

**Supreme Court of Nova Scotia**

Application by Atlantica Diversified Transportation Systems Inc.  
(the "Applicant") for relief under the *Companies' Creditors  
Arrangement Act*



**Initial Order**

Before the Honourable *Justice James H. Chipman* in Chambers:

The Applicant proposes to make a compromise or arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "CCAA") and it applied for an initial order and, now or in the future, other relief under the CCAA as may be sought on notice of motion.

The following parties received notice of this application:

The Service List attached as Schedule "A" to the Notice of Application in Chambers filed November 23, 2017.

The following parties, represented by the following counsel, made submissions:

<b>Party</b>	<b>Counsel</b>
Applicant	D. Bruce Clarke, Q.C.
Canadian Western Bank and Canadian Western Bank Leasing Inc. Vaughn Sturgeon TrailerWizards BDO Canada Limited	Gavin MacDonald Sara L. Scott Matthew J.D. Moir Adam D. Crane

On motion of the Applicant the following is ordered and declared:

**Service**

1. The service of the Notice of Application in Chambers, and the supporting documents, as set out in the Affidavit of Service is hereby deemed adequate notice so that the motion is properly returnable today and further service thereof is hereby dispensed with.

**Application**

2. The Applicant is a company to which the CCAA applies.

**Plan of Arrangement**

3. The Applicant, in consultation with the Monitor, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (the "Plan").

**Possession of Property and Operations**

4. The Applicant shall remain in possession and control of its current and future assets, undertakings, and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, but expressly not including any account receivable factored or sold to Accutrac Capital Solutions Inc. prior or subsequent to the date of this order (together, the "Property"). Subject to further order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ consultants, agents, experts, accountants, counsel, and such other persons (collectively "Assistants") and the employees currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
5. The Applicant may pay the following expenses whether incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, and expenses payable to employees who continue to provide service on or after the date of this Order ("Active Employees"), in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - (b) all existing and future employee health, dental, life insurance, short and long term disability and related benefits (collectively, the "Group Benefits") payable on or after the date of this Order to Active Employees, in each case incurred in the ordinary course of business and consistent with existing policies and arrangements or such amended policies and arrangements as are necessary or desirable to deliver the existing Group Benefits; and

- (c) with prior written approval of the Monitor, the fees and disbursements for any Assistants retained or employed by the Applicant in respect of these proceedings, at their reasonable standard rates and charges.
6. Except as otherwise provided to the contrary herein, the Applicant may pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses may include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance including directors and officers insurance, maintenance, and security services; and
  - (b) payments for goods or services actually supplied to the Applicant following the date of this Order, including those provided for in CCAA section 11.01(a).
7. The Applicant shall remit or pay, in accordance with legal requirements or on terms as may be agreed to between the Applicant and the applicable authority:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of: i) employment insurance, ii) Canada Pension Plan, iii) Quebec Pension Plan, and iv) income taxes;
  - (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - (c) any amount payable to the Crown in right of Canada or of any Province or any regulatory or administrative body or any other authority, in all cases in respect of municipal realty, municipal business, or other taxes, assessments or levies of any nature or kind which are: i) entitled at law to be paid in priority to claims of secured creditors; ii) attributable to or in respect of the ongoing Business carried on by the Applicant; and iii) payable in respect of the period commencing on or after the date of this Order.

8. Until such time as the Applicant disclaims a real property lease in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases, including, for greater certainty, common area maintenance charges, utilities and realty taxes, and any other amounts payable to the landlord under the lease, or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in accordance with its existing lease agreements. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.
9. Except as specifically permitted herein or by further order of this Court, the Applicant is hereby directed, until further order of this Court: i) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date without prior written consent of the Monitor; ii) to grant no security interests, trusts, liens, charges, or encumbrances upon or in respect of any of its Property; and iii) to not grant credit or incur liabilities except in the ordinary course of the Business or with the prior written approval of the Monitor; provided nevertheless that the Applicant is expressly authorized and permitted to continue to operate its factoring facility with, and sell its accounts receivable to, Accutrac Capital Solutions Inc. with respect to accounts receivable arising either before or after the date of this order pursuant to the Factoring Agreement between the Applicant and Accutrac Capital Solutions Inc. dated June 2016 (the "Factoring Agreement") without the prior consent of the Monitor or any further approval of this Court.



### **Restructuring**

10. The Applicant shall, subject to such requirements as are imposed by the Monitor and under any agreements for debtor-in-possession financing which may hereafter be approved by this Court, have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any of its business or operations;
  - (b) return to any equipment lessor any asset under lease not required for the ongoing operations of the Business;
  - (c) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and, as applicable, in accordance with the terms of any collective agreement;

- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any refinancing; and
- (e) in accordance with its ordinary course of business, dispose of redundant or nonmaterial assets not exceeding \$20,000 in value in a single transaction or \$100,000 in aggregate.

### No Proceedings against the Applicant or the Property

11. Until and including the <sup>22<sup>nd</sup></sup> ~~23<sup>rd</sup>~~ day of December, 2017, or such later date as this Court may order (the "Stay Period"), no claim, grievance, application, action, suit, right or remedy, or proceeding or enforcement process in any court, tribunal, or arbitration association (each, a "Proceeding") shall be commenced, continued, or enforced against or in respect of any of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court. Not to limit the generality of the foregoing:

- (a) Canadian Western Bank, Canadian Western Leasing and Alton Bubar Sales Ltd. shall forthwith deliver to the Applicant any "fully paid for" units seized by them described in Exhibit "B" of the Supplemental Affidavit of David Montgomery; and 
- (b) Canadian Western Bank, Canadian Western Leasing and Alton Bubar Sales Ltd. shall forthwith deliver to the Applicant transport records, equipment, personal effects and other documents required for the business of Atlantica seized by them as described in paragraph 7 of the Supplemental Affidavit of David Montgomery. 

### No Exercise of Rights or Remedies

12. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall: i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on; ii) affect such investigations, actions, suits or proceedings by a regulatory body as

are permitted by section 11.1 of the CCAA; iii) exempt the Applicant from compliance with statutory or regulatory provisions relating to health, safety, or the environment; iv) prevent the filing of any registration to preserve or perfect a security interest; or v) prevent the registration of a claim for lien and the related filing of an action to preserve the right of a lien holder, provided that the Applicant shall not be required to file a defence during the stay period. Nothing in this Order restricts, limits or stays any right that a shareholder of the Applicant has to nominate a director or to vote on the appointment of the directors of the Applicant, either under the *New Brunswick Business Corporations Act* or any shareholders agreement.

### **No Interference with Rights**

13. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Applicant, including but not limited to renewal rights in respect of existing insurance policies on the same terms, except with the written consent of the Applicant and the Monitor, or leave of this Court.

### **Continuation of Services**

14. During the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility, or other services to the Business or the Applicant, are hereby restrained until further order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Applicant, and the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

### **Non-Derogation of Rights**

15. Notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property, or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation

on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant.

### **Proceedings Against Directors and Officers**

16. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current, or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court, these proceedings are dismissed by final order of this Court, or with leave of this Court.

### **Appointment of Monitor**

17. BDO Canada Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Applicant, the Property, and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicant and its shareholders, officers, directors, employees and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations, and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.
18. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicant's receipts and disbursements;
  - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the activities of the Applicant, and such other matters as may be relevant to the proceedings herein;
  - (c) advise the Applicant in its development of the Plan and any amendments to the Plan, and, to the extent deemed appropriate by the Monitor, assist in its negotiations with creditors, customers, vendors, and other interested Persons;

- (d) assist the Applicant, to the extent deemed appropriate by the Monitor, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
  - (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents and to the Business of the Applicant, to the extent that is necessary to adequately assess the Applicant's Business and financial affairs or to perform its duties arising under this Order;
  - (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, including any affiliate of, or person related to the Monitor;
  - (g) develop a claims process to ascertain the quantum of the claims of all creditors; and
  - (h) be at liberty to perform such other duties as are required by this Order or by this Court from time to time.
19. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
20. Nothing herein contained shall limit the protections afforded the Monitor at law including those protections set out in the CCAA.
21. The Monitor shall provide any creditor of the Applicant or a potential Debtor In Possession lender ("DIP Lender") with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor or a DIP Lender addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors or a DIP Lender unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.
22. The Monitor, counsel to the Monitor, and all counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case not to exceed their standard rates and charges, by the Applicant as part of the



costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis.

23. The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge.

### **Critical Suppliers**

24. The suppliers listed on Schedule "A" herein, and any other supplier of goods or services to the Applicant which the monitor, in consultation with the Company, deems critical to the continued operation of the applicant, as contemplated by section 11.4 of the CCAA, shall be considered a critical supplier (a "Critical Supplier").
25. Each Critical Supplier shall continue to supply the Applicant with goods or services on terms and conditions that are consistent with existing arrangement and past practices.
26. The Applicant shall make prompt payment for goods or services supplied to the applicant by a Critical Supplier. For greater clarity, the Applicant who receives goods or services from a Critical Supplier on and after the date of this Order shall make payment to such Critical Supplier for such a goods or services on the next date on which such applicant ordinarily issues cheques after the date on which the Applicant receives from such Critical Supplier an invoice for the purchase price of the goods or services supplied.
27. No Critical Supplier may require the payment of a deposit or the posting of any security in connection with the supply of goods or services to the Applicant after the date of this Order.
28. In lieu of the grant of a Critical Supplier Charge, the Applicant may, with the consent of the Monitor, make payments in the ordinary course of business to Critical Suppliers, including for products or services rendered in the 30 days prior to the date hereof, not to exceed in aggregate \$200,000.

### **Directors' Charge**

29. The directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge) on the Property, which charge shall not exceed an aggregate amount of ~~\$100,000~~, as security to indemnify the directors and officers against obligations and liabilities that they may incur as a director or officer of the company after

*\$50,000.*  
*ll*

the commencement of these proceedings, but subject however to the limitations contained in CCAA subsection 11.51(4).

30. Notwithstanding any language in any applicable insurance policy to the contrary, (a) the Company's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with this Order, and (b) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge.
31. The Directors' Charge shall be subordinate to the Administration Charge but shall otherwise be in priority to all secured creditors listed in section 34 herein.

### **Administrative Charge**

32. The Monitor, the Monitor's counsel, the Applicant's counsel and Assistants (collectively, the "Chargees") shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of ~~\$100,000~~, as security for their professional fees and disbursements incurred at their applicable standard rates and charges, both before and after the making of this Order in respect of these proceedings. \$15,000
33. The filing, registration or perfection of the Directors' Charge and the Administration Charge (the "Charges") shall not be required and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
34. The Charges shall constitute a charge on the Property and shall rank in priority to claims of the following secured creditors: Canadian Western Bank and Canadian Western Bank Leasing Inc.; Penske Truck Leasing Canada Inc.; Wells Fargo Equipment Finance Company; Royal Bank of Canada; Clarke Road Transportation Inc.; Accutrac Capital Solutions Inc.; Design Group Staffing Inc.; Trailer Wizards Ltd.; Roops Cleaners 2009 Limited; Hawkins Truck Mart Ltd.; National Leasing Group Inc.; RCAP Leasing Inc.; Bank of Montreal; Bodkin Capital Corp.; PACCAR Financial Ltd.; Northeast Truck & Trailer Sales; 3237541 Nova Scotia Limited; Blue Chip Leasing Corporation; Element Financial Corporation; Nissan Canada Financial Services Inc.; 1354439 Ontario Inc.; and in priority to any other interests, trusts, liens, charges, and encumbrances and claims, statutory or otherwise, in favour of any Person, but shall not have priority over any

accounts receivable factored or sold to Accutrac Credit either before or after the date of this Order pursuant to the Factoring Agreement.

35. The Applicant and the Chargees shall be entitled, upon giving notice to parties likely affected, to seek an order changing the amount of the Administration Charge or providing that the Administrative Charge shall rank in priority to secured creditors not named in paragraph 34.
36. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any encumbrance over any Property that ranks in priority to, or *pari passu* with the Charges unless the Applicant also obtains the prior written consent of the Chargees, or further order of this Court.
37. The Charges shall not be rendered invalid or unenforceable and the rights and remedies thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application for a bankruptcy order issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions, or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, sublease, offer to lease, or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:
  - (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
  - (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant seeking the creation of the Charges; and
  - (c) the payments made by the Applicant pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

### **Service and Notice**

38. The Monitor shall: i) without delay, publish in a notice containing the information prescribed under the CCAA, ii) within five days after the date of this Order, (A) make this Order publicly available in the manner

prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

39. The Applicant and the Monitor may give notice of this Order, any other materials and orders in these proceedings, and any notices, and provide correspondence, by forwarding originals or true copies by prepaid ordinary mail, courier, personal delivery, or electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and any such notice by courier, personal delivery, or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
40. The Applicant and the Monitor, and any party who has filed a demand of notice may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsel's e-mail addresses as recorded on the service list from time to time, and the Monitor may post a copy of any or all such materials on its website at [www.bdo.ca](http://www.bdo.ca).

### **General**

41. The Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
42. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, construction lien trustee, or a trustee in bankruptcy of the Applicant, the Business or the Property.
43. The aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction outside Nova Scotia, is requested to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

- 44. Each of the Applicant and the Monitor may apply to any court, tribunal, or regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and the Monitor may act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
- 45. Any interested party, including the Applicant and the Monitor, may apply to this Court to vary or amend this Order on such notice required under the *Civil Procedure Rules* or as this Court may order.
- 46. This Order and all of its provisions are effective as of 12:01 [a.m./p.m.] PM Atlantic Standard Time on the 7<sup>th</sup> day of December, 2017.

Issued December 7, 2017.

Janet Hawes  
(Deputy) Prothonotary

IN THE SUPREME COURT OF NOVA SCOTIA  
I hereby certify that the foregoing document  
is a true copy of the original.

Dated 7<sup>th</sup> day of December, 2017

Janet Hawes  
Deputy Prothonotary

Schedule "A"  
List of Critical Suppliers

Irving – Fuel

Tchek - Fuel

Telus – Phones, Cells, Internet, Fleet Complete

GBS – IT Support

Loadlink – Load Board

PC Miler – Mileage Program

Crimson – Custom Clearance

Best Pass – US Tolls

MacPass – Canadian Tolls

Bridgestone – Tires

Goguen – Maintenance and Repair

Marine Atlantic – NFLD Ferry