

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.**

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

MAY 23, 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 and 15, 2019, the Proposal Trustee served a supplement and a second supplement to the Third Report (the “**Supplements**”). Capitalized terms not otherwise defined in this supplemental report have the meaning ascribed to them in the Third Report and the Supplements.

PURPOSE OF THIS REPORT

3. The purpose of this third supplement (the “**Third Supplement**”) to the Third Report is to report on the Proposal Trustee’s review of records evidencing FundThrough’s cash advances to the Companies during these NOI proceedings and to address the impact of receipt by the companies of an HST refund on May 22, 2019 of approximately \$700,000 and other updated estimates.

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 Third Supplement. Any use which any person or entity, other than the Court, makes of this Third Supplement, or any reliance on or a decision made based upon this Third Supplement is at such person’s or entity’s own risk.

REVIEW OF DOCUMENTATION EVIDENCING ADVANCES

5. At the most recent return date for this motion, before Justice Conway on May 17, 2019, the Proposal Trustee was invited to report on its review of documentation evidencing FundThrough cash advances to the Companies during these NOI proceedings. The Proposal Trustee has since worked with the Companies and FundThrough to gather the Companies’ banking and certain of its accounting records showing transactions during the period of these proceedings.
6. The Proposal Trustee has reviewed the gathered records and identified in those records FundThrough advances to the Companies. The quantum of the advances identified match the advances recorded in the cash flow forecasts and statements that have been provided

to, and considered by, the Proposal Trustee in these proceedings to date, and on which the Proposal Trustee has reported in its First, Second and Third Reports to the Court.

HST REFUND

7. On May 22, 2019, D&J was paid approximately \$700,000 by the CRA on account of an HST refund for the period January 1, 2018 to March 31, 2019. This refund was not expected and was therefore not previously accounted for in the Companies' cash flows.
8. Based on Companies' best estimates, an additional HST refund of \$150,000 is anticipated for April and May 2019.
9. The Companies have also estimated QST obligations of approximately \$320,000 for the post-NOI period from January 23, 2019 to the date of this Report. This expected outflow on account of QST obligation will impact the amounts available for distribution.

IMPACT ON THE PROPOSAL TRUSTEE'S ANALYSIS OF THE PROPOSED SALE

10. The accounts receivable as at May 24, 2019 are projected to be approximately \$4,157,368 assuming perfect collections. After making provision for uncollectible amounts and uncollectable intercompany account owing from Agency to D&J, the Company estimates receivables of \$3,808,343 in a going concern scenario. For the purposes of this Third Supplement, and based on discussions with the Purchaser, the Proposal Trustee has assumed that 80% of the accounts receivable that are outstanding for over 60 days are uncollectible. In this 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 Accounts Receivable assuming perfect collection:	\$4,157,368
Less: 80% of accounts receivable that are outstanding for over 60 days and uncollectible	(\$349,025)
Add: Potential HST Refund for April and May 2019	\$150,000
Less: Reserve for unpaid operating costs and professional fees till closing	(\$100,000)
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	(\$763,182)
Less: the Companies' expected HST and QST Liability covered by the D&O Charge for the period April 1, 2019 to closing which would all be due after closing ¹	(\$880,000)
Add: Adjustment to account for \$1,500,000 cap on D&O Charge	\$143,182.00
Amount Remaining for distribution, subject to the rights of secured creditors	\$2,358,343.00

11. Thus, in a going concern scenario the Company has estimated that net amount available for distribution would be \$2,358,343.00 after taking into account provision for uncollectible amounts. 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. This security serves as collateral for the projected debt owing to FundThrough of \$3,190,157 as at May 24, 2019. This amount will be reduced to \$2,490,157 after applying the \$700,000 HST refund towards repayment of FundThrough's debt.

¹ The APA provides that the Purchaser will assume the post-filing HST obligations that accrued since January 23, 2019.

12. Therefore, it is expected that FundThrough would suffer a shortfall of \$131,814.00 (\$2,490,157 less \$2,358,343) in a going concern scenario. Accordingly, there would be no funds available from the accounts receivable for BDC pursuant to their subordinated secured claim in a bankruptcy scenario.

13. As mentioned in paragraph 37 of the Third Report, in a bankruptcy scenario, the Companies would no longer be able to provide Field Staff to its customers. Those customers rely on the Field Staff to act as their work force. An absence of Field Staff would cause major disruption to the customers' operations. Accordingly, management and the Proposal Trustee expect that the realizable value of any accounts receivable would likely be significantly impaired in a bankruptcy.

All of which is respectfully submitted this 23rd 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: Allan Nackan

Title: Partner

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Proceeding commenced at Toronto

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