

Court File Nos.35-2466619 and 35-2466620
Estate File Nos. 35-2466619 and 35-2466620

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

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE
A PROPOSAL OF DONALDSON & JAMES LTD. AND THE
AGENCY EMPLOYMENT SERVICES LTD.**

**SECOND SUPPLEMENT TO THE THIRD REPORT
OF THE PROPOSAL TRUSTEE**

MAY 15, 2019

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INTRODUCTION

1. On January 23, 2019, Donaldson & James Ltd. (“**D&J**”) and The Agency Employment Services Ltd. (“**Agency**”) (collectively, the “Companies”) filed Notices of Intention to Make a Proposal (“**NOIs**”) under Section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, as amended (the “**BIA**”). A. Farber & Partners Inc. (“**Farber**”) was appointed proposal trustee (the “**Proposal Trustee**”) in both NOI proceedings. The administrations of the Companies’ estates were administratively consolidated pursuant to the January 31, 2019 Order of Mr. Justice Penny.
2. On May 8, 2019, the Proposal Trustee served its third report in these NOI proceedings (the “**Third Report**”), and on May 14, 2019, the Proposal Trustee served a supplement to the Third Report (the “**First Supplement**”). Capitalized terms not otherwise defined in this supplemental report have the meaning ascribed to them in the Third Report and First Supplement.

PURPOSE OF THIS REPORT

3. The purpose of this second supplement (the “**Second Supplement**”) to the Third Report is to address the specific disagreement of BDC, articulated in paragraph 24 of the affidavit of Margaret Bernat sworn May 14, 2019 served after service of the Third Report and the First Supplement, with the Proposal Trustee’s opinion that the transaction under the APA is more beneficial to creditors than a sale or disposition under a bankruptcy.

DISCLAIMER

4. Farber has relied upon the financial records and information provided by the Companies, as well as other information supplied by management, and advisors, and Farber has not independently reviewed or verified such information. Farber assumes no responsibility or liability for any loss or damage incurred by or caused to any person or entity as a result of the circulation, publication, re-production or use of or reliance upon this Second Supplement. Any use which any person or entity, other than the Court, makes of this Second Supplement, or any reliance on or a decision made based upon this Second Supplement is at such person’s or entity’s own risk.

FURTHER SUPPLEMENTAL INFORMATION

5. As described in paragraph 35 of the Third Report, the accounts receivable as at April 26, 2019 are approximately \$4,121,326 net of disputed and/or uncollectable accounts to be written off and uncollectable intercompany account owing from Agency to D&J. For the purposes of this Second Supplement, the Proposal Trustee has assumed the best-case scenario where, in a bankruptcy scenario, 100% of these net receivables were collected. Even in this unlikely scenario the Proposal Trustee does not expect that any funds would be available for BDC from the realization of the accounts receivable. In such a scenario, such proceeds of collection would be first absorbed as follows:

Description	Amount
Collection of Net Accounts Receivable assuming perfect collection:	\$4,121,326
Less expected remaining Employee Priority Payables covered by the D&O Charge of which \$2,000 per employee would also be a priority in accordance with section 81.3 of the BIA: ¹	(\$700,000)
Less the Companies' expected HST Liability covered by the D&O Charge for the period April 1, 2019 to closing which would all be due after closing: ²	(\$417,000)
Amount Remaining for distribution, subject to the rights of secured creditors	\$3,004,326

6. Thus, in the unlikely bankruptcy scenario where all the accounts receivable are collectable, \$3,004,326 would be available for distribution before costs and subject to the rights of secured creditors. FundThrough, the Purchaser, has a first ranking security interest in the Companies' receivables as described in paragraphs 35 and 44-45 of the Third Report. As described in paragraph 35 of the Third Report, this security serves as collateral for the debt owing to FundThrough of \$3,188,892 as at April 26, 2019.
7. In addition, FundThrough has updated its estimated outstanding debt to a planned closing of May 17, 2019 to be \$3,902,485 after funding additional operating expenses and payroll amounts due before or on the day of closing which are in addition to the Employee Priority Payables noted above. The Companies also report that net accounts receivable as at May 10, 2019 are \$4,041,258, down from \$4,121,326 as at April 26, 2019 reducing assets of the Companies available in a bankruptcy by \$80,068.

¹ The Employee Security Deposit, intended to secure the Purchaser's obligation to cover the Employee Priority Payables, was set out in the redacted version of the APA filed with the court in the Companies' Motion Record.

² See paragraph 47 of the Third Report.

8. Therefore, it is expected that FundThrough would suffer a shortfall of \$978,227 (\$3,902,485 less \$3,004,326 and add back \$80,068) in a bankruptcy, even in the unlikely event that 100% of the net receivables are collected; accordingly, there would be no funds available from the accounts receivable for BDC pursuant to their subordinated secured claim in a bankruptcy scenario.

All of which is respectfully submitted this 15th day of May, 2019.

A. FARBER & PARTNERS INC., solely in its capacity as the Proposal Trustee of Donaldson & James Ltd. and The Agency Employment Services Ltd., and not in its personal or corporate capacity

Per: _____

Name: John Hendriks

Title: Managing Director

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Proceeding commenced at Toronto

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