

2025 Hot Topics

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Agenda

- Cascading Consumer Proposals
- Equity in Property – Consumer Proposals
- Consumer Proposal Trends
- Reverse Vesting Orders

Introduction to Cascading Proposals

- Definition: Where a consumer debtor files a new consumer proposal while a previous one is still in effect.
- Cascading Proposal vs Second Proposal After Deemed Annulment.

OSB Position Paper

- BIA is a single proceeding model
- Multiple consumer proposals cannot coexist for the same consumer debtor.
- Court approval of any subsequent consumer proposal is required under subsection 66.22(1) of the BIA and, upon court approval, the previous consumer proposal is annulled

OSB Position Paper Continued

- LIT's responsibility: mandatory due diligence, assessment process and maintain integrity of the insolvency system.
- If the creditors or the court refuse to approve the subsequent consumer proposal, the previous consumer proposal remains in effect.
- Subsequent consumer proposal, different LIT?

Have you filed a cascading consumer proposal?

Would you file a cascading consumer proposal?

Comparative Analysis

- Should debtor not just make an assignment in bankruptcy?
- Second Cascading Proposal
 - Offers creditors higher receipts than bankruptcy
 - Potentially provides better return for creditors
- Bankruptcy Filing Concerns
 - May be prejudicial to creditors
 - Debtor could have made a more attractive proposal

Timing of Proposals

- Is there a difference if the cascading proposal is done 6 months or 4.5 years after initial filing?
- Integrity of the Insolvency System
- Stay of Proceedings

Source of New Debt

- How important is the nature of the new debt?
- Credit Cards & Payday Loans vs Hardship Related Debt?
- CRA Considerations:
 - Is CRA a majority creditor?
 - Likelihood of CRA approving a cascading proposal
 - Is it worth the stress for the debtor?

Other Considerations

- Stakeholder considerations
- Analysis for approval or opposition
- Material Change Assessment
- Is it imminent that the debtor cannot obtain a CFP in its current form?

Equity in Property – Consumer Proposals

- 2025 ONSC 2040 – In the matter of the consumer proposal of Danny Angelatos
- Court reviewed and provided guidance in determine how to deal with equity of jointly owned home when other party refuses to sell.

Consumer Proposal Trends

Globe & Mail Article February 18, 2025

Consumer Proposals rose from 23% to 79% (2009-2023)

What is the cause of the increase:

- 2009 changes
- Asset vesting
- Liquidity
- Stigma
- “Fresh start” to “earned start” philosophy – if you can pay, you should

Questions?

Reverse Vesting Orders

RVO Basics



Court Order and Innovative Tool:

- Strategy used by insolvency practitioners to maximize value in a transaction for an insolvent company in a restructuring proceeding.
- Generally, RVOs allow the shares of an insolvent company to be sold free and clear of claims and encumbrances to a purchaser by transferring unwanted assets, contracts and liabilities to a new corporation (frequently referred to as “ResidualCo”).
- Intention is still to provide a purchaser with clear title to assets- however the RVO also provides access to a cleansed entity and obtains value for attributes that may not be transferrable under other transaction structures.

The RVO functions to:

- Transfer out most, or all, of the debtor’s liabilities and unwanted contracts, assets or other property to ResidualCo;
- Any assets, contracts, licenses etc. and assumed liabilities that the purchaser wants is retained in the debtor corporation;
- The debtor corporations' shares are reorganized such that the purchaser becomes the sole shareholder of the debtor, which then exits the insolvency proceeding;
- Residual Co, who retains the purchase price in the transaction, replaces the debtor in the insolvency proceeding. It can then be liquidated via CCAA plan, BIA proposal, Receivership distribution order or a bankruptcy.

AVO vs RVO

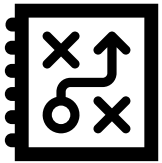
Similarities

- Tool to transfer ownership
- Provides “clear title”
- Court approval is required
- Releases are common
- Does not vest off liability which cannot be separated from the asset (i.e. ARO)

Key differences

- Share sale, vs asset sale
- Subscription agreement, vs asset purchase agreement
- Focus on retained assets and liabilities
- Upon approval, debtor exits insolvency, replaced by “ResidualCo”

Strategic Considerations



- Increase deal value via access to non-transferrable characteristics
- Tax structure and losses;
- Regulatory permits or licenses;
- Avoids assignment of contracts
- Mitigates risk in ongoing operations
- Allows thorough “cleansing”- restructuring the business for success moving forward
- Clean title
- Broad releases
- Removes the business from the remaining insolvency and distribution matters

RVOs in Atlantic Canada

1

Canada Fluorspar Inc., Canada Fluorspar (NL) Inc., CFI Holdings Inc. and Newspar (a General Partnership):

- Mining group of companies located in St. Lawrence, NL
- CCAA proceeding initiated on February 21, 2022. Grant Thornton Limited was the appointed Monitor and conducted a SISP
- RVO granted on June 7, 2023

3

Tacora Resources Inc.:

- Mining company located in Wabush, NL
- CCAA proceeding initiated on October 10, 2023. FTI Consulting Canada Inc. was the appointed Monitor and Greenhill & Co. Canada Ltd. Was financial advisor and investment banker
- RVO granted on July 26, 2024 by Ontario Superior Court of Justice

2

Rambler Metals and Mining Canada Limited and 1948565 Ontario Inc.:

- Mining group of companies located in Baie Verte, NL
- CCAA proceeding initiated on February 27, 2023. Grant Thornton Limited was the appointed Monitor and conducted a SISP
- RVO granted on September 11, 2023

4

Saltwire - Sale of Titan Security:

- Security company owned by Saltwire group of companies.
- Key consideration to RVO - continued eligibility for immigration program, which was critical for ongoing operations, and could not be transferred via AVO.
- RVO granted by Justice Keith, October 18, 2024

Court Considerations When Granting RVO



The “Harte Gold” Factors:

1. Why is the RVO necessary in this case?
2. Does the RVO structure produce an economic result at least as favourable as any other viable alternative?
3. Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?
4. Does the consideration being paid for the debtor’s business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure?



Have RVO’s been refused?

Despite the continued judicial view across the country of RVO’s as an extraordinary remedy, rather than a new way to facilitate a transaction, the courts have yet to refuse an RVO based on the merits of the transaction structure.

- PaySlate Inc.
- MCAP Financial Corporation



Relevant Insolvency Proceedings:

- CCAA
 - Numerous examples
- Receivership
 - Peakhill
 - Canwest Aerospace
- BIA Proceedings
 - Proposal, NOI, Bankruptcy
 - Fact pattern is more important than proceeding

Questions?