors of the Debtors

16. If this Proposal is accepted by the Unsecured Creditors and approved by the Court, each of Wasaya Prop Shop Limited Partnership, Wasaya Community Economic Development Corporation, Wasaya Wilderness Adventures Inc. Wasaya Petroleum Limited Partnership, First Nations Petro Ltd., WGPL and Wasaya Group Inc., as related party creditors of the Debtors, will be deemed to have irrevocably waived the right to receive dividends on their claims for the amounts due and owing to them as at the NOI Filing Date as recorded on the books and records of the Debtors.

Interpretation

Date for Any Action

17. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day. "Business Day" means a day, other than a Saturday, or Sunday, on which the banks are generally open for business in Thunder Bay, Ontario.

Time

18. All times expressed herein are local time in Thunder Bay, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to this Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Thunder Bay, Ontario, Canada.

Currency

19. Unless otherwise stated herein, all references to currency in this Proposal are to lawful money of Canada.

Successors and Assigns

20. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any person named or referred to in this Proposal.

Miscellaneous

Modification of Proposal

21. The Debtors may propose an alteration or modification to this Proposal at or prior to the Creditors' Meeting.

Payments Net of Superintendent's Levy

22. All dividend payments to be made pursuant to this Proposal shall be made net of the levy payable to the Superintendent in Bankruptcy pursuant to section 147(1) of the BIA.

Conditions

23. This Proposal is conditional upon the fulfillment or satisfaction, on or prior to the date of Court approval of this Proposal, of the following conditions, each of which may be waived in whole or in part by the Debtors:
- (a) the completion of financing arrangements with Kingfisher Lake First Nation ("Kingfisher"), the Debtors and Leasing and related subordination and postponement agreements with each of RBC and BDC on terms satisfactory to the Debtors and RBC and BDC; and
 - (b) the performance by the Debtors of their obligations pursuant to this Proposal is conditional upon this Proposal being accepted by the Unsecured Creditors of the Debtors, approved by final order of the Court and becoming effective on the Effective Date and the concurrent acceptance, approval and effectiveness of the separate Proposal filed by Leasing.

IN THE MATTER OF THE PROPOSAL OF WASAYA AIRWAYS LIMITED PARTNERSHIP AND WASAYA GENERAL PARTNER LIMITED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(PROCEEDING COMMENCED AT TORONTO)

ORDER
(Approving Proposal – Sec. 60(5))

PALLET VALO LLP
Lawyers & Trade-Mark Agents
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario L5B 1M5

Alex Ilchenko / Wojtek Jaskiewicz
LSUC# 33944Q / 49809L

Tel: (905) 273-3300
Fax: (905) 273-6920

Lawyers for Vine and Williams Inc.
in its capacity as Proposal Trustee
of Wasaya Airways Limited Partnership and its
general partner Wasaya General Partner Limited