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Delivered Via E-mail

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Attention: Bruce A. Simpson

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Attention: Paul Feldman

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Attention: Sheldon Title

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Attention: E. Patrick Shea

Office of the Superintendent of Bankruptcy
(glenn.schmid@canada.ca)
Federal Building
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London, ON N6A 5C9

Attention: Glenn Schmid

Dear Sirs:

**Re: In the matter of the Notice of Intention to Make a Proposal of 1787930 Ontario
cob as Messenger Freight
Court File No. 35-2395481**

My client, Transit Petroleum Inc., is bringing a motion to lift the stay of proceedings to commence an action against 1787930 Ontario Inc. cob as Messenger Freight Systems and Louise Vonk-Hiddink. The action includes claims in fraudulent misrepresentation and civil fraud that are not released by the acceptance of the proposal. Please see Motion Record attached.

MNP, as proposal trustee, brought a motion dated September 8, 2020 for relief that included authorizing the delivery of a Certificate of Full Performance upon receipt of certain funds and approving the distribution to certain creditors so that MNP could be discharged as trustee.

It appears that MNP has not yet been discharged and thus the stay not lifted. The bankruptcy court in London is only scheduling urgent hearings. Due to the potential expiry of a limitations period, we will seek the scheduling of an urgent hearing, if necessary. However, I hope that counsel, MNP and the OSB will advise that they do not oppose the motion to lift the stay of proceedings so that this matter can be dealt with on an unopposed and in writing basis.


The leading case, *Re Ma* (ONCA), states that a proposed claim that survives bankruptcy (fraudulent misrepresentation in that case, like this one) is the type of claim that should be allowed to proceed. An examination on the merits is not appropriate and the moving party is not required to establish a *prima facie* case. Rather, the Court will determine if there is sufficient prejudice to justify the lifting of the stay. In this case, the potential expiry of a limitation period is sufficient to justify the lifting of the stay. The reality is that MNP has intended to seek a discharge as set out in its September motion (which would have resulted in the termination of the stay) but for whatever reason, that process has taken a long time.

Please advise as soon as possible if you/your client will not oppose the relief being sought. Otherwise, I will ask the Court for a date on an urgent basis.

Yours truly,

MILLER THOMSON LLP

Per:


Sherry A. Kettle
SAK/sj
Enc.

c: client

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