

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, C. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC.,
SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

PEOPLES TRUST COMPANY

APPLICANT

AND

**CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC.,
SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST**

RESPONDENTS

**FACTUM OF THE APPLICANT
(Motion for an Amended and Restated Initial Order)
(Returnable November 17, 2023)**

November 16, 2023

GOWLING WLG (CANADA) LLP
Suite 1600, 1 First Canadian Place
100 King Street West
Toronto ON 5X 1G5

David F.W. Cohen LSA#: 33195Q
Tel: (416) 862-7525
Email: david.cohen@gowlingwlg.com

Clifton P. Prophet LSO#: 34845K
Tel: 416-862-3509
Email: clifton.prophet@gowlingwlg.com

Thomas Gertner LSO#: 67756S
Tel: 416-369-4618
Email: Thomas.Gertner@gowlingwlg.com

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**SUPPLEMENTARY FACTUM OF THE APPLICANT
(CCAA COMEBACK HEARING)**

1. This supplementary factum is being filed by Peoples Trust Company (“PTC”) in connection with its motion returnable before the Ontario Superior Court of Justice [Commercial List] (the “Court”) on November 17, 2023 for an amended and restated initial order (the “Amended and Restated Initial Order”).

2. It is intended to supplement the factum of PTC filed earlier today, November 17, 2023 (the “**Initial PTC Factum**”).¹

3. In particular this supplementary factum seeks to address certain relief (the “**Sotos Relief**”) that appears to be sought by the representative class action plaintiffs (the “**Class Action Representative Plaintiffs**”) in their factum also dated as of today’s date (the “**Sotos Factum**”).² This relief is as follows:

	Relief	Defined Term
(a)	<i>That the continuation of the CCAA proceeding, should the court decide to grant it, is without prejudice to the right of the class action plaintiffs to bring a motion to lift the stay and to pursue equitable relief</i> ³	(the “ Lift Stay Relief ”)
(b)	<i>That the DIP loan shall not provide PTC with any better rights to the purported collateral, than its other security currently enjoys, until such time as those rights are determined by this court</i> ⁴	(the “ DIP Restriction Relief ”)
(c)	<i>That the extension of the stay, should the court decide to grant it, is without prejudice to the rights of the class action plaintiffs to seek an order to terminate the CCAA proceedings on a motion brought before this court</i> ⁵	(the “ Termination Relief ”)
(d)	<i>That nothing in the Amended and Restated Order, the appointment of the monitor or the CRO contemplated therein, protects any party from being liable for damages or other penalty or remedy if it is found that the enforcement of any security interests or contracts against the class action plaintiffs or putative class or collection of debts by such party</i>	(the “ Liability Relief ”)

¹ Factum on behalf of the Applicant, Peoples Trust Company dated November 16, 2023 [the “**Initial PTC Factum**”] [\[H: A1739\]](#)

² Factum on behalf of the Class Action Representative Plaintiffs, Alga Adina Bonnick and Goran Soilov Donev dated November 16, 2023 [the “**Sotos Factum**”] [\[H: B-1-1\]](#)

³ Sotos Factum, *supra* note 2, at para 62(a) [\[H: B-1-19\]](#)

⁴ Sotos Factum, *supra* note 2, at para 62(b) [\[H: B-1-20\]](#)

⁵ Sotos Factum, *supra* note 2, at para 62(c) [\[H: B-1-20\]](#)

	<i>during these proceedings causes harm to the parties to those agreements</i> ⁶	
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4. PTC submits as follows in respect of the Sotos Relief:

5. **The Lift Stay Relief:** The Lift Stay Relief is unnecessary and appears to be based on a misapprehension of the terms of the Amended and Restated Initial Order. The Amended and Restated Initial Order (as with the model initial order established by this Court), does not restrict the rights of any party to bring a motion to lift the stay of proceedings at any time, in accordance with the applicable procedures and practices of the Commercial List.

6. **The DIP Restriction Relief:** As is typical in CCAA proceedings, PTC, as DIP Lender, is not prepared to advance the DIP Facility, absent being granted a priority Court-ordered charge on all the assets, rights, undertakings and properties of the Simply Green Leasing Group. This is a fundamental term of the DIP Term Sheet. As will be set out in the revised cash flow forecast, to be filed, the DIP Facility is urgently required by the Simply Green Leasing Group. The DIP Restriction Relief, is in effect, a collateral attack on these CCAA proceedings, and an attempt to force the termination of the CCAA proceedings by denying the Simply Green Leasing Group a necessary source of go-forward liquidity. The DIP Facility represents “new money” and will provide liquidity to pay the Respondents’ budgeted expenses, including expenses for the technical servicing of the customer home energy equipment, which could not otherwise be paid.⁷

7. In considering DIP Restriction Relief, the Court should not lose sight of this outcome, nor the fact that the party requesting this relief, is at best, a contingent unsecured creditor, whose claims are part of class action proceedings that have not been certified, and are contested and denied by the Respondents.⁸

⁶ Sotos Factum, *supra* note 2, at para 62(d) [[H: B-1-20](#)]

⁷ Affidavit of Michael Lombard sworn November 6, 2023, Application Record of Peoples Trust Company dated November 6, 2023, Tab 2 [[H: A17](#)], , at para 68 [[H: A36](#)];

⁸ Affidavit of Michael Lombard sworn November 15, 2023, Motion Record of Peoples Trust Company dated November 15, 2023, Tab 2 [[H: A1471](#)], at para 21 [[H: A1477](#)]

8. **The Termination Relief:** As with the Lift Stay Relief, the Termination Relief is unnecessary and belies a misapprehension of the terms of the Amended and Restated Initial Order and the CCAA. The Amended and Restated Initial Order does not restrict the ability of any party to bring a motion seeking to terminate the CCAA proceedings on notice to the service list, including PTC, the Respondents, and the Monitor, and otherwise in accordance with the applicable procedures and practices of the Commercial List.

9. **The Liability Relief:** The Liability Relief seeks to strip the Monitor and the CRO, court-officers, from normal course liability protections (including those enshrined in the model order and otherwise established precedent)⁹. It is not grounded in any foundation at law and would have very prejudicial effects on this and future restructuring cases. Without the normal course liability protections present in the model forms of order for CCAA proceedings, no accounting firm or chief restructuring officer would agree to serve as Monitor, or CRO, respectively of a business that is subject to litigation. As with the DIP Restriction Relief, the Liability Relief, is an indirect attempt to derail these CCAA proceedings in a manner that would be tantamount to summary judgment in the class proceedings. It appears to be part of a repeated effort by the Class Action Plaintiffs, to mischaracterize the Amended and Restated Initial Order as empowering the Respondents to breach applicable law. This it not accurate and is contrary to the plain wording of the Amended and Restated Initial Order, which explicitly provides that nothing in that Order empower the Simply Green Leasing Group to carry on any business which they are not lawfully entitled to carry on. Unless and until a Court has made a decision to the contrary, on a full and proper record, the Simply Green Leasing Group is entitled to carry on its existing business in the ordinary course, under the control of the CRO and the supervision of the Monitor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of November, 2023.



**Clifton Prophet / Thomas Gertner /
Katherine Yurkovich**

⁹ *Collins & Aikman Automotive Canada Inc., re* [2007] OJ No 4186, 37 CBR (5th) 282, paras 120-141; *Northstar Aerospace, Inc. (Re)*, 2012 ONSC 3974, paras 11-12

**Schedule “A”
List of Authorities**

[Collins & Aikman Automotive Canada Inc., re](#) [2007] OJ No 4186, 37 CBR (5th) 282 (ONSC)

[Northstar Aerospace, Inc. \(Re\)](#), 2012 ONSC 3974

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, c.C-36 ASA AMENDED

Court File No. CV-23-00709183-00CL

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

SUPPLEMENTARY FACTUM

GOWLING WLG (CANADA) LLP

Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto ON M5X 1G5

David F.W. Cohen (33195Q)
david.cohen@gowlingwlg.com

Clifton P. Prophet (34845K)
clifton.prophet@gowlingwlg.com

Thomas Gertner (67756S)
thomas.gertner@gowlingwlg.com

Tel: (416) 862-7525

Lawyers for Peoples Trust Company, the Applicant