

District of Ontario  
Division No. 09 – Toronto  
Court File No. BK-24-03039233-0031  
Bankruptcy Estate File No. 31-3039233

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C., 1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION  
TO MAKE A PROPOSAL OF  
LIVEWIRE COMMUNICATIONS INC.

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**FACTUM**

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February 14, 2024

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## MOVING PARTY'S FACTUM

### PART I - NATURE OF THE MOTION

1. A little “breathing space” can go a long way. It can bring stability, ensure continuity and ultimately save jobs. With that in mind, on February 2, 2024 (the “**Filing Date**”), Livewire Communications Inc. (“**Livewire**”) filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”). Albert Gelman Inc. was named proposal trustee in Livewire's proposal proceedings (in such capacity, the “**Proposal Trustee**”). Livewire needs a little more “breathing space” to achieve those objectives.

2. This factum is filed in support of a motion by Livewire for an order, *inter alia*:

(a) granting Livewire an extension of time to make a proposal under the NOI proceedings up to and including April 17, 2024;

(b) authorizing Livewire to enter into an interim financing term sheet (the “**Interim Financing Term Sheet**”) with 10Point1 Inc. and 1281000 Ontario Limited, being the shareholders of Livewire (the “**DIP Lenders**”), as interim lenders, approving the Interim Financing Term Sheet and granting the DIP Lenders a super-priority charge in the maximum amount of \$500,000 against Livewire’s assets, undertakings and properties (the “**Property**”) as security for Livewire’s obligations to the DIP Lenders under the Interim Financing Term Sheet;

(c) granting a super-priority charge (the “**Administration Charge**”) against the Property in an amount not to exceed \$75,000 in favour of Livewire’s legal counsel, the Proposal Trustee and if applicable, the Proposal Trustee’s legal counsel; and

(d) approving the first report of the Proposal Trustee dated February 14, 2024 (the “**First Report**”), and the activities of the Proposal Trustee set out therein.

## **PART II - FACTS**

### *Livewire’s Business & Operations*

3. Livewire is an Ontario corporation that has been in business for over 25 years as a communications agency that supports its clients through every manner of change and transformation. It operates primarily from leased premises in Toronto and currently employs over 20 people.

**Affidavit of Mark Attard, sworn February 14, 2024 (the “Attard Affidavit”), Motion Record of Livewire dated February 14, 2024 (the “Motion Record”), TAB 2, at para. 4.**

4. The principals of Livewire are Mark Attard and Briare Corcoran. Mark Attard is the primary owner of 10Point1 Inc., which is the 50% shareholder of Livewire. Briare Corcoran is the primary owner of 1281000 Ontario Limited, which is the other 50% shareholder of Livewire.

**Attard Affidavit, Motion Record, TAB 2, at paras. 8 -11.**

### *Financial Difficulties*

5. Over-expansion, combined with COVID and its aftermath, and market challenges, have caused Livewire financial distress. Livewire is currently insolvent, with more than \$1.4 million in secured debt owed to the Bank of Montreal (“**BMO**”), and approximately \$285,000 in unsecured trade debt.

**Attard Affidavit, Motion Record, TAB 2, at paras. 17, 18, 20, 23, 24.**

6. On the Filing Date, Livewire filed an NOI under section 50.4 of the BIA, naming Albert Gelman Inc. as Proposal Trustee.

**Attard Affidavit, Motion Record, TAB 2, at para. 2.**

***Creditors***

Secured Creditor

7. BMO is Livewire's operating lender and senior secured creditor. Livewire owes BMO in excess of \$1.4 million.

8. BMO established certain credit facilities in favour of Livewire. In connection with the financing, Livewire granted various security documents in favour of BMO ("**BMO's Security**"). This included a security agreement over the personal property of Livewire. BMO is the only registrant under the *Personal Property Security Act* (the "**PPSA**") in relation to Livewire and BMO's Security appears to have been perfected by that registration. On the Filing Date, there were no other registrants or secured creditors with respect to Livewire under the PPSA.

**Attard Affidavit, Motion Record, TAB 2, at paras. 16-18.**

Unsecured Creditors

9. On the Filing Date, Livewire was indebted to its unsecured creditors in the approximate aggregate amount of \$285,000, as reflected in Livewire's list of creditors filed in connection with the NOI.

10. The landlord of the Toronto leased premises (the “**Landlord**”) is aware that Livewire has missed rent payments for January and February, 2024, and has granted Livewire a grace period while Livewire attempts to restructure its business.

**Attard Affidavit, Motion Record, TAB 2, at paras. 13, 20.**

Government Remittances

11. Livewire is current with all government remittances for source deductions, save and except for source deductions accrued and accruing in respect of standard payroll processing, which will continue in the ordinary course. Also, Livewire has made regular HST payments prior to the NOI filing.

**Attard Affidavit, Motion Record, TAB 2, at paras. 21, 22.**

*Interim Financing*

12. Livewire’s cash flow forecast, prepared with the Proposal Trustee, projects that Livewire will require additional funds to enable it to carry on business during the restructuring process, fund working capital and the costs of the proposal proceedings.

**Attard Affidavit, Motion Record, TAB 2, at paras. 27-28.**

**Cash Flow Forecast, to be appended to the First Report of the Proposal Trustee filed separately in this motion.**

13. The DIP Lenders, in their capacity as the proposed interim lenders under the Interim Financing Term Sheet, have offered to make available to Livewire a debtor-in-possession loan in the maximum amount of \$500,000 (the “**Interim Financing Loan**”) pursuant to the terms of the Interim Financing Term sheet.



**Attard Affidavit, Motion Record, TAB 2, at para. 29.**

**Interim Financing Term Sheet, Exhibit “H” to the Attard Affidavit, Motion Record.**

14. The Interim Financing Term Sheet is conditional upon, *inter alia*, the Court granting an order establishing a charge against the Property in favour of the DIP Lenders to secure the repayment of advances made under the Interim Financing Loan in the amount of \$500,000 (the “**Interim Financing Charge**”), which shall rank in priority as follows: (1) the Administration Charge in the amount of \$75,000; (2) BMO’s Security in the amount of \$200,000; (3) the Interim Financing Charge in the amount of \$500,000; and (4) BMO’s Security for the outstanding debt owed by Livewire to BMO under the respective credit facility.

**Attard Affidavit, Motion Record, TAB 2, at para. 30.**

***Administration Charge***

15. In order to protect the fees and expenses of Livewire’s legal counsel, the Proposal Trustee and if applicable, its legal counsel (collectively, the “**Administration Professionals**”) throughout the proposal proceedings, Livewire seeks the Administration Charge in the amount of \$75,000, ranking in priority to claims of all secured and unsecured creditors and the proposed Interim Financing Charge and BMO’s Security, as security for the reasonable fees and disbursements of the Administration Professionals.

**Attard Affidavit, Motion Record, TAB 2, at para. 32.**

16. Each of the Administration Professionals will play a critical role in Livewire’s restructuring and it is unlikely that the Administration Professionals will participate in the restructuring unless the Administration Charge is granted to secure their respective fees and disbursements.

**Attard Affidavit, Motion Record, TAB 2, at para. 32.**

**PART III - STATEMENT OF ISSUES**

17. The issues in this motion are as follows:
- (a) Should the Court approve the Interim Financing Term Sheet and the Interim Financing Charge?
  - (b) Should the Court approve the Administration Charge?
  - (c) Should the Court approve the extension of time for Livewire to file a proposal?
18. Livewire respectfully submits that the answer to each of the foregoing questions is – *yes*.

**PART IV - LAW AND ARGUMENT**

**a) Discretion to approve Interim Financing and Interim Financing Charge**

19. Livewire seeks approval of the Interim Financing Term Sheet and the Interim Financing Charge pursuant to the *BIA*.
20. The *BIA* codifies the availability of interim financing during proposal proceedings. Section 50.6 of the *BIA* confers on the Court the statutory jurisdiction to grant the Interim Financing Charge:

**50.6(1) *Interim Financing*:** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

21. Subsection 50.6(5) of the BIA sets out a non-exhaustive list of factors to be considered by the Court in deciding whether to grant the Interim Financing Charge:

**50.6(5) Factors to be considered:** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

22. In the present case, it is submitted that the Court should approve the Interim Financing Term Sheet together with the Interim Financing Charge, both of which are essential to provide Livewire with the financing it requires to continue operating the business during the proposal proceedings, and to work towards considering a viable proposal to its creditors. The following factors support the Court authorizing Livewire to enter into the Interim Financing Term Sheet and granting the Interim Financing Charge:

- (a) the availability of the proposed financing is contingent on this Court issuing an Order approving the Interim Financing Term Sheet and granting the Interim Financing Charge to secure any advances made thereunder;

- (b) the necessity for the financing is demonstrated and supported by Livewire's cash flow projections;
- (c) in the absence of financing, Livewire will not be able to continue to carry on business through the NOI process or make a viable proposal to its creditors;
- (d) Livewire's senior secured creditor (and only secured creditor under the PPSA), BMO, does not oppose the Interim Financing Term Sheet and Interim Financing Charge;
- (e) the shareholders of Livewire (who are also the DIP Lenders) have been consulted and support the Interim Financing Term Sheet and Interim Financing Charge;
- (f) none of Livewire's creditors will be materially prejudiced as a result of the Interim Financing Term Sheet or the Interim Financing Charge; and
- (g) the Proposal Trustee supports the Interim Financing Term Sheet and the Interim Financing Charge.

23. Accordingly, Livewire submits that the Court should exercise its discretion and make an order authorizing Livewire to enter into the Interim Financing Term Sheet and grant the Interim Financing Charge over the Property.

**b) Discretion to grant Administration Charge**

24. Livewire also seeks the Administration Charge to secure the fees and disbursements of the Administration Professionals, whose services are critical to the successful restructuring of Livewire. The Administration Charge is to rank in priority to all other claims and encumbrances in Livewire's Property.

25. Section 64.2 of the *BIA* confers on the Court the statutory jurisdiction to grant the Administration Charge:

**64.2(1) *Court may order security or charge to cover certain costs:*** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

**64.2(2) *Priority:*** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

26. It is unlikely that the Administration Professionals will participate in these proceedings without benefit of the Administration Charge to secure their fees and disbursements.

27. The following additional factors support the granting of the Administration Charge:

- (a) the legal and financial advice to be provided by the Administration Professionals is essential to Livewire throughout the proposal proceedings;
- (b) the roles of each of the Administration Professionals are distinct and there is no anticipated unwarranted duplication;

(c) the Administration Charge does not purport to prime any secured party who has not received notice of Livewire's motion;

(d) Livewire's senior secured creditor (and only secured creditor under the PPSA), BMO, does not oppose the Administration Charge; and

(e) none of Livewire's creditors will be materially prejudiced as a result of the Administration Charge.

28. Accordingly, Livewire submits that this is an appropriate circumstance for the Court to exercise its discretion and grant the Administration Charge over the Property. Each of the Administration Professionals whose fees and disbursements are to be secured by the Administration Charge have played, and will continue to play, a critical role in these proposal proceedings.

*c) Discretion to extend the time for Livewire to file a proposal*

29. Livewire seeks an extension of time to file a proposal. The stay of proceedings will expire on or about March 2, 2024.

30. Subsection 50.4(9) of the *BIA* confers on the Court the statutory jurisdiction to extend the time within which Livewire may file a proposal to its creditors:

**50.4(9) Extension of time for filing proposal:** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

31. In the present case, it is submitted that the Court should grant an extension of time for Livewire to file a proposal by 45 days to and including April 17, 2024, because:

- (a) Livewire has acted in good faith and with due diligence in these proceedings, including consultation with BMO, its Landlord and other stakeholders;
- (b) without the extension (and DIP financing), Livewire will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders, including its employees; and
- (c) none of Livewire's creditors will be materially prejudiced if the extension is granted. The same has been said above about the Administration Charge and the Interim Financing Charge. The reason for this is as follows: In a bankruptcy scenario, there would be limited recovery and that recovery would probably be limited to BMO, as the only and senior secured creditor (subject to any statutory priorities). In other words, the unsecured creditors are unlikely to recover much, if anything, in a bankruptcy scenario, and the Administration Charge, Interim Financing Charge and the NOI extension, rather than prejudice them, offers the chance or prospect of a better outcome for the unsecured creditors under a BIA proposal. As noted already, BMO is not opposed to the relief being sought by Livewire.

32. Accordingly, Livewire submits that the Court should exercise its discretion to grant Livewire an extension to file a proposal to and including April 17, 2024.

33. This court has granted similar relief in other NOI proceedings and taken into account similar factors when applying its discretion: [\*Colossus Minerals Inc. \(Re\)\*](#), 2014 ONSC 514 (CanLII).

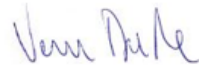
34. In [\*Eureka 93 Inc. et. al. \(Re\)\*](#), 2020 ONSC 1482 (CanLII), the Court extended the time to file a proposal and approved the proposed interim priority financing arrangements in circumstances where a successful restructuring might result in a benefit to current employees and former employees. As noted by the Court at para. 23: "There are five current employees but perhaps 20 other employees who were laid off from the various companies. The completion of the project and the start of cannabis production would involve calling some of those employees back to work." The Court concluded at paragraph 24 that "immediate liquidation would have dire effects whereas the brief extension of time and the interim financing hold at least the prospect of increased value and a successful proposal." Applying that reasoning to these proceedings, Livewire currently employs over 20 people and the prospect of a successful restructuring will likely benefit them whereas immediate liquidation would have the dire effects of them being terminated from their employment.

#### **PART V - ORDER SOUGHT**

35. Livewire seeks an order of the Court approving the relief set out in paragraph 2 of this Factum.



ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of February, 2024.



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**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. [\*Colossus Minerals Inc. \(Re\)\*](#), 2014 ONSC 514 (CanLII)
2. [\*Eureka 93 Inc. et. al. \(Re\)\*](#), 2020 ONSC 1482 (CanLII)

**SCHEDULE "B"**  
**TEXT OF STATUTES, REGULATIONS & BY - LAWS.**

**SCHEDULE "B"**

**RELEVANT LEGISLATION**

***Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3***

**Extension of time for filing proposal**

**50.4(9)** The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

**Order – interim financing**

**50.6 (1)** On application by a debtor in respect of whom a notice of intention was filed under section 50.4 or a proposal was filed under subsection 62(1) and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the debtor's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the debtor an amount approved by the court as being required by the debtor, having regard to the debtor's cash-flow statement referred to in paragraph 50(6)(a) or 50.4(2)(a), as the case may be. The security or charge may not secure an obligation that exists before the order is made.

**Priority**

**50.6 (3)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the debtor.

**Factors to be considered**

**50.6 (5)** In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the debtor is expected to be subject to proceedings under this Act;
- (b) how the debtor's business and financial affairs are to be managed during the proceedings;
- (c) whether the debtor's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable proposal being made in respect of the debtor;
- (e) the nature and value of the debtor's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the trustee's report referred to in paragraph 50(6)(b) or 50.4(2)(b), as the case may be.

#### **Court may order security or charge to cover certain costs**

**64.2 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

- (a) the trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee's duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

#### Priority

**64.2 (2)** The court may order that the security or charge rank in priority over the claim of any secured creditor of the person.

#### ***Bankruptcy and Insolvency General Rules, CRC, c 368***

##### **General**

3. In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that the procedure is not inconsistent with the Act or these Rules.

***Ontario Rules of Civil Procedure, RRO 1990, Reg 194***

***General Principle***

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

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**FACTUM**

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