

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

Court No.: 35- 2395487 and 35-2395481

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
1732427 ONTARIO INC. AND 1787930 ONTARIO INC.
BOTH OF THE CITY OF ST. THOMAS,
IN THE PROVINCE OF ONTARIO**

MOTION RECORD

Date: 8 September 2020

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TAB 1

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

Court No.: 35- 2395487 and 35-2395481

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
1732427 ONTARIO INC. AND 1787930 ONTARIO INC.
BOTH OF THE CITY OF ST. THOMAS,
IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION

MNP Ltd. (the “**Proposal Trustee**”) in its capacity as Trustee in the Notice of Intention to Make a Proposal of 1787930 Ontario Inc. cob Messenger Freight (“**Messenger**”) and 1732427 Ontario Inc. will make a Motion to the Bankruptcy Court at 0900 on Tuesday, 15 September 2020 via telephone conference.

PROPOSED METHOD OF HEARING: The Motion is to be heard verbally via telephone conference.

THE MOTION IS FOR:

1. An Order:
 - (a) That the claim of Transit Petroleum Inc. be admitted the Proposal Trustee at its original claim amount of \$202,791.59;
 - (b) Requiring that Messenger remit \$5,970.54, or such other amount as the Proposal Trustee may determine, to Swanick & Associates to be held on the terms set forth in the Forth Report dated 1 September August 2020 (the “**Fourth Report**”);
 - (c) Requiring that Messenger pay to the Proposal Trustee the Administrative Fees and Expenses incurred or to be incurred in completing the administration of the Amended Proposal;

- (d) Authorizing a directing the delivery by the Proposal trustee of a Certificate of Full Performance upon receipt of the amounts referenced in paragraphs (b) and (c); and
 - (e) Approving the distribution to the Election Creditors as described in the Fourth Report; and
 - (f) Approving the activities of the Proposal Trustee as set forth in the Fourth Report.
2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 1. The grounds set out in the Fourth Report.
- 2. Such further and other grounds as counsel may advise and this Honourable Court may accept.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- 1. The Fourth Report; and
- 2. Such further and other evidence as this Honourable Court may permit.

8 September 2020

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Court No.: 35- 2395487 and 35-2395481

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427 ONTARIO INC. AND 1787930 ONTARIO INC. BOTH OF THE CITY OF ST. THOMAS, IN THE PROVINCE OF ONTARIO

ONTARIO
**SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)**
(PROCEEDING COMMENCED AT LONDON)

NOTICE OF MOTION

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TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

Court No.: 35- 2395487 and 35-2395481

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
1732427 ONTARIO INC. AND 1787930 ONTARIO INC.
BOTH OF THE CITY OF ST. THOMAS,
IN THE PROVINCE OF ONTARIO

FOURTH REPORT TO THE COURT
SUBMITTED BY MNP LTD.

SEPTEMBER 1, 2020

I. INTRODUCTION

1. On July 2, 2018, 1787930 Ontario Inc. cob as Messenger Freight (“**Messenger**”) and 1732427 Ontario Inc. (“**173 ONT**”, and collectively with Messenger, the “**Companies**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), wherein MNP Ltd. (“**MNP**”) was named as proposal trustee (the “**Proposal Trustee**”) of the Companies.
2. On July 31, 2018, the Court ordered the following:
 - a. The date for the filing of the Companies’ proposal be extended to September 14, 2018;

- b. That the proposal proceedings for Messenger and 178 ONT be administratively consolidated; and
 - c. The granting of Administration Charge of \$75,000 in favour of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Companies.
3. Each of Messenger and 173 ONT filed a proposal on October 12, 2018.
4. Each of Messenger and 173 ONT held meeting of their respective creditors on November 2, 2018. Prior to Messenger's meeting of creditors, Messenger amended its Proposal (the "**Amended Proposal**") to delete the clause that read "sections 95-101 do not apply to this Proposal". This amendment was made to preserve the creditors ability to pursue certain transactions identified by the Proposal Trustee in its report to Creditors, dated July 16, 2018 (the "**Report to Creditors**") including, as detailed further below, a July 5, 2018, payment from Messenger to Transit Petroleum Inc., a division of Hogg Petroleum ("**Transit Petroleum**") via a pre-authorized payment in the amount of \$83,734.05 (the "**Retained Funds**"). A copy of the Amended Proposal and the Report to Creditors are attached as **Appendices "A" and "B"**.
5. On December 4, 2018, the Court approved each of Messenger's and 173 ONT's proposal. A copy of the Court Order approving Messenger's proposal is attached as **Appendix "C"**.
6. At the general meeting of creditors, Messenger's creditors resolved to appoint three (3) Inspectors.
7. Transit Petroleum supplied Messenger with fuel after the filing of the NOI. Nonetheless, Transit Petroleum applied the Retained Funds against payment of Messenger's pre-NOI debt. Messenger commenced legal proceedings (the "**Transit Litigation**") against Transit Petroleum for recovery of the payment.
8. On January 28, 2019, the Court ordered that Transit Petroleum pay Messenger the sum of \$35,299.75, plus pre-judgment interest and costs in the sum of \$31,767.52 (the "**Transit Order**") The \$35,299.75 is calculated by deducting from the Retained Funds the amount

of \$48,434.40 owing by Messenger to Transit Petroleum for post-NOI purchases (the “**Post-NOI Transit Purchases**”).

9. Transit Petroleum appealed the Transit Order, with the appeal being heard on November 15, 2019. The Court of Appeal released its decision on December 3, 2019, wherein it set aside the Transit Order and remitted the matter to the motion judge for a new hearing on all issues except for the appellant’s entitlement to the payment for the Post-NOI Transit Purchases. The Court of Appeal also ordered that Transit Petroleum is entitled to its partial indemnity costs of the appeal in the agreed upon amount of \$15,000, inclusive of disbursements and applicable taxes.
10. Information regarding the proceedings has been posted to the Proposal Trustee’s website at <https://mnpdebt.ca/en/corporate/engagements/1787930-ontario-inc>.

II. RESTRICTIONS

11. In preparing this Report and making the comments herein, the Proposal Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Companies’ books and records, discussions with employees and management of the Companies, the proofs of claim filed by Messenger’s creditors and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards of the Chartered Professional Accountants of Canada.

III. PURPOSE OF THIS REPORT

12. The purpose of this Report is to:
 - a. Provide information to the Court with respect to the administration of the Messenger’s proposal proceeding, including the impact the Transit Litigation is having on the Proposal Trustee’s ability to distribute the Excess Funds (as such

term is defined below) to Messenger's unsecured creditors and issuing to Messenger a Certificate of Full Performance; and

- b. Provide the Court with the Proposal Trustee's recommendation for an Order, *inter alia*:
 - i. Authorizing the Proposal Trustee to accept Transit Petroleum's unsecured proof of claim in the amount of \$202,791.59;
 - ii. Authorizing the Proposal Trustee to issue the Certificate of Full Performance after receiving the additional proposal proceeds, being the amount required to satisfy the Administrative Fees and Expenses and upon receiving confirmation from Swanick & Associates, Messenger's legal counsel, that Messenger has paid \$5,970.54 (the "**Trust Fund**"), or such other amount determined by the Proposal Trustee having regard to, *inter alia*, any retraction of the elections made by the Election Creditors as set out herein, into its trust on the terms described in detail below;
 - iii. Approving that the distribution to the Election Creditors (as such term is defined below) be governed by the Article 3.3 Clause (as such term is defined below), save and except for the Election Creditors that provide the Proposal Trustee with written notice of the retraction of its election prior to the date set for this motion to be returnable ("**Motion Return Date**") ; and
 - iv. approving the activities of the Proposal Trustee as set out in this Report.

BACKGROUND INFORMATION¹

13. Messenger is an Ontario corporation carrying on business out of the Property (as such term is defined below) located in St. Thomas, Ontario and from rented premises in Cambridge, Ontario. Messenger is a transportation and logistics company. Messenger also provides warehousing and storage services to its customers, as well as providing repacking and sorting.

14. 173 ONT owns an approximately 130,000 square foot industrial property, situated on approximately 14 acres of land, located at 150 Dennis Road, St. Thomas, Ontario (the “**Property**”) from which Messenger carries on its warehousing and logistics business.

PROPOSAL ADMINISTRATION

15. The implementation of the Amended Proposal was conditional on the following:
- a. The acceptance of the Amended Proposal by the Unsecured Creditors;
 - b. The making of the Approval Order and the expiry of all appeal periods;
 - c. the acceptance of 173 ONT’s proposal; and
 - d. the completion of the Refinancing (as such term is defined in the Amended Proposal).
16. The Refinancing was completed in early February 2019. As part of the Refinancing, Messenger paid the Proposal Trustee an amount of \$400,000 (the “**Proposal Proceeds**”) payable by Messenger pursuant to Article 5 of the Amended Proposal. The Amended Proposal was accordingly implemented upon the completion of the Refinancing, the last of the four conditions precedent to be satisfied.
17. The Amended Proposal contemplated the proposal will be fully implemented by Messenger paying the Proposal Proceeds to the Proposal Trustee. As noted in greater detail below, the following complications have given rise to a situation where the Proposal Trustee has been unable to deliver the Certificate of Full Performance to Messenger:
- a. The impact of the Transit Litigation on the Proposal Trustee’s ability to determine the quantum of Transit Petroleum’s contingent proof of claim, and accordingly, on its ability to distribute the Excess Funds;
 - b. The amendments to the CRA Source Deduction Claim (as such term is defined below); and

- c. The Administrative Fees and Expenses exceeding the Threshold (as such term is defined below) and the ongoing role of the Proposal Trustee and its counsel requiring Messenger to fund the payment of additional Administrative Fees and Disbursements.

Canada Revenue Agency

18. Canada Revenue Agency (“**CRA**”) submitted four (4) proofs of claims for unpaid taxes, including unpaid source deductions; the original proof of claim followed by three amended claims. On February 22, 2019, CRA filed its third proof of claim, amending its claim for unpaid source deductions to \$125,797.56 (the “**CRA Source Deduction Claim**”). At a meeting of Inspectors held on March 22, 2019, the Inspectors authorized payment of the CRA Source Deduction Claim from the Proposal Proceeds; the Proposal Trustee paid the CRA Source Deduction Claim on March 25, 2019.
19. On February 18, 2020, CRA filed a further amended claim wherein it increased the CRA Source Deduction Claim to \$218,392.65, withdrew its claim for unpaid HST and corporate taxes and filed an unsecured proof of claim on account of principal and penalty and interest in the amount of \$107,606.18 related to Messenger’s source deduction account. Based on the Proposal Trustee’s June 17, 2020 discussion with a representative of CRA, the Proposal Trustee understands that subsequent to the implementation of the Amended Proposal, CRA carried out a trust examination that resulted in a reassessment for failure to remit source deductions in 2018, which reassessment included penalties and interest. The increase in the CRA Source Deduction Claim reduces the amount originally thought to be available to Messenger’s unsecured creditors.

Transit Petroleum’s Claim

20. Transit Petroleum originally filed a proof of claim, dated November 1, 2018, in the amount of \$202,791.59, which claim is net of the Retained Funds.
21. As a result of the Transit Litigation, on March 27, 2019, Transit Petroleum filed an amended proof of claim in the amount of \$286,525.64, the quantum of which is subject to change depending upon its success in the Transit Litigation. The amended proof of claim

provided that if an appeal of Justice Raikes decision (i.e., the Transit Order) results in the Agreed Payment of \$83,734.05 (the “**Potential Disputed Amount**”) not being returned to Messenger, the claim amount is \$202,791.59 (the amount of the original proof of claim).

22. Pursuant to section 135 of the BIA, the Proposal Trustee has a duty to examine every proof of claim and to determine if the proof of claim is valid. Given the contingent nature of Transit Petroleum’s amended proof of claim, the Proposal Trustee is unable to determine the extent of Transit Petroleum’s provable claim until the conclusion of the Transit Litigation.
23. The delay in determining the Transit Petroleum claim is having the following impacts on Messenger:
 - a. A delay in the Proposal Trustee’s distributing funds to Messenger’s unsecured creditors, which is having an adverse impact on the affected creditors and in its confidence in its dealings with Messenger; and
 - b. The ongoing involvement of the Proposal Trustee results in additional Administrative Fees and Expenses, and accordingly, the delay in Messenger’s fully performing its obligations under the terms of the Amended Proposal.

Election Creditors

24. Article 3.3 (the “**Article 3.3 Clause**”) of the Amended Proposal provides that an ordinary Unsecured Creditor may at the time of filing a Proof of Claim and for distribution purposes only elect, in writing, to accept a distribution equal to the lesser of (i) the amount of that Unsecured Creditor’s proven Claim; and (ii) \$1,000, in full and final satisfaction of its claim. The remaining ordinary Unsecured Creditors will be paid the balance of the Proposal Proceeds remaining after the payment of the aforementioned Claims on a pro rata basis;
25. On October 22, 2018, the Proposal Trustee sent each of Messenger’s creditors a package of documents, including an election form (“**Election Form**”) to be completed if they wished to make the election pursuant to the Article 3.3 Clause.

26. The Report to Creditors included a summary of the terms of the Amended Proposal, which indicated that “each ordinary Unsecured Creditor who makes the election in accordance with Article [3.3], will receive a distribution in accordance with Article [3.3]”.
27. Seven (7) creditors (the “**Election Creditors**”) returned the completed Election Form with their proofs of claim, with an aggregate value of \$973,481.68, with two creditors accounting for \$953,181.71 of this amount.
28. The Report to Creditors estimated that unsecured creditors may receive a distribution of approximately 8.28%. The Proposal Trustee is concerned that certain of the Election Creditors did not understand that in completing the election they were limiting their recovery to \$1,000 and will only come to that realization upon the Proposal Trustee making a distribution to creditors.
29. For the foregoing reasons, the Proposal Trustee has been hesitant to make an interim distribution to creditors, recognizing that it would have to reserve in excess of 50% of the funds remaining to distribute to unsecured creditors to address any of the Election Creditors that may object to the distribution.

Administrative Fees and Expenses

30. The Amended Proposal provides that the Administrative Fees and Expenses shall be paid in full out of the Proposal Proceeds to a maximum of \$113,000 (the “**Threshold**”) prior to the distribution to the Unsecured Creditors. Administrative Fees and Expenses in excess of those paid by the Proposal Proceeds shall be paid by retainers provided by Messenger to the Proposal Trustee.
31. The Administrative Fees and Expenses include the fees and expenses of the Proposal Trustee, its counsel, Gowlings WLG, and Messenger’s legal fees and disbursements related to the Amended Proposal. The Administrative Fees and Expenses are in excess of the Threshold and remain subject to taxation.

Proposed Distribution and Issuance of a Certificate of Full Performance

32. The Proposal Trustee recommends the Court consider making an order authorizing or approving the following as a means of resolving the foregoing issues and expedite the completion of the administration of the Amended Proposal in a cost efficient and equitable manner:

- a. For the purpose of participating in the distribution of the Excess Funds, that Transit Petroleum's claim be admitted at its original claim amount of \$202,791.59;
- b. To address the Potential Disputed Amount, Messenger shall remit an additional sum (not part of the funds contemplated under the Amended Proposal), being the Trust Fund, to Swanick & Associates, to be held pending the outcome of the Transit Litigation, with Swanick & Associates being directed to pay the Trust Fund in its entirety to either Messenger or Transit Petroleum, depending upon the outcome of the Transit Litigation. As discussed in greater detail below, the amount of the Trust Fund represents the equivalent dividend distribution on the Potential Disputed Amount so as not to put Transit Petroleum in a worse position should Messenger ultimately be successful in the Transit Litigation and the Transit Petroleum claim is admitted at \$286,525.64 for distribution purposes;
- c. That Messenger pay to the Proposal Trustee the Administrative Fees and Expenses incurred or to be incurred in completing the administration of the Amended Proposal, which amount remains subject to taxation; and
- d. That the Election Creditors each be given an opportunity to retract its election until the Motion Return Date, failing which its proof of claim is to be governed by the Article 3.3. Clause.

33. The Proposal Trustee recommends that the Court make the order sought for the following reasons:

- a. As noted previously, the quantum of Transit Petroleum's proof of claim cannot be determined until the Transit Litigation is settled or a final decision is reached. To ensure that all creditors are receiving a fair and equitable distribution, the Proposal Trustee has calculated the distribution to Messenger's creditors (other than the

Election Creditors and prior to any of the Election Creditors retracting their elections) based on Transit Petroleum's claim being valued net of the Retained Funds, which results in a return of approximately 7.13%. This is the most favourable result for Messenger's unsecured creditors (other than Transit Petroleum). In order to safeguard Transit Petroleum's ability to share rateably in the distribution should Messenger have success in the Transit Litigation, the Trust Fund will be paid to Transit Petroleum, such that Transit Petroleum will still be paid a return of approximately 7.13%. If Transit Petroleum is successful, the Trust Fund will be returned to Messenger. Should the Election Creditors having claims of \$953,182 retract their elections, the estimated distribution to affected creditors would decrease to approximately 3.53%, with the Trust Fund decreasing from \$5,970.54 to \$2,961.14 as a result of this dilution.

- b. Proceeding in the manner contemplated herein will permit the Proposal Trustee to proceed to its discharge without having to wait for the outcome of the Transit Litigation.
- c. The resolution of these issues will permit the Proposal Trustee to issue a Certificate of Full Performance to Messenger, which is beneficial for all stakeholders inasmuch as it will allow Messenger to have received the benefit of the restructuring, thereby enhancing its ability to sustain its business, notwithstanding the impact of COVID-19; and
- d. Election Creditors will have had an opportunity to retract their elections if they advertently submitted an election with their proofs of claim.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

34. The SRD, attached as **Appendix "D"**, reflects an excess of receipts over disbursements of \$69,907.35 (the "**Excess Funds**"). The SRD does not reflect the unpaid Administrative Fees and Expenses, which in accordance with the Amended Proposal, will be paid by way of additional retainers. The Excess Funds, however, is calculated after accruing payment

of the additional \$92,595.09 in respect of the CRA Source Deduction Claim and limits the net Administrative Fees and Expenses to the Threshold.

CONCLUSION AND RECOMMENDATION

35. Based on the foregoing, the Proposal Trustee respectfully recommends that the Court make an order granting the relief detailed in paragraph 12.

All of which is respectfully submitted on this 1st day of September 2020.

MNP LTD.

In its capacity as Trustee in re
the Notice of Intention to Make a Proposal of
1787930 Ontario Inc. and 1732427 Ontario Inc.

Per:



Sheldon Title
Licensed Insolvency Trustee

TAB A

Appendix "A"

Court No.: 35-2395481

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
1787930 ONTARIO INC.
OF THE CITY OF ST. THOMAS,
IN THE PROVINCE OF ONTARIO**

PROPOSAL OF 1787930 ONTARIO INC.

1787930 Ontario Inc. hereby submits the following Proposal to its Unsecured Creditors pursuant to Part III of the BIA.

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) “**173 ONT**” means 1732427 Ontario Inc., the related company that owns the land and building from which the Debtor primarily carries on its business;
- (b) “**173 ONT’s Proposal**” means the Proposal filed by 173 ONT pursuant to Part III, Division I of the BIA;
- (c) “**Administrative Fees and Expenses**” means:
 - (i) the proper fees and expenses of the Trustee incidental to the preparation and facilitation of the Proposal and any amendments thereto, including, without limitation, its legal fees and disbursements; and
 - (ii) the legal fees and disbursements of the Debtor on and incidental to negotiations in connection with the approval of the Proposal, court proceedings relating to the Proposal and the transactions and agreements contemplated hereby, including, without limitation, advice to the Debtor.
- (d) “**Approval Order**” means an Order of the Court approving the Proposal;



- (e) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and in force as at the Proposal Date;
- (f) “**Business Day**” means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (g) “**Canada Pension Plan**” means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as amended;
- (h) “**Claim**” means any right of any Person against the Debtor or a Director in connection with any indebtedness, liability or obligation of any kind of the Debtor which indebtedness, liability or obligation is in existence at the Proposal Date, whether or not reduced to judgement, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or as of the Proposal Date;
- (i) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (j) “**Creditor**” means any Person, having a Claim and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (k) “**Creditors’ Meeting**” means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (l) “**Creditors’ Meeting Date**” means the date and time as may be called by the Trustee for the meeting of creditors to consider this Proposal, but in any event shall be no later than twenty-one (21) days following the Proposal Date;
- (m) “**Debtor**” means 1787930 Ontario Inc.;
- (n) “**Directors**” means the Debtor’s current and past directors;
- (o) “**Employee Creditors**” means employees and former employees of the Debtor, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under **paragraph 136(l)(d)** of the BIA if the Debtor became bankrupt on the Proposal Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Debtor’s business during the same period;



- (p) “**Employment Insurance Act**” means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (q) “**Implementation Date**” means the date upon which the conditions set forth in **Article [7.4]** have been satisfied;
- (r) “**Income Tax Act**” means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (s) “**Inspectors**” means one or more inspectors appointed pursuant to the BIA as provided for in the Proposal;
- (t) “**Official Receiver**” shall have the meaning ascribed thereto in the BIA;
- (u) “**Person**” means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (v) “**Preferred Creditors**” means Creditors with Proven Claims that are required by the BIA to be paid in priority to all other claims under a proposal made by a debtor save and except for Employee Creditors and Source Deduction Creditors;
- (w) “**Proof of Claim**” shall mean the proof of claim required by the BIA to be mailed to each known Creditor prior to the Creditors’ Meeting;
- (x) “**Proposal**” means this proposal together with any amendments or additions thereto;
- (y) “**Proposal Date**” means the date of the filing of the Proposal with the Official Receiver;
- (z) “**Proposal Proceeds**” mean the funds contributed in accordance with **Article [5.1]**;
- (aa) “**Proven Claim**” of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the BIA;
- (bb) “**Refinancing**” means the loan that the Debtor has applied for in order to finance the Debtor’s working capital requirements, including payment of the Proposal Proceeds, which financing is subject to conditions in favour of the Lender;
- (cc) “**Related Creditors**” means Louise Vonk;
- (dd) “**Secured Creditor**” means any Person holding a mortgage, hypothec, pledge, charge, lien or privilege on or against the property of the Debtor or any part thereof as security for a Claim, and “**Secured Creditors**” means all of them;



- (ee) “**Source Deduction Creditors**” means Her Majesty in Right of Canada or a Province for all amounts that were outstanding on the Proposal Date and are of a kind that could be subject to a demand under,
- (i) **subsection 224(1.2)** of the *Income Tax Act*;
 - (ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to **subsection 224(1.2)** of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or
 - (iii) any provision of provincial legislation that has a similar purpose to **subsection 224(1.2)** of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum;
 - (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*; or
 - (B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a “province providing a comprehensive pension plan” as defined in **subsection 3(1)** of the *Canada Pension Plan* and the provincial legislation establishes a “provincial pension plan” as defined in that subsection;
- (ff) “**Trustee**” means MNP Ltd. or its duly appointed successor or successors;
- (gg) “**Unsecured Creditors**” means the Preferred Creditors and any Creditor who is not a Secured Creditor; and
- (hh) “**Voting Letter**” shall mean the voting letter required by **subsection 51(1)** of the BIA to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.



1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.4 Date for Any Action

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 that is a Business Day.

1.5 Time

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

1.6 Numbers

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

1.7 Currency

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

1.8 Statutory References

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.9 Successors and Assigns

The 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 the Proposal.

ARTICLE 2

CLASSIFICATION AND TREATMENT OF CREDITOR

2.1 Classes of Creditors

For the purposes of voting on the Proposal, only the Unsecured Creditors will be entitled to vote on the Proposal. There shall be one (1) class of Unsecured Creditors.

2.2 Secured Creditor

The Claim of each Secured Creditor shall be paid by the Debtor in accordance with agreements between the Debtor and the Secured Creditor or as otherwise agreed between the Secured Creditor and the Debtor. For greater clarity, each Secured Creditor shall not be affected by the Proposal or the Proposal proceedings commenced by the Debtor under the BIA.

2.3 Administrative Fees and Expenses

The Administrative Fees and Expenses shall be paid in full out of the Proposal Fund to a maximum of \$113,000 prior to distribution to the Unsecured Creditors. Administrative Fees and Expenses in excess of those paid by the Proposal Proceeds shall be paid by retainers provided by the Debtor to the Trustee.

2.4 Preferred Creditors

The Proven Claims of the Preferred Creditors are to be paid in full in priority to the Proven Claims of the Unsecured Creditors in accordance with the BIA and the Proposal.

2.5 Unsecured Creditors

The Proven Claims of the Unsecured Creditors, other than Preferred Creditors, will be satisfied or paid as provided by **Article [6]**.

2.6 Related Creditors

The Related Creditors claims shall receive no dividend under this Proposal.

ARTICLE 3

PROCEDURE FOR VALIDATION OF CLAIMS

3.1 Filing of Proofs of Claim

Each Unsecured Creditor must file a Proof of Claim as required by the BIA to vote on, or receive a distribution under, the Proposal.

3.2 Allowance or Disallowance of Claims by the Trustee

Upon receipt of a completed Proof of Claim, the Trustee shall examine the Proof of Claim and shall deal with each Proof of Claim in accordance with the provisions of the BIA. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the BIA.



3.3 Election

An ordinary Unsecured Creditor may at the time of filing a Proof of Claim and for distribution purposes only elect, in writing, to accept a distribution equal to the lesser of: (i) the amount of that Unsecured Creditor's Proven Claim; and (ii) \$1,000, in full and final satisfaction of its claim.

3.4 Delivery of section 149 Notice

Immediately after the Implementation Date, the Trustee will deliver notices as provided by **section 149** of the BIA.

ARTICLE 4

MEETING OF CREDITORS

4.1 Unsecured Creditors' Meeting

On the Creditors' Meeting Date, the Debtor shall hold the Creditors' Meeting in order for the Unsecured Creditors to consider and vote upon the Proposal.

4.2 Time and Place of Meeting

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in the notice of Creditors' Meeting to be mailed to Creditors pursuant to the BIA.

4.3 Conduct of Meetings

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors and legal counsel of the Debtor, together with such representatives of the Trustee as the Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

4.4 Adjournment of Meetings

The Creditors' Meeting may be adjourned in accordance with **section 52** of the BIA.

4.5 Voting by Creditors

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount that is equal to that Unsecured Creditor's Claim. Any Proof of Claim in respect of a Claim that is not a Proven Claim as at the Creditors' Meeting Date will be marked as objected

to in accordance with **subsection 108(3)** of the BIA. Related Creditors will not be entitled to vote at the Creditors' Meeting.

4.6 Approval by Creditors

In order that the Proposal be binding on all of the Unsecured Creditors of the Debtor in accordance with the BIA, it must first be accepted by each class of Unsecured Creditors by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing two-thirds in value of the Proven Claims of the Unsecured Creditors in each class who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

4.7 Appointment of Inspectors

At the Meeting of Creditors, the Unsecured Creditors may appoint up to **five (5)** Inspectors whose powers will be limited to: (a) advising the Trustee concerning any dispute which may arise as to the validity of Claims; and (b) advising the Trustee from time to time with respect to any other matter that the Trustee may refer to them.

ARTICLE 5

FUNDING OF PROPOSAL

5.1 Funding of Proposal.

On the Implementation Date the Debtor will pay \$400,000 (the "**Proposal Proceeds**") to the Trustee to be distributed in accordance with **Article [6]**.

ARTICLE 6

DISTRIBUTION

6.1 Distribution

The Proposal Proceeds shall be distributed by the Trustee as soon practicably possible, but in any event within six (6) months of the Implementation Date, as follows:

- a) First, to payment of Source Deduction Creditors;
- b) Second, to payment of the unpaid Administrative Fees and Expenses to the maximum set out in Article [2.3];
- c) Third, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 of the BIA;
- d) Fourth, to payment of the Claims, if any, of the Employee Creditors;

- e) Fifth, to payment of all Claims of any other Preferred Creditors in the priority set out in section 136 of the BIA;
- f) Sixth, each ordinary Unsecured Creditor who makes the election in accordance with Article [3.3], will receive a distribution in accordance with Article [3.3]; and
- g) Seventh, the remaining ordinary Unsecured Creditors will be paid the balance on a *pro rata* basis.

6.2 Levy

Payments to each Unsecured Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the BIA and the Trustee shall remit the amount of such levy to the Office of the Superintendent of Bankruptcy contemporaneous with the distributions to Unsecured Creditors.

6.3 Discharge of Trustee

Upon the payment by the Trustee of the amounts contemplated in this **Article [6]** the Trustee shall have discharged its duties as Trustee and the Trustee shall be entitled to apply for its discharge as Trustee. For greater certainty, the Trustee will not be responsible or liable for any obligations of the Debtor and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default.

ARTICLE 7

MISCELLANEOUS

7.1 Compromise Effective for all Purposes

The provisions of this Proposal will be binding upon each Unsecured Creditor, their heirs, executors, administrators, successors and assigns, for all purposes. Subject to the limitations in **section 50(14)** of the BIA, the Claims against the Directors that arose before the Proposal Date and that relate to the obligations of the Debtor where the directors are by law liable in their capacity as directors for the payment of such obligations will be satisfied and released.

7.2 Modification of Proposal

The Debtor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Unsecured Creditor will be deemed:



- (a) to have executed and delivered to the Debtor all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Debtor in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Unsecured Creditor and the Debtor as at the Implementation Date (other than those entered into by the Debtor on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Debtor, the Trustee and all of their respective affiliates, employees, agents, directors, officers, shareholders, advisors, consultants and solicitors from any and all demands, claims, actions, causes of action, counter-claims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein; provided that nothing herein shall release the Debtor of its obligation to make the distributions to Unsecured Creditors contemplated in this Proposal.

7.4 Conditions to Proposal Implementation

The implementation of the Proposal by the Debtor will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) The acceptance of the Proposal by the Unsecured Creditors;
- (b) The making of the Approval Order and the expiry of all appeal periods;
- (c) the completion of the Refinancing; and
- (d) the acceptance of 173 ONT's Proposal.

7.5 Full Implementation

This Proposal will be fully implemented by the Debtor on payment of the funds as provided by **Article [5.1]**.

7.6 Effect of Proposal Generally

As at 12:01 a.m. on the date of the Approval Order becomes final and binding:

- (a) The treatment of all Claims under the Proposal shall be final and binding on the Debtor and all Unsecured Creditors (along with their respective heirs, executors, administrators, legal personal representatives, successors and assigns); and
- (b) The Proposal shall constitute: (i) a full, final and absolute settlement of all rights of the holders of the Claims affected hereby; and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Debtor and the Directors of or in respect of the Claims.

7.7 Conduct of Debtor's Business

Subject to any Order made by the Court, the Debtor shall remain in possession and control of their property and assets at all times, both before and after implementation of this Proposal.

~~Deleted~~

~~ARTICLE 8~~

~~ⓧ~~

~~AVOIDANCE OF TRANSACTION~~

~~8.1 Avoidance Proceedings~~

~~Sections 95 to 101 of the BIA will not apply in respect of the Debtor or this Proposal.~~

ARTICLE 9

GENERAL

9.1 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Debtor:

1789390 Ontario Inc. cob as Messenger Freight
 150 Dennis Road
 St. Thomas, ON N5P0B6
Attention: Louise Vonk
 E-mail : louise@messengerfreight.ca

~~ⓧ~~

- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and
- (c) if to the Trustee:

MNP Ltd.
300-111 Richmond St W
Toronto, ON M5H 2G4

Attention: Sheldon Title
Telecopier: 416-596-7894
E-mail : sheldon.title@mnp.ca

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lock-out and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5th) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

9.2 Foreign Currency Obligations

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Proposal Date.

9.3 Applicable Law

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

9.4 Non-Severability

It is intended that all provisions of this Proposal shall be fully binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason

whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect

9.5 Deeming Provisions

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

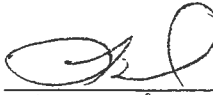
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EXECUTION PAGE

DATED at London, Ontario this 12th day of October, 2018.

1789390 ONTARIO INC.

Per: 
Name: Louise Vanik
Title: President

I have authority to bind the corporation.



TAB B

Appendix “B”

District of ONTARIO
 Division 05-London
 Estate #: 35-2395481
 Court # 35-2395481

SUPERIOR COURT OF JUSTICE (IN BANKRUPTCY)

**IN THE MATTER OF THE PROPOSAL OF
 1787930 ONTARIO INC.
 COB AS MESSENGER FREIGHT
 OF THE CITY OF ST. THOMAS,
 IN THE PROVINCE OF ONTARIO**

REPORT OF TRUSTEE TO THE CREDITORS
(Section 50(5) of the Bankruptcy and Insolvency Act)

Enclosed are the following documents:

- ♦ Notice of Proposal to Creditors;
- ♦ Proposal under Part III, Division I, of the *Bankruptcy and Insolvency Act* (the “**BIA**”), dated October 12, 2018 (the “**Proposal**”) lodged with MNP Ltd. (the “**Trustee**”) by 1787930 Ontario Inc. cob as Messenger Freight (“**Messenger**” or the “**Company**”) and filed with the Official Receiver on October 12, 2018;
- ♦ a statement of affairs, detailing the Company’s assets and liabilities as July 2, 2018 (“**SOA**”);
- ♦ a proof of claim form;
- ♦ voting letter if you wish to vote in advance of the meeting; and
- ♦ general proxy.

The following is an outline of the background and financial position of the Company, including relevant information that should be of assistance to the creditors in considering their position with respect to the Proposal.

In preparing this Report and making the comments herein, the Trustee has been provided with, and has relied upon, certain unaudited, draft and/or internal financial information, the Company’s books and records, discussions with employees and management and information from other third-party sources (collectively, the “**Information**”). Except as described in this Report, the Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook.

Capitalized terms used in this Report are the same as those referenced in the Proposal.

SECTION A - Background

Messenger is an Ontario corporation carrying on business out of the Real Property (as defined below) located in St. Thomas, Ontario and from rented premises in Cambridge, Ontario. Messenger is a transportation and logistics company. Messenger provides warehousing and storage services to its customers, as well as providing repacking and sorting.

1732427 Ontario Inc. (“**173 ONT**”, and together with Messenger, the “**Companies**”), a related company to Messenger, owns an approximately 130,000 square foot industrial building, situated on approximately 14 acres of land, located at 150 Dennis Road, St. Thomas, Ontario (the “**Real Property**”) from which Messenger carries on its business.

Each of Messenger and 173 ONT filed a Notice of Intention to Make a Proposal on July 2, 2018, and each obtained an extension of time within which to file a Proposal from the Court.

On October 12, 2018, the Company filed a Proposal pursuant to the BIA, as a means of: (i) stabilizing the Companies; (ii) considering the possibility of a restructuring; and (iii) offering its creditors a dividend that would be higher than its creditors would receive in the event of a bankruptcy.

The Trustee is maintaining a website at <https://mnpdebt.ca/en/corporate/engagements/1787930-ontario-inc> with publicly available information on the Companies proposal proceedings.

SECTION B - Summary of the Proposal

This section contains a summary of the Proposal, the terms of which would be effective only if the Proposal is accepted by the creditors and approved by the Court, in accordance with the provisions of the BIA.

As set out in the Proposal, the Proposal provides for the following:

- (i) Conditional on, *inter alia*, the approval of the Proposal by the Unsecured Creditors of Messenger and the making of the Approval Order, Messenger will pay to the Trustee the sum of \$400,000 (the “**Proposal Proceeds**”);
- (ii) Secured Creditors will be paid in accordance with existing arrangements, or as may be arranged with them and are not affected by this Proposal;
- (iii) Payment of the proper fees and expenses of the Trustee, including legal fees, in connection with the Proposal shall be paid out of the Proposal Proceeds, to a maximum of \$113,000, inclusive of Harmonized Sales Tax (the “**Fee Cap**”);
- (iv) An ordinary Unsecured Creditor may at the time of filing a Proof of Claim and for distribution purposes only elect, in writing, to accept a distribution equal to the lesser of: (i) the amount of that Unsecured Creditor’s Proven Claim; and (ii) \$1,000, in full and final satisfaction of its claim;
- (v) The Proposal Proceeds shall be distributed by the Trustee as soon as practicably possible, but in any event within six (6) months of the Implementation Date, as follows:
 - a) First, to payment of Source Deduction Creditors (defined below);
 - b) Second, to payment of Administrative Fees and Expenses to the maximum of the Fee Cap, with the excess, if any, paid from retainers paid by the Company to the Trustee;

- c) Third, to payment of the Office of the Superintendent of Bankruptcy levy payable under section 147 and Rule 123(2) of the BIA on the distributions set-out below;
 - d) Fourth, to payment of the Claims, if any, of the Employee Creditors;
 - e) Fifth, to payment of all Claims of any other Preferred Creditors in the priority set out under section 136 of the BIA;
 - f) Sixth, each ordinary Unsecured Creditor who makes the election in accordance with Article [3.3], will receive a distribution in accordance with Article [3.3]; and
 - g) Seventh, the remaining ordinary Unsecured Creditors will be paid the balance of the Proposal Proceeds remaining after the payment of the aforementioned Claims on a *pro rata* basis;
- (vi) Any Claims against Messenger by any Creditor that are also Claims against the directors and/or officers of Messenger that relate to obligations of Messenger where the directors and/or officers are under any law liable in their capacity as directors and/or officers for the payment of such obligations shall be, and upon Court approval of the Proposal, are to the extent permitted by the BIA, released and forever discharged as against the directors and/or officers of Messenger;
 - (vii) Sections 95-101 of the BIA will not apply in respect of this Proposal;
 - (viii) The claim of Louise Vonk, Messenger's sole shareholder, will receive no distribution under the Proposal; and
 - (ix) The implementation of the Proposal is also conditional on the completion of a refinancing. The Company entered into a Letter of Intention, which if finalized, will support the Company's working capital requirements including the payment of the Proposal Proceeds.

The above description of the Proposal is a summary only, and readers are cautioned that if there is inconsistency between this report and the Proposal, the terms of the Proposal shall govern.

SECTION C - Financial Position and Causes of Difficulties

1. Messenger advises that the causes of its financial difficulties are attributable to the following:
 - a. In the summer of 2017, Messenger was negatively impacted by a six-week strike by the unionized staff at General Motors' CAMI plant ("CAMI"). Messenger had several trucks that ran 24/6 dedicated to CAMI and had trucks dedicated to the feeder plant that supplied CAMI with seats via dedicated runs and shunter service around the plant;
 - b. One of Messenger's larger customers also experienced a slowdown in service, which resulted in them cancelling runs on a day's notice; an impact of approximately 20 runs a day, twice a week in the months of October and November. This reduced activity resulted in drivers leaving Messenger; and

- c. Messenger's cost structure has increased and is too high given the size of Messenger's business. While it would have been beneficial for Messenger to pass recent cost increases onto its customers, sometimes it is locked into fixed pricing under contract and forced to absorb those costs.

2. A summary of the Companies' combined historical financial results is set out below¹:

Year Ended July 31 (CAD \$)	F2016 Unaudited	F2017 Unaudited
Revenue	\$20,440,844	\$20,665,200
% Growth	N/A	1%
Cost of Goods Sold	15,774,476	15,937,798
Gross Margin	4,666,368	4,727,402
Gross Margin (%)	23%	23%
Operating Expenses	3,592,438	3,674,208
Operating Expenses (%)	18%	18%
EBITDA	1,599,544	1,586,802

SECTION D - Interim Receiver

Not Applicable.

SECTION E - Identification and Evaluation of Assets

According to the SOA, the Company's assets and their estimated realizable value are as listed below. Further details can be found in Section L of this Report.

Description	Estimated Realizable Value
Accounts receivable (net of allowance for doubtful accounts)	\$ 145,262
Equipment (fleet of trucks and trailers)	2,601,178
TOTAL	\$2,746,440

The Trustee performed a *Personal Property Security Act* (Ontario) registration search on July 2, 2018. The search revealed registrations by Bank of Nova Scotia ("BNS"), Baron Financial Incorporated ("Baron"), Altruck Idealease and a number of equipment lessors in respect of the fleet of trucks and trailers leased or financed by the Company.

SECTION F - Conduct of the Company

The conduct of the Company does not appear to be subject to censure.

SECTION G - Creditors' Claims

As per the SOA, the Company's creditors consist of:

¹ The Companies' 2018 combined results for the 11 months ending June 30, 2018 are not available for inclusion in this report, but reflect significant decreases in revenues, at a reduced gross margin.

Creditor Classifications	SOA ² Amount
Secured	\$ 2,746,440
Preferred	0
Unsecured	2,901,807
TOTAL	\$ 5,648,247

Included in the secured creditor claims is Messenger's obligation to pay Canada Revenue Agency (the "Source Deduction Creditors") approximately \$128,681 on account of unpaid source deductions. Section 60(1.1) of the BIA deals with Crown claims arising under s. 224(1.2) of the *Income Tax Act* and similar provincial legislation or any provision of the Canada Pension Plan or the *Employment Insurance Act* that refers to s. 224(1.2) of the *Income Tax Act* or similar provincial legislation. Unless the Crown consents otherwise, a proposal must provide for payment within six months of the claims set out in s. 60(1.1). The Proposal contemplates this amount being paid from the Proposal Proceeds within the required time period.

The Company advises that there are no amounts owing to the Employee Creditors.

SECTION H - Previous Business Dealings with the Company

Not applicable

SECTION I - Informal Meeting with Major Creditors

During the NOI, the Companies and the Trustee have had ongoing discussions with certain of the Companies' secured creditors, including BNS and Baron.

SECTION J - Remuneration of Trustee

The Trustee's fees and expenses related to the administration of the Proposal, including those of its and Messenger's legal counsel, will be paid from the Proposal Proceeds to the extent detailed in Paragraph (iii) of Section B above. Any additional fees will be paid from retainers paid by the Company to the Trustee. To date, Messenger has provided a retainer of \$30,000 to the Trustee.

On July 31, 2018, the Court ordered an Administration Charge of \$75,000 in favour of the Trustee, counsel to the Trustee and counsel to the Companies.

SECTION K - Other

Not applicable.

SECTION L - Statement of Estimated Realizations

Set out below is the Trustee's estimate of the distribution to ordinary unsecured creditors if the Proposal is accepted by the Unsecured Creditors and approved by the Court:

Proposal Proceeds	\$ 400,000
Less:	
Source Deduction Creditors	(128,681)

² The secured claims total \$3,644,179. The value of Messenger's assets is estimated at \$2,746,440. The difference between the estimated realizable value of the assets and the secured claims, namely \$897,739 represents an unsecured claim.

Estimated Trustee's Fees and Expenses	<u>(113,000)</u>
Estimated Net Funds Available for Distribution to Unsecured Creditors	<u>\$ 158,319</u>
Estimated claims of Unsecured Creditors per SOA (net of BNS' unsecured portion and Related Creditors claims)	1,911,706
Estimated distribution to Unsecured Creditors (%)	<u>8.28%</u>

If the Proposal is rejected by the Creditors, the Company will be deemed bankrupt. The anticipated realizations from a bankruptcy, per the SOA, are summarized below.

	<u>Notes</u>	<u>Estimated Realization</u>
Accounts receivable (book value is net of allowance for doubtful accounts)	(1)	145,262
Equipment	(2)	<u>2,601,178</u>
Total:		<u>\$2,746,440</u>
Less:		
Claims of Secured Creditors	(3)	(3,644,179)
Estimated Professional fees		(50,000)
Estimated Amount Available for Distribution		0

Notes:

1. Accounts receivable of \$145,262 represents amounts that are not factored by Baron. On the basis of Trustee's review of these accounts receivable, based on the aging, it appears as if Messenger were bankrupt, recoveries from this source would be lower than the value ascribed on the SOA.
2. Equipment consists of the fleet of trucks and trailers. The Trustee has not obtained a formal appraisal in respect of the liquidation value of these assets but consulted an appraiser to provide it an estimate of forced liquidation value. This appraiser estimates Messenger's estimated value, per the SOA, is considerably higher than forced liquidation value. Messenger's estimate also does not consider the costs of liquidation, which typically range between 15-25%.
3. In the event of a bankruptcy, claims of the Secured Creditors would rank ahead of unsecured creditors. The Trustee has not incurred the expense associated with obtaining an independent legal opinion on the validity or enforceability of the security granted by Messenger to BNS or Baron.
4. In the event of Messenger's bankruptcy, the claim of the Related Creditors would participate in the distribution to unsecured creditors.

Preferences and Transactions at Under Value

The Proposal provides that sections 95-101 are not applicable. Accordingly, and to assess the appropriateness of the inclusion of this clause, the Trustee would generally undertake a review of the Company's books and records in order to enable it to be in a position to report to the creditors on any potential preferences or transfers at undervalue identified.

In order to carry out this review, the Trustee would review Messenger's bank statements and cancelled cheques for the period beginning one year prior to the filing of the NOI and ending on July 2, 2018. At this time, Messenger is unable to provide the Trustee with copies of cancelled cheques, and accordingly, requested copies from its bank. At the time of writing the report, Messenger had not received this information from the bank. Consequently, the Trustee has not completed its review, but will provide a supplementary report to creditors prior to or at the November 2nd meeting of creditors to consider the Proposal.

Notwithstanding the foregoing, the Trustee has identified the following post-NOI transactions:

Transit Petroleum Inc.

Transit Petroleum Inc., a division of Hogg Petroleum ("**Transit Petroleum**"), previously supplied Messenger with a portion of the fuel it required to operate its fleet. Upon the filing of the NOI, Messenger met with representatives of Transit Petroleum to secure the supply of post-NOI fuel.

Soon after this preliminary meeting, on July 9, 2018, Transit Petroleum's legal counsel reached out to the Trustee to request a copy of Messenger's NOI and requested the Cash Flow Projections on behalf of its client.

On July 5, 2018, Transit Petroleum received payment via a pre-authorized payment in the amount of \$83,734.05 (the "**Retained Funds**"). Messenger advises the Trustee that on July 4, 2018 and July 5, 2018, Messenger attempted to stop this payment, which was in respect of the supply of pre-NOI fuel, first by approaching Transit Petroleum and then by contacting its credit union. Neither Transit Petroleum or the credit union were able to stop payment. Messenger had asked Transit Petroleum to apply the Retained Funds against the supply of post-NOI fuel, which request was refused. Messenger asserts that Transit Petroleum may have applied payment of the Retained Funds against Messenger's pre-NOI indebtedness to Transit Petroleum.³

On September 19, 2018, Messenger filed a motion, initially returnable on October 2, 2018, wherein it sought the return of the Retained Funds. In the alternative, Messenger sought from Transit Petroleum the repayment of \$35,299.77, representing the difference between the Retained Funds and the amount which remains owing to Transit Petroleum for fuel provided by Transit Petroleum post-NOI.

On October 4, 2018, Transit Petroleum filed responding materials disputing Messenger's characterization of Messenger's instructions to Transit Petroleum regarding the Retained Funds. Transit Petroleum's position is that Messenger authorized Transit Petroleum to apply the Retained Funds against pre-NOI obligations as, among other things, Messenger considered it a "vital vendor".

On October 15, 2018, Messenger filed a Supplementary Motion Record.

The matter is scheduled to be heard by the Court as a special appointment on December 19, 2018.

³ Messenger's SOA reflects its indebtedness to Transit Petroleum at \$163,670.29. Messenger has not applied payment of the Retained Funds against this amount.

Aviva Insurance Company of Canada

Messenger's automobile insurance for the year ending August 31, 2018 (the "2018 Policy") was with Aviva Insurance Company of Canada ("Aviva"). This one-year policy had a premium of \$369,609, inclusive of financing charges associated with a deferred payment plan. The final instalment payment under the 2018 Policy was due on June 15, 2018. On the date of the NOI, Aviva was not fully paid the \$369,609. Subsequent to the NOI, Messenger made a payment to Aviva in the amount of \$55,486, which was a pre-NOI obligation.⁴

Messenger chose to make this payment to Aviva on the basis that it was concerned about the possibility that Aviva would not renew the coverage if Aviva was unpaid in respect of the 2018 Policy.

Baron

Baron has charged back from its post-NOI funding to Messenger an amount of approximately \$131,000 to repay Baron for amounts that it over remitted to Messenger in March 2018. Baron's position is that having Messenger repurchase invoices previously acquired by Baron as part of its factoring arrangement is it operating in the ordinary course.

Other

As noted above, the Trustee will advise creditors at the meeting of creditors on November 2, 2018 should any other preferences or transactions at undervalue be identified as part of the Trustee's review.

SECTION M - Recommendations

Based on the above, the Trustee recommends the acceptance of the Proposal as the Proposal contemplates a higher distribution to the Unsecured Creditors than a bankruptcy. The Proposal would also provide for the continued employment of Messenger's current employees and the preservation of business relationships with Messenger's existing suppliers and customers.

SECTION N - Technical Requirements for a Successful Proposal

This Proposal will become effective only if it is accepted by a resolution of the Unsecured Creditors and approved by the Court. To obtain Creditor approval, a simple majority in the number of Unsecured Creditors voting, with this majority representing at least 2/3 of the dollar value of the Unsecured Creditors voting, must vote in favour of the Proposal. If the Unsecured Creditors do not accept the Proposal, then the Company will be deemed to have made an assignment in bankruptcy and a meeting of creditors in the matter of the bankruptcy will immediately take place.

If the Unsecured Creditors vote to accept the Proposal, Court approval of the Proposal must then be sought. If the Court does not approve the Proposal, the Company would be deemed to have made an assignment in bankruptcy and the Trustee will then call a meeting of creditors in the matter of the bankruptcy.

When completing the Proof of Claim form submitted herewith, Creditors should include all outstanding amounts as at July 2, 2018, the date of the filing of the NOI. It is expressly noted and should be clearly understood that the Trustee, in its capacity as Trustee, assumes no personal liability

⁴ Aviva was not reflected as a creditor on the NOI filing.

for any claims that Creditors may have against Messenger either before or after the filing of the Proposal.

Creditors may attend, in person or by proxy, the meeting to consider the Proposal, which will be held at Best Western Plus Lamplighter Inn & Conference Centre, located at 591 Wellington Road South, London, ON on November 2, 2018 at 11:30 am (Toronto Time).

Creditors who do not wish to attend or be represented at the meeting but who wish to vote, may forward their Proofs of Claim and voting letters by either email to messengerfreight@mnp.ca or fax to (416) 323-5242, to the Trustee so as to be received prior to 11:30 am (Toronto Time) on November 2, 2018.

Should you have any questions or comments on the Proposal or this report, please do not hesitate to contact the undersigned.

Dated at Toronto, Ontario, the 22nd day of October 2018.

MNP LTD.

**Trustee acting in re the Proposal of
1787930 Ontario Inc., and not in its
personal capacity**

Per:



Sheldon Title, CPA, CA, CIRP, LIT

Encl.

TAB C

Appendix "C"



Court File No.: 35-2395481
Estate File No.: 35-2395481

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)

THE HONOURABLE

Justice Rady)

TUESDAY, THE 4th DAY
OF DECEMBER 2018

IN THE MATTER OF PROPOSAL OF 1787930 ONTARIO INC.
COB AS MESSENGER FREIGHT SYSTEMS
OF THE CITY OF ST. THOMAS, IN THE PROVINCE OF ONTARIO

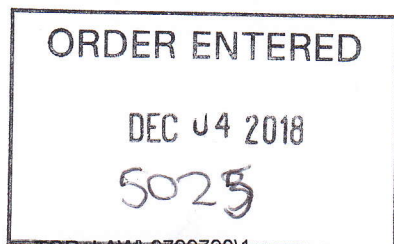
ORDER
(PROPOSAL APPROVAL)

THIS MOTION, made by MNP Ltd. in its capacity as proposal trustee (the “**Trustee**”) of 1787930 Ontario Inc. (the “**Debtor**”), was heard this day at 80 Dundas Street in London, Ontario.

ON READING the Report of the Trustee dated November 14, 2018 (the “**Trustee’s Report**”) and on hearing the submissions of counsel for the Trustee, ~~the Debtor, and those other parties present and listed on the counsel slip, no one else appearing;~~ *dk*

1. **THIS COURT ORDERS** that the Proposal dated October 12, 2018, made by the Debtor and attached to the Trustee’s Report (as amended in the manner described in the Trustee’s Report) be and is hereby approved.

Helene Rady



IN THE MATTER OF PROPOSAL OF 1787930 ONTARIO INC. COB AS MESSENGER FREIGHT SYSTEMS OF THE CITY OF ST. THOMAS, IN THE PROVINCE OF ONTARIO

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
(PROCEEDING COMMENCED AT LONDON)**

**ORDER APPROVING PROPOSAL
DECEMBER 4, 2018**

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
100 King Street West, Suite 1600
1 First Canadian Place
Toronto, ON M5X 1G5

E. Patrick Shea
Tel: (416) 369-7399
Fax: (416) 862-7661

Solicitors for MNP Ltd.

TAB D

Appendix “D”

District of Ontario
 Division No. 05 - London
 Court No. 35-2395481
 Estate No. 35-2395481

**In the matter of the proposal of
 1787930 Ontario Inc. cob as Messenger Freight Systems
 of the City of St. Thomas
 in the Province of Ontario**

Form 12

Interim

Interim Statement of Receipts and Disbursements

RECEIPTS

1. Payment Receipt		
Proposal	400,000.00	400,000.00
2. Miscellaneous		
Funds from retainer	71,248.77	
Interest allocation	1,300.00	72,548.77
TOTAL RECEIPTS		472,548.77

DISBURSEMENTS

3. Fees Paid		
To registrar	150.00	
To official receiver	150.00	300.00
4. Other notices and reports		
Photocopies	17.92	
Postage	24.64	42.56
5. Postage on general correspondence	15.40	15.40
6. Trustee's remuneration		
Trustee's fees	112,972.70	
HST charged on Trustee remuneration	14,686.45	127,659.15
7. Legal fees and legal services costs (taxed)		
Legal Counsel to estate	33,836.92	33,836.92
8. Federal and Provincial taxes		
HST on legal fees	4,371.56	4,371.56
9. Deemed Trust Claim (crown- Federal)	218,392.65	218,392.65
10. Miscellaneous		
Bank charges	112.50	
Photocopies	4.20	
Travel	168.21	
HST paid (ITC)	2,067.18	
Other misc disbursements	10,500.00	
Courier	32.05	
Legal fees/disbursements	4,630.45	
Ascend License Fee	150.00	
Meeting Room	300.00	
Notice of application for court approval	2.17	
Notice of application for court approval - postage	23.87	
Notice to creditors	3.22	
Notice to creditors - postage	0.77	
Notice to creditors to prove claim	2.38	
Notice to creditors to prove claim - postage	26.18	18,023.18
TOTAL DISBURSEMENTS		402,641.42

Note: How much of the total disbursements was paid for services provided by persons related to the trustee? 0.00

District of Ontario
 Division No. 05 - London
 Court No. 35-2395481
 Estate No. 35-2395481

**In the matter of the proposal of
 1787930 Ontario Inc. cob as Messenger Freight Systems
 of the City of St. Thomas
 in the Province of Ontario**
 Form 12 --- Concluded
 Interim Statement of Receipts and Disbursements

Interim

Amount available for distribution		<u>69,907.35</u>
11. Levy payable under section 147 of the Act		<u>0.00</u>
12. Secured creditors		
Proved claims of	4,648,292.70	
13. Unsecured creditors		
Proved claims of	1,939,462.07	
14. Amount retained in the Trust account by the Trustee:		<u>69,907.35</u>

Status of Bankrupt's Discharge (if an individual):

Notes:

1. On July 2, 2018, 1787930 Ontario Inc. cob as Messenger Freight Systems ("Messenger") or the "Company" filed a Notice of Intention to Make a Proposal.
2. Messenger filed a proposal on October 12, 2018
3. Prior to Messenger's meeting of creditors, Messenger amended its Proposal (the "Amended Proposal") to delete the clause that read "sections 95-101 do not apply to this Proposal".
4. At a meeting of creditors held on November 2, 2018 the Amended Proposal was approved by the requisite number of creditors who voted. It was approved by the Court on December 4, 2018.
5. There is are three Inspectors appointed to the Estate.
6. The Amended Proposal provides that the Administrative Fees and Expenses shall be paid in full out of the Proposal Proceeds to a maximum of \$113,000 (the "Threshold") prior to distribution to the Unsecured Creditors. This statement provides for the receipt of retainers which limits the net Administrative Fees and Expenses being funded out of the Proposal Proceeds to the Threshold. This statement does not reflect the unpaid Administrative Fees and Expenses, which in accordance with the Amended Proposal, will be paid by way of additional retainers.
7. The Amount Available for Distribution, namely \$69,907.35, is calculated after accruing payment of the additional \$92,595.09 in respect of Canada Revenue Agency's Source Deduction claim.

Dated at the City of Toronto in the Province of Ontario, this 1st day of September 2020.

MNP Ltd. - Licensed Insolvency Trustee

300 - 111 Richmond Street West
 Toronto ON M5H 2G4
 Phone: (416) 596-1711 Fax: (416) 323-5242

Taxed at the sum of \$ _____, this _____ day of _____.

Registrar

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
1732427 ONTARIO INC. AND 1787930 ONTARIO INC.
BOTH OF THE CITY OF ST. THOMAS,
IN THE PROVINCE OF ONTARIO**

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

REPORT TO THE COURT

MNP LTD.
300-111 Richmond Street West
Toronto, ON M5H 2G4

Sheldon Title
Tel: (416) 263-6945
Fax: (416) 323-5242
Email: sheldon.title@mnp.ca

Court No.: 35- 2395487 and 35-2395481

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 1732427 ONTARIO INC. AND 1787930 ONTARIO INC. BOTH OF THE CITY OF ST. THOMAS, IN THE PROVINCE OF ONTARIO

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)

(PROCEEDING COMMENCED AT LONDON)

MOTION RECORD

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Barristers and Solicitors
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Lawyers for MNP Ltd.