

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED**

BETWEEN:

HSBC BANK CANADA

Applicant

-and-

2SOURCE MANUFACTURING INC.

Respondent

AND:

Court File No. 32-2274852

**IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.**

**RESPONDING MOTION RECORD
OF 2006905 ONTARIO INC.**

DATE: August 22, 2017

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED**

BETWEEN:

HSBC BANK CANADA

Applicant

-and -

2SOURCE MANUFACTURING INC.

Respondent

AND:

Court File No. 32-2274852

**IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.**

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TAB 1

Court File No. CV-17-11672-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED,
AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

BETWEEN:

HSBC BANK CANADA

Applicant

-and -

2SOURCE MANUFACTURING INC.

Respondent

AND:

Court File No. 32-2274852

IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.

NOTICE OF MOTION

2006905 Ontario Inc. (the “**2006905**”), a creditor of 2Source Manufacturing Inc. (“**2Source**”), will make a motion in response to the motion brought by 2Source’s receiver and trustee in bankruptcy, with notice, to a Justice of the Ontario Superior Court of Justice (Bankruptcy and Insolvency), for an Order pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the “**BIA**”), on August 29, 2017 at 10:00 a.m., or as soon after that time as the motion can be heard, at 393 University, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

in writing under subrule 37.12.1 (1) because it is without notice.

- in writing as an opposed motion under subrule 37.12.1 (4).
- orally.

1. **THIS MOTION IS FOR:**

- (a) an order pursuant to section 38 of the BIA authorizing 2006905 to pursue and enforce 2Source's claims against United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and Dino Soave (collectively, "UTAS" and the "UTAS Defendants") by continuing or commencing and prosecuting, proceedings in its own name and at its own expense and risk against any one or more of the UTAS Defendants, including without limitation, the claims and causes of action plead by 2Source in the litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court File No. CV-17-567429-00) (the "**UTAS Ontario Proceeding**");
- (b) an order pursuant to section 38 of the BIA authorizing 2006905 to pursue and enforce 2Source's claims against Messier-Dowty Inc., Messier-Buggatti-Dowty S.A., Messier-Dowty Ltd., Messier-Dowty Mexico SA de CV and Messier-Dowty Suzhou Co. Ltd. (collectively, the "**Messier Defendants**") by continuing or commencing and prosecuting, proceedings in its own name and at its own expense and risk against any one or more of the Messier Defendants, including without limitation, the claims and causes of action plead by 2Source in the litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court File No. CV-15-537943) (the "**Messier Ontario Proceeding**");

- (c) an order granting 2006905 the sole right to control the conduct of and decision making in any proceedings in respect of the UTAS Claim (as defined below) and the Messier Claim (as defined below);
- (d) an order validating service of this notice of motion, if necessary; and
- (e) such further and other relief as this Honourable Court may deem just.

2. **THE GROUNDS FOR THE MOTION ARE:**

THE UTAS PROCEEDING

- (a) 2Source commenced the UTAS Ontario Proceeding against the UTAS Defendants and Verify, Inc. pursuant to a statement of claim issued in the Ontario Superior Court of Justice on January 10, 2017.
- (b) In the UTAS Proceeding, 2Source advances causes of action in fraudulent misrepresentation, deceit, conspiracy and unlawful interference with economic relations, as well as breach of the *Competition Act* (collectively, the “**UTAS Claim**”);
- (c) In connection with the UTAS Claim, 2Source seeks damages against the UTAS Defendants in the amount of at least \$25,000,000 (CAD), plus punitive damages of at least \$5,000,000 and other relief;
- (d) On January 31, 2017, the UTAS Defendants delivered a notice of intent to defend the UTAS Ontario Proceeding and, in doing so, asserted that the UTAS Ontario Proceeding should be stayed on the basis that the courts in New York,

United States have exclusive jurisdiction over the dispute pursuant to a forum selection clause incorporated into the Supply Agreement by reference;

- (e) On May 12, 2017, 2Source delivered a fresh as amended statement of claim, which, among other things, discontinued the action against Verify, Inc.;
- (f) The UTAS Defendants subsequently delivered a motion for summary judgment seeking a dismissal of the UTAS Ontario Proceeding on the basis of the forum selection clause incorporated in the Supply Agreement;
- (g) On June 27, 2017, the UTAS Defendants' motion for summary judgment was heard by the Honourable Justice Monahan;
- (h) On July 19, 2017, Justice Monahan issued written reasons in which a stay of the UTAS Ontario Proceeding was ordered. Specifically, Justice Monahan held that the forum selection clause incorporated by reference in the Supply Agreement was binding and that 2Source was required to pursue the UTAS Claim in New York;

THE MESSIER PROCEEDING

- (i) 2Source commenced the Messier Ontario Proceeding against the Messier Defendants pursuant to a notice of action dated October 7, 2015 and a statement of claim issued in the Ontario Superior Court of Justice on October 13, 2015.

- (j) In the Messier Ontario Proceeding, 2Source advances causes of action in breach of contract, misrepresentation and deceit (collectively, the “**Messier Claim**”);
- (a) In connection with the Messier Claim, 2Source seeks damages against the Messier Defendants in the amount of \$4,030,000 (USD), plus punitive damages in the amount of \$500,000 (CAD) and other relief;
- (k) The Messier Ontario Proceeding has not progressed since the close of proceedings. However, if the relief sought in connection with this motion is granted, 2006905 intends to pursue the Messier Ontario Proceeding in the ordinary course, including the next steps of documentary discovery and oral discovery;

THE RECEIVERSHIP AND BANKRUPTCY

- (l) Pursuant to an Order made by the Ontario Superior Court of Justice on January 23, 2017 (after the UTAS Ontario Proceeding and the Messier Proceeding had already been commenced by 2Source), Deloitte Restructuring Inc. (“**Deloitte**”) was appointed receiver of the assets, undertakings and properties of 2Source (the “**Receiver**”);
- (m) On March 31, 2017, the court issued an Order authorizing the Receiver to file an assignment in bankruptcy on behalf of 2Source;

- (n) On July 21, 2017, Deloitte filed an assignment in bankruptcy on behalf of 2Source and the Office of the Superintendent of Bankruptcy issued a Certificate of Appointment appointing Deloitte as trustee (the “Trustee”);

CLAIMS OF 2006905 AND ROBERT GLEGG IN 2SOURCE'S BANKRUPTCY

- (o) As at July 21, 2017, the date of the bankruptcy, 2006905 holds secured claims against 2Source in the principal amount of \$2,765,836 and unsecured claims in the principal amount of \$1,359,872;
- (p) On August 10, 2017 2006905 filed a proof of claim with the Trustee in 2Source's bankruptcy proceeding in respect of the secured and unsecured debt referenced above;
- (q) In addition to the debts owed by 2Source to the Applicant, Robert Glegg, the principal of 2006905, is personally owed \$273,366 of unsecured debt by 2Source as of the date of 2Source's bankruptcy, in respect of which a proof of claim was also filed on August 10, 2017;

PROSECUTION OF THE UTAS CLAIM DURING THE RECEIVERSHIP

- (r) 2006905 is a significant creditor of 2Source and is owed over \$2.76 million in secured debt and \$1.35 million in unsecured debt. The Receiver was appointed on application by another secured creditor of 2Source, HSBC Bank Canada, whose security has priority to that of the Applicant;

- (s) HSBC Bank Canada advised the Receiver that it did not wish to fund the continuation by 2Source of its litigation claims, including litigation in respect of the UTAS Claim and Messier Claim.
- (t) Given its belief that pursuit of the UTAS Claim and Messier Claim represented important recovery sources for 2006905 and other creditors, 2006905 entered an agreement with the Receiver to assist 2Source in the continuation of the UTAS Claim by funding the costs thereof and instructing counsel with respect to the UTAS Claim. Among other things, the Receiver agreed 2006905 would be entitled to repayment of costs incurred in funding 2Source's continuation of the litigation from any proceeds recovered therein, in priority to the claims of other creditors. To date, 2006905 has incurred more than \$150,000 in costs in advancing the UTAS Claim;

THE TRUSTEE IS UNWILLING TO CONTINUE THE UTAS CLAIM AND MESSIER CLAIM

- (u) 2006905 has requested that the Trustee continue the UTAS Claim and the Messier Claim on behalf of 2Source's bankruptcy estate, but Deloitte has refused to do so on the basis that it is not funded to do so;
- (v) At the conclusion of a creditors meeting held on August 10, 2017, the Trustee was instructed not to pursue the UTAS Claim or the Messier Claim;
- (w) The Applicant, who, through Mr. Glegg, has been involved in every aspect of the UTAS Claim and the Messier Claim to date, believes that pursuit of the

UTAS Claim and the Messier Claim would benefit creditors of 2Source and the estate of 2Source;

- (x) The UTAS Claim and the Messier Claim have sufficient merit and there is a *prima facie* case in support of the claims;
- (y) 2006905 seeks an Order from this Honourable Court authorizing it to commence and prosecute the UTAS Claim in New York and to continue to prosecute the Messier Claims in its own name and at its own expense and risk, subject to any other creditors joining in the proceedings, as contemplated by section 38 of the BIA;
- (z) The Trustee does not oppose the Order sought on this motion;
- (aa) The Order sought is in the interests of the estate;
- (bb) It is just and equitable that the sought Order be granted;
- (cc) Section 38 of the BIA, as amended;
- (dd) Rules 1.04, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
- (ee) The inherent and equitable jurisdiction of this Honourable Court; and
- (ff) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) The affidavit of Robert Glegg sworn August 22, 2017; and
- (b) Such other materials as counsel may advise and this Honourable Court may permit.

DATE: August 22, 2017

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**IN THE MATTER OF THE BANKRUPTCY OF 2SOURCE MANUFACTURING INC.
 IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND
 INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE
 ACT*, R.S.O. 1990, C. C-43, AS AMENDED
 BETWEEN: HSBC BANK CANADA –AND- 2SOURCE MANUFACTURING INC.**

Court File No. 32-2274852
 Court File No.: CV-17-11672-CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF AN APPLICATION PURSUANT
TO SECTION 243(1) OF THE *BANKRUPTCY AND
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BETWEEN:

HSBC BANK CANADA

Applicant

-and --

2SOURCE MANUFACTURING INC.

Respondent

AND:

Court File No. 32-2274852

IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.

**AFFIDAVIT OF ROBERT GLEGG
(Sworn August 22, 2017)**

I, Robert Glegg, of the City of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. Until my resignation on March 10, 2017, I was the Chief Executive Officer ("**CEO**") and a director of 2Source Manufacturing Inc. ("**2Source**"), the bankrupt. I am also the President, director and shareholder of 2006905 Ontario Inc. ("**2006905**"), which is a significant secured and unsecured creditor of 2Source. I am, in my personal capacity, also a significant creditor and a shareholder of 2Source, holding the majority of its shares. Accordingly, I have knowledge of the matters to which I hereinafter depose. Where my evidence is based on information provided to me by others, I have so indicated, and I believe such information to be true.

REQUEST FOR AN ORDER ASSIGNING UTAS AND MESSIER CLAIMS TO 2006905

2. I swear this affidavit in support of a responding motion to the motion brought by 2Source's receiver and trustee in bankruptcy. In my responding motion, I am requesting an order to assign any and all claims, rights and causes of action that 2Source or its trustee in bankruptcy may have against the UTAS Defendants (as defined below) (the "**UTAS Claims**") and any and all claims, rights and causes of action that 2Source or its trustee in bankruptcy may have against the Messier Defendants (as defined below) (the "**Messier Claims**") to 2006905, pursuant to section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the "**BIA**"). The form of order requested is enclosed at Tab 3 of the Motion Record of 2006905 dated August 22, 2017 (the "**Requested Order**").

3. Based upon my counsel's correspondence with Deloitte Restructuring Inc., the Court-appointed receiver ("**Receiver**") and trustee in bankruptcy ("**Trustee**") of 2Source, and my attendance at the creditors meeting in 2Source's bankruptcy proceeding, held on August 10, 2017, all as described in further detail below, I understand that neither the Receiver nor the Trustee will be pursuing the UTAS Claims or the Messier Claims on behalf of 2Source or its creditors as the 2Source bankruptcy estate does not have funds available to do so.

4. Accordingly, I believe that it is urgent that the Requested Order be granted since the UTAS Claims and the Messier Claims will otherwise be abandoned or left unpursued or the pursuit thereof will be delayed. The UTAS Claims and the Messier Claims could be an important source of potential recovery for 2006905 and potentially for other creditors and stakeholders and I believe that they should be assigned to 2006905 without delay.

5. As I set out in greater detail below, I believe that 2006905 and I, as its President and director and the person who will be instructing counsel in respect of any proceedings in pursuit of the UTAS Claims and/or the Messier Claims, are best placed to pursue and prosecute the UTAS Claims and Messier Claims.

6. Having been the CEO of 2Source since its formation in 2004 and having been directly involved in that capacity in negotiating and conducting business with the UTAS Defendants and the Messier Defendants on behalf of 2Source, I have detailed knowledge of the UTAS Claims and the Messier Claims and the facts giving rise thereto, including the facts alleged in litigation proceedings that had already been commenced by 2Source against the UTAS Defendants and the Messier Defendants prior to 2Source's receivership and subsequent bankruptcy, as described in greater detail below. Accordingly, I believe that 2006905 and I are in the best position to pursue any proceedings and instruct counsel in respect of the UTAS Claims and the Messier Claims for the benefit of 2006905 (which is a significant secured and unsecured creditor of 2Source) and any other creditors of 2Source who wish to join in the pursuit of the UTAS Claims and the Messier Claims (proportionate to the amount of such creditors' provable claims in the bankrupt estate), including sharing in the costs thereof.

UTAS PROCEEDING

7. 2Source commenced an action against United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and Dino Soave (collectively, the "**UTAS Defendants**") as well as Verify, Inc. pursuant to a statement of claim issued on January 10, 2017 in the Ontario Superior Court of Justice bearing Court File No. CV-17-567429 (the "**UTAS Ontario Proceeding**"). Attached as **Exhibit "A"** is a copy of the statement of claim.

8. As described in more detail in the statement of claim, 2Source alleges in the UTAS Ontario Proceeding that certain of the UTAS Defendants deliberately misled 2Source into believing that UTAS was interested in entering into a new 15 year agreement beginning January 1, 2017 for the supply of aircraft component parts by 2Source to UTAS, with a significant increase in UTAS' annual spend with 2Source, when UTAS had no intention of entering into any new agreement whatsoever with 2Source. The UTAS Ontario Proceeding further alleges that the conduct of the UTAS Defendants was intended to retaliate against 2Source for certain positions advanced by 2Source during the negotiation and performance of the then existing supply agreement, which was in place from January 1, 2015 through December 31, 2016, with such retaliation originating from when 2Source refused to agree to indemnify UTAS for unlimited consequential damages. The UTAS Ontario Proceeding claims causes of action in, among other things, fraudulent misrepresentation, deceit, conspiracy and unlawful interference with economic relations, as well as breach of the *Competition Act*.

9. In connection with the UTAS Ontario Proceeding, 2Source seeks damages against the UTAS Defendants in the amount of at least \$25,000,000 (CAD), plus punitive damages and other relief in the amount of at least \$5,000,000 (CAD).

10. On January 31, 2017, the UTAS Defendants delivered a notice of intent to defend the UTAS Ontario Proceeding and, in doing so, asserted that the UTAS Ontario Proceeding should be stayed in Ontario on the basis of its assertion that the courts in New York had exclusive jurisdiction over the UTAS Claim. Attached as **Exhibit "B"** is a copy of the notice of intent to defend the UTAS Ontario Proceeding filed by the UTAS Defendants.

11. On May 12, 2017, 2Source delivered a fresh as amended statement of claim dismissing the claim as against Verify, Inc. and making certain other amendments. Attached as **Exhibit “C”** is a copy of 2Source’s fresh as amended statement of claim.

12. The UTAS Defendants subsequently delivered a motion for summary judgment seeking a dismissal of the UTAS Ontario Proceeding on the basis that the forum selection clause incorporated into the Supply Agreement granted exclusive jurisdiction over the UTAS Claims alleged in the UTAS Ontario Proceeding to the courts of New York.

13. On June 27, 2017, the UTAS Defendants’ motion for summary judgment was heard by the Honourable Justice Monahan of the Ontario Superior Court of Justice. On July 19, 2017, Justice Monahan rendered his decision and ordered a stay in Ontario of the UTAS Ontario Proceeding on the basis of his finding that the court of New York had exclusive jurisdiction over the UTAS Claim. Attached as **Exhibit “D”** is a copy of Justice Monahan’s endorsement.

14. In seeking relief pursuant to section 38 of the BIA on behalf of 2006905, 2006905 does not intend to seek to override or vary the stay of the UTAS Ontario Proceeding ordered by Justice Monahan on July 19, 2017. Rather, if the relief sought in connection with this motion is granted, 2006905 intends, at my direction, to pursue the UTAS Claims by commencing a proceeding in the courts of New York.

MESSIER PROCEEDING

15. 2Source commenced an action against Messier-Dowty Inc., Messier-Buggatti-Dowty SA, Messier-Dowty Ltd., Messier-Dowty Mexico SA de CV and Messier-Dowty Suzhou Co. Ltd. (collectively, the “**Messier Defendants**”) pursuant to a Notice of Action dated October 7, 2015 and Statement of Claim dated October 13, 2015 in the Ontario Superior Court of Justice bearing

Court File Number CV-15-537943 (the “**Messier Ontario Proceeding**”). Attached as **Exhibit “E”** is a copy of the Notice of Action and Statement of Claim.

16. 2Source alleges in the Messier Ontario Proceeding that the Messier Defendants are liable to 2Source for their breach of a principal supplier agreement and for misrepresentations which were made to induce 2Source to enter into this principal supplier agreement. The Messier Ontario Proceeding alleges that the Messier Defendants deliberately induced 2Source to sign and execute a principal supplier agreement on the basis that Messier would purchase agreed upon volumes of A320 MRO shipsets of bushings for each of the 6 years governed by the principal supplier agreement (in addition to the other bushings in the scope of supply of the principal supplier agreement). Although the Messier Defendants ordered a small initial quantity of these A320 MRO shipsets in the first year, they failed to order almost all of the A320 MRO shipsets which they had committed to purchase in accordance with their representations. 2Source alleges that the Messier Defendants had made these representations with respect to the A320 MRO shipsets knowingly, recklessly and/or carelessly in order to induce 2Source to enter into the principal supplier agreement because the Messier Defendants needed 2Source to provide them with bushings that were not part of the A320 MRO program.

17. In connection with the Messier Ontario Proceeding, 2Source seeks declaratory relief, damages for breach of contract, misrepresentation and deceit in the amount of \$4,030,000 (USD), plus punitive damages in the amount of \$500,000 (CAD) and other relief.

18. On November 20, 2015, the Messier Defendants delivered a Statement of Defence and Counterclaim denying any liability to 2Source for its failure to purchase A320 MRO shipsets from 2Source, and seeking damages in its Counterclaim in the amount of \$96,000 for 2Source’s failure to deliver products in accordance with the contract and damages in the amount of \$1,500,000

(CAD) for breach of contract. Attached as **Exhibit "F"** is a copy of the Statement of Defence and Counterclaim filed by the Messier Defendants.

19. On January 8, 2016, 2Source served its Reply and Defence to Counterclaim. Attached as **Exhibit "G"** is a copy of 2Source's Reply and Defence to Counterclaim.

20. The Messier Ontario Proceeding has not progressed since the close of pleadings. If the relief sought in connection with this motion is granted, 2006905 intends to pursue the Messier Ontario Proceeding in the ordinary course, including pursuing the next steps of documentary discovery and oral discovery.

THE RECEIVERSHIP AND BANKRUPTCY

21. Pursuant to an Order made by the Ontario Superior Court of Justice on January 23, 2017 (after the UTAS Ontario Proceeding and the Messier Ontario Proceeding had already been commenced), Deloitte Restructuring Inc. ("**Deloitte**") was appointed receiver of the assets, undertakings and properties of 2Source.

22. On March 31, 2017, the court issued an Order authorizing the Receiver to file an assignment in bankruptcy on behalf of 2Source.

23. On July 21, 2017, Deloitte filed an assignment in bankruptcy on behalf of 2Source and the Office of the Superintendent of Bankruptcy issued a Certificate of Appointment, appointing Deloitte as Trustee.

CLAIMS OF 2006905 AND ROBERT GLEGG IN 2SOURCE'S BANKRUPTCY

24. As at July 21, 2017, the date of bankruptcy, 2006905 holds secured claims against 2Source in the principal amount of \$2,765,836 (the "**Secured Debt**") in respect of certain shareholder

loans. In addition to the Secured Debt, 2Source is also indebted to 2006905 in the principal amount of \$1,359,872, representing unsecured debt that was owed to me personally by 2Source and which I assigned to 2006905 on July 15, 2017 (the "**Unsecured Debt**").

25. On August 10, 2017, 2006905 filed a proof of claim with the Trustee in 2Source's bankruptcy proceeding in respect of the Secured Debt and Unsecured Debt referenced above. I have not attached a copy of that proof of claim as it contains confidential information but attached as **Exhibit "H"** is a copy of 2Source's Statement of Affairs, sworn and filed by the Receiver in 2Source's bankruptcy proceeding, confirming indebtedness to 2006905 of \$4,136,000. The difference of approximately \$10,000 between the amount shown on the Statement of Affairs (\$4,136,000) and total amount of the Secured Debt and Unsecured Debt (\$4,125,708) represents \$10,000 of unsecured debt owed to me by 2Source in respect of working capital loans, which I did not assign to 2006905 (the "**Retained Glegg Loan**").

26. In addition to the debts owed by 2Source to 2006905, I am personally owed \$273,366 of unsecured debt by 2Source as at the date of 2Source's bankruptcy, consisting of the Retained Glegg Loan of \$10,000, \$85,161 in accrued and unpaid interest, \$28,205 in unpaid salary and \$150,000 for legal fees I have paid personally to assist 2Source in its litigation against the UTAS Defendants pursuant to an arrangement with the Receiver, described further below. On August 10, 2017, I filed a proof of claim with the Trustee in 2Source's bankruptcy proceeding in respect of my personal claims against 2Source referenced above. I have not attached a copy of that proof of claim to this Affidavit as it contains confidential information.

PROSECUTION OF THE UTAS AND MESSIER CLAIMS DURING THE RECEIVERSHIP

27. As noted above, 2006905 is a significant creditor of 2Source and is owed over \$2.76 million in Secured Debt and over \$1.35 million in Unsecured Debt. The Receiver was appointed on application of another secured creditor of 2Source, HSBC Bank Canada, whose security has priority to that of 2006905.

28. Some time after the Receiver was appointed on January 23, 2017, I was informed by the Receiver that HSBC Bank Canada did not wish to fund the continuation by 2Source of its litigation claims, including its litigation in respect of the UTAS Claims and the Messier Claims. Since there was immediate ongoing work to be conducted in respect of the UTAS Ontario Proceeding, and since I believed and continue to believe that pursuit of the UTAS Claims and the Messier Claims is an important source of recovery for 2006905 and me in respect of our claims against 2Source and potentially for other creditors in 2Source's insolvency proceedings and, should there be sufficient funds remaining, for 2Source's shareholders as well, I agreed with the Receiver to assist 2Source in the continuation of the UTAS Claims by funding the costs thereof and instructing counsel with respect thereto. I also provided assistance to the Receiver during this period in connection with the Messier Ontario Proceeding.

29. My arrangement with the Receiver was that I would be entitled to repayment of the costs of funding 2Source's continuation of the litigation from any proceeds received therefrom, in priority to the claims of other creditors. While I have spent in excess of \$150,000 in paying fees and disbursements of counsel for 2Source in connection with litigation against the UTAS Defendants, I am claiming \$150,000 in respect thereof.

TRUSTEE AND RECEIVER UNWILLING TO CONTINUE UTAS CLAIMS AND MESSIER CLAIMS

30. After 2Source's bankruptcy, 2006905 has, through counsel, requested that the Trustee continue to prosecute the UTAS Claims on behalf of 2Source's bankruptcy estate but Deloitte has refused or otherwise declined to proceed on the basis that it is not funded to do so. I am advised by Raj Sahni of Bennett Jones LLP, counsel to 2Source in the UTAS Ontario Proceeding and counsel to 2006905 in connection with the relief sought herein, that on July 27, 2017, he was advised by Leanne Williams of Thornton Grout Finnigan, counsel to the Trustee and Receiver, that the Trustee and Receiver were not likely to commence or continue any proceedings in respect of the UTAS Claims on behalf of the 2Source estate as it does not have sufficient funding to do so.

31. Following this telephone call, on July 28, 2017, Mr. Sahni wrote a letter to Ms. Williams to formally request that the Trustee pursue the UTAS Claim on behalf of 2Source for the benefit of the estate of 2Source and its creditors. Mr. Sahni's letter also advised that if the Trustee declined to do so, 2006905 may bring a motion or application to seek an order authorizing it to pursue and enforce the UTAS Claim in its own name, and at its own expense and risk, pursuant to section 38 of the BIA. Attached as **Exhibit "I"** is a copy of the letter dated July 28, 2017 from Mr. Sahni to Ms. Williams.

32. Similarly, by letter dated August 1, 2017 from Eli Lederman of Lenczner Slaght LLP, counsel of record to 2Source in respect of the Ontario Messier Claim and co-counsel to 2006905 in this motion, Mr. Lederman requested that the Trustee continue to pursue the Ontario Messier Claim on behalf of 2Source for the benefit of the estate of 2Source and its creditors. Mr. Lederman's letter also advised that if the Trustee declined to do so, 2006905 may bring a motion or application to seek an order authorizing it to pursue and enforce the Messier Claims in its own name, and at its own expense and risk, pursuant to section 38 of the BIA. Attached as **Exhibit "J"** is a copy of the letter dated August 1, 2017 from Mr. Lederman to Ms. Williams.

33. By letters dated August 2, 2017 to each of Mr. Sahni and Mr. Lederman, counsel for the Trustee confirmed that it had no funds to continue litigation in respect of either the UTAS Claims or the Messier Claims and thus, did not intend to continue such litigation. Attached as **Exhibit “K”** and **Exhibit “L”** are copies of the letters dated August 2, 2017 from Ms. Williams, counsel to the Trustee, to Mr. Sahni and Mr. Lederman, respectively.

34. In the Trustee's Report to Creditors on Preliminary Administration dated August 10, 2017 (the "**Trustee's Report**"), the Trustee outlined (at Section "F") the UTAS Claims and the Messier Claims and noted that, after consultation with the secured creditors of 2Source, the Receiver has decided not to continue the Messier Claims or the UTAS Claims on behalf of 2Source. Attached as **Exhibit “M”** is a copy of the Trustee's Report dated August 10, 2017.

35. I attended the meeting of creditors held on August 10, 2017 at the offices of the Trustee in 2Source's bankruptcy proceeding (the "**Creditors Meeting**"), both in my personal capacity and as proxy holder for 2006905. At the Creditors Meeting, the Trustee referred the creditors to Section "F" of the Trustee's Report and asked that the creditors represented in person and by proxy and the inspectors who were appointed thereby confirm instructions to the Trustee not to pursue the UTAS Claims or the Messier Claims on behalf of 2Source's bankruptcy estate. The Trustee also informed the meeting that if the Trustee was not instructed and funded to pursue the UTAS Claims or the Messier Claims on behalf of 2Source's bankruptcy estate, that 2006905 intended to seek the Requested Order under section 38 of the BIA. A draft of the Requested Order was provided by 2006905's counsel to the Trustee and its counsel on August 9, 2017, so that they had it in advance of the Creditors Meeting

36. At the Creditors Meeting, the Trustee was instructed not to pursue the UTAS Claims or the Messier Claims on behalf of 2Source's bankruptcy estate. In order to ensure no conflict of interest,

I abstained from voting on that decision in any and all capacities, including in my personal capacity, in my capacity as proxyholder for 2006905 and in my capacity as an inspector appointed at the Creditors Meeting.

37. Accordingly, it is now clear to me that neither the Receiver nor the Trustee will pursue the UTAS Claims or the Messier Claims.

2006905 PREPARED TO PURSUE CLAIMS IN OWN NAME AND EXPENSE

38. In accordance with section 38 of the BIA, 2006905 is prepared to pursue the UTAS Claims and the Messier Claims in its own name, at its own expense and risk, and to give other creditors of 2Source who, as of the date of the Requested Order, have proven claims in the estate an opportunity to participate in the proceeding as contemplated by section 38 of the BIA (subject to their agreement to share in funding the costs of the litigation).

39. In order to ensure that other creditors who wish to participate in the prosecution of the UTAS Claims and the Messier Claims are provided with notice of the Requested Order and are given a reasonable opportunity to participate in the benefits, funding and risks of any proceedings in respect of the UTAS Claims and the Messier Claims, as contemplated under section 38 of the BIA, the Requested Order contemplates that the Trustee will deliver notice of the Requested Order to all known creditors of the Bankrupt with provable claims and that such creditors will have ten days to inform the Trustee if they wish to participate in the proceedings. The Requested Order also provides that any such creditors who agree to participate in the benefits and risks of the proceedings and actually fund their *pro rata* share (proportionate to the amount of such creditors' provable claims in the bankruptcy estate) of the costs of the proceedings ("**Participating**

Creditors") will be entitled to share in the benefits thereof on a *pro rata basis* with 2006905, in accordance with paragraph 11 of the Requested Order.

40. As can be seen from paragraph 11 of the Requested Order, if there are proceeds remaining after payment of the costs of litigation and the proven claims of 2006905 and any Participating Creditors, any surplus proceeds received from the UTAS Claims and/or the Messier Claims will be paid to the Trustee for the benefit of 2Source's bankruptcy estate, including its remaining creditors and, if there are sufficient funds remaining after paying creditors, 2Source's shareholders.

41. The Requested Order includes a paragraph granting 2006905 the sole right to control the conduct of any proceedings in respect of the UTAS Claims and/or the Messier Claims in all jurisdictions, including the sole right to instruct counsel and make all decisions with respect to the proceedings and the UTAS Claims and the Messier Claims. I believe that such an order is appropriate since, as noted above, I was, until my resignation on March 10, 2017, the CEO of 2Source since its formation in 2004 and I was directly involved in that capacity in negotiating and conducting business with the UTAS Defendants and the Messier Defendants on behalf of 2Source. I have detailed knowledge of the UTAS Claims and the Messier Claims and the facts giving rise thereto.

42. I have also spent considerable time and effort assisting 2Source in pursuing the UTAS Claims and the Messier Claims to date, both in my former capacity as CEO of 2Source and also in my capacity as President of 2006905, which, as detailed above, is a significant secured and unsecured creditor of 2Source. In those capacities, I have been involved in every stage of 2Source's pursuit of the UTAS Claims and the Messier Claims to date, including instructing counsel and assisting with the preparation of pleadings and other documents drafted by 2Source's counsel. Accordingly, I have been intimately involved in 2Source's pursuit of the UTAS Claims

and the Messier Claims to date and believe that I am best placed to make decisions in respect of the UTAS Claims and the Messier Claims and the continuation or commencement of any further proceedings in respect thereof.


43. The pursuit of the UTAS Claims and the Messier Claims will require considerable time and resources on the part of 2006905 and myself and cause 2006905 to incur further, potentially significant, costs. Accordingly, it is important that 2006905 have sole and absolute decision making power regarding the UTAS Claims and the Messier Claims, including without limitation, decisions on whether or not to pursue such claims, the forum in which those claims are to be pursued and the counsel to be used to pursue those claims. 2006905 and I are only willing to expend such time and resources if the Requested Order is granted in the form requested.


44. The Requested Order also contains a paragraph vesting any proceeds from any proceedings in respect of the UTAS Claims and the Messier Claims to 2006905 and other Participating Creditors free and clear of any rights and interests of secured creditors of other encumbrances. I also believe such an order is just and appropriate in the circumstances given that the Receiver will remain in place for the current time on behalf of secured creditors. As noted in Section "F" of the Trustee's Report, after consultation with the secured creditors of 2Source, the Receiver has decided not to continue to pursue the UTAS Claims or the Messier Claims on behalf of 2Source. Accordingly, having decided not to fund or pursue the UTAS Claims and the Messier Claims it would be unjust for secured creditors to be able to interfere with or potentially reap the rewards thereof ahead of 2006905 or other Participating Creditors, who will be funding and taking on the risk of any proceedings in respect of the UTAS Claims and the Messier Claims. However, for greater certainty, the vesting of the benefits of the UTAS Claims and the Messier Claims free and clear of secured claims and other encumbrances does not deprive any secured or unsecured

creditors of any residual proceeds remaining after the litigation costs and the claims of 2006905 and Participating Creditors are paid in full, since any such residual proceeds will be paid to the Trustee for the benefit of creditors and, if any funds remain, for the benefit of the shareholders of 2Source.

45. As noted above, the Requested Order was provided to the Trustee in advance of the Creditors Meeting so that it could be discussed at the Creditors Meeting. A copy of the Requested Order was also provided to counsel for HSBC, the primary secured creditor, for their review prior to the Requested Order being served. I am advised by 2006905's counsel that the draft Requested Order has been discussed with counsel for the Trustee and that the Trustee is not objecting to the Requested Order.

SWORN BEFORE ME at the City of)
Toronto, in the Province of Ontario, this)
22nd day of August, 2017)
)
)
)
)
)
A Commissioner For Taking Affidavits)
Amanda C. McLachlan)



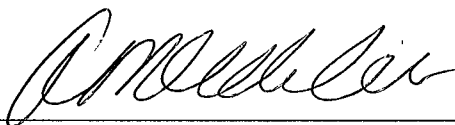
ROBERT GLEGG


TAB A

This is **Exhibit "A"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017

A handwritten signature in black ink, appearing to read "Amanda C. McLachlan", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

Court File No. CV-17-567429-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



2SOURCE MANUFACTURING INC.

Plaintiff

- and -

**UNITED TECHNOLOGIES CORPORATION, GOODRICH AEROSPACE CANADA
LTD., GOODRICH CORPORATION, DINO SOAVE and VERIFY, INC.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date January 10, 2017 Issued by *Jonas*
Local Registrar
Address of court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: **UNITED TECHNOLOGIES CORPORATION**
10 Farm Springs Road
Farmington, Connecticut 06302

AND TO: **GOODRICH AEROSPACE CANADA LTD.**
1400 South Service Road W
Oakville, ON L6L 5Y7

AND TO: **GOODRICH CORPORATION**
160 Mine Lake Ct Ste 200
Raleigh, NC 27615

AND TO: **DINO SOAVE**

AND TO: **VERIFY, INC.**
2525 Main Street
Suite 100
Irvine, California 92614

CLAIM

1. The plaintiff, 2Source Manufacturing Inc. ("2Source") claims as against the defendants, United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and

Dino Soave:

- (a) damages in the amount of at least \$25,000,000 (CAD), or such other amounts as may be proven at trial, for breach of the *Competition Act*, RSC 1985 c C-34, fraudulent misrepresentation, deceit, conspiracy and unlawful interference with economic interests;
- (b) punitive damages in the amount of \$5,000,000 (CAD);
- (c) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding, plus all applicable taxes; and
- (f) such further and other relief as to this Honourable Court may seem just.

2. 2Source claims as against Verify, Inc.:

- (a) damages in the amount of \$25,000,000 (CAD) for negligence and breach of contract;

- (b) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) the costs of this proceeding, plus all applicable taxes; and
- (e) such further and other relief as to this Honourable Court may seem just.

The Parties

3. 2Source is a corporation incorporated pursuant to the laws of Ontario. It operates as a supplier and manufacturer of component parts used in the manufacture of aircraft landing gear. It has approximately 70 employees.

4. Robert Glegg ("Glegg") is an individual resident in Ontario and is the Chief Executive Officer and Chairman of the Board of Directors of 2Source.

5. The defendant, United Technologies Corporation ("UTC") is a corporation incorporated pursuant to the laws of Delaware. UTC serves customers worldwide in the commercial aerospace, defense and building industries. It enjoys annual revenues in excess of \$50 billion and employs approximately 200,000 individuals worldwide. UTC acquired Goodrich Aerospace Canada Ltd. and Goodrich Corporation in 2012.

6. Goodrich Aerospace Canada Ltd. ("Goodrich Canada") is a corporation incorporated under the laws of Canada.

7. Goodrich Corporation is a corporation incorporated under the laws of New York and operates in Troy, Ohio.

8. Goodrich Canada and Goodrich Corporation operate in Canada and the United States as UTC Aerospace Systems ("UTAS"), one of the largest suppliers of integrated landing systems in the world, providing landing gear and braking systems for a wide range of aircraft applications. UTC directly or indirectly owns all of the shares of Goodrich Canada and Goodrich Corporation. It exercises near total control of the management of the business and affairs of all of its subsidiaries, including Goodrich Canada and Goodrich Corporation and effectively dominates the decision making processes of its subsidiaries. Unless otherwise indicated, references below to UTAS shall include UTC as sole shareholder and directing mind and will of Goodrich Canada and Goodrich Corporation.

9. Dino Soave ("Soave") is a resident of Ontario and was employed by Goodrich Canada in the role of Senior Sourcing Machining Manager, Aircraft Systems & APS Segments during the relevant period. In that role, Soave was 2Source's primary contact at UTAS.

10. Verify, Inc. ("Verify") is a corporation incorporated pursuant to the laws of California. Verify provides quality critical industries supplier performance management services to companies throughout North America.

11. This claim is about a carefully conceived and orchestrated scheme of deception by UTAS against 2Source. UTAS' scheme of deception has resulted in the crippling of 2Source's business.

The Long-Term Purchase Agreement

12. Prior to UTC's acquisition of Goodrich Canada in or about 2012, 2Source contracted with Goodrich Canada directly for the supply of certain landing gear component parts. 2Source began contracting with Goodrich Canada in or about 2005.

13. Pursuant to an agreement dated January 1, 2015, Goodrich Canada, operating as UTAS, entered into a contract with 2Source for the continued purchase of aircraft component parts for a further period of two years (the "Purchase Agreement"). UTAS was 2Source's largest customer. Sales to UTAS in 2016 represented approximately 50% of 2Source's revenues.

14. During the course of 2Source's previous long-term purchase agreement with UTAS, which was scheduled to expire on December 31, 2014, Paul Meringer ("Meringer") (Director of Procurement, Landing Systems at UTAS) inquired as to whether or not 2Source was interested in hiring his wife, who was employed by Noranco Inc. ("Noranco"), another company engaged in the manufacture of aircraft component parts. Noranco is a major supplier to UTAS. Meringer explained that his wife's employment at Noranco was coming to an end. 2Source declined to hire Meringer's wife as requested.

15. In the course of negotiations to put in place a new long-term agreement beginning January 1, 2015, 2Source advised UTAS that it was unable to agree to unlimited liability for consequential damages. 2Source required that its liability for such damages be capped at \$750,000. Glegg considered it negligent for any company to agree to unlimited consequential damages with its customers; in fact, UTAS informed 2Source that UTAS never agrees to unlimited consequential damages with its own customers. As explained below, UTAS reacted very negatively to this

position and although it ultimately agreed to include such a damages cap in the Purchase Agreement, it decided that 2Source should be punished for the position that it had asserted.

16. The Purchase Agreement also incorporated by reference the UTC Standard Terms and Conditions of Purchase (the "UTC Terms and Conditions"). The UTC Terms and Conditions defined "Buyer" for the purposes of the agreement as UTC or an affiliate of UTC, and outlined further terms and conditions applicable to the relationship between 2Source, UTAS and UTC. In negotiating supply contracts, Goodrich Canada and Goodrich Corporation acted on their own behalf and as agents on behalf of UTC and the entire family of UTAS companies.

2Source's Exemplary Quality

17. Industry and regulatory standards require very careful inspection of all parts prior to their installation into aircraft landing gear.

18. As a result of the exemplary quality of the products delivered by 2Source, 2Source inspectors were permitted by UTAS to self-inspect and affix UTAS' designated supplier quality assurance representative stamp ("DSQAR Stamp") on parts supplied to UTAS for use in aircraft landing gear.

19. 2Source's exemplary quality was acknowledged and depended upon by UTAS.

UTAS Revokes 2Source's DSQAR Stamps as an Act of Reprisal

20. In early 2015, Glegg was warned by a procurement executive at UTAS that there would be reprisals against 2Source as a result of its insistence on the inclusion of the consequential damages cap in the Purchase Agreement.

21. This warning materialized within the first six months of 2015 when UTAS revoked all of 2Source's DSQAR Stamps. 2Source immediately protested the decision as there was no quality basis for the revocation of the DSQAR Stamps. Immediately after the last DSQAR Stamp was revoked, Glegg was advised by another procurement executive at UTAS (not the executive referenced above) that UTAS had revoked the DSQAR Stamps in retaliation for 2Source's insistence on the consequential damages cap in the Purchase Agreement.

22. 2Source was advised that it would be required, at its own expense, to use a third party inspection service, Verify, selected by UTAS. UTAS also advised that the shortest possible timeframe for the return of its DSQAR Stamps was, based on company practice, eighteen months.

23. On July 27, 2015, an inspector employed by Verify at 2Source sent an email to a 2Source employee in which he made a number of disturbing and paranoid statements, including allegations that he was being watched while on the job and while using the washroom and that individuals "from his past" were attempting to "jeopardize his employment". Upon reviewing the email, Glegg and a number of other 2Source employees became concerned about the mental health and fitness of the Verify inspector to perform his job duties satisfactorily. After reviewing the email and interviewing the Verify inspector, a senior UTAS employee present on the 2Source site that day described the Verify inspector in his own words as "mentally unfit" and as being "in the Twilight Zone".

24. Given his serious and well-founded concerns about the suitability of the Verify inspector, Glegg determined that it was necessary to remove the Verify inspector from the 2Source facility. Upon further reflection, Glegg determined that all Verify inspectors should be removed from the 2Source facility pending investigation of the email and certain of Verify's processes and

procedures. Specifically, 2Source requested that Verify provide information pertaining to its personnel selection process, training and inspection procedures.

25. In a letter dated July 29, 2015 responding to 2Source's request, UTAS thanked 2Source for identifying the problematic Verify inspector and acknowledged that its own subsequent interview of such employee had "raised concern that was not identified during their original screening" and that removal of the individual from the list of approved contractors was "rational". Notwithstanding this acknowledgement, the letter went on to advise that UTAS maintained the exclusive right to approve or disapprove of any individual authorized to perform inspections on its behalf and that vetting individual inspectors could create a conflict of interest.

26. 2Source sought to correct UTAS' misunderstanding regarding its request for information from Verify, specifically clarifying on numerous occasions that 2Source's requests were not intended to permit 2Source an opportunity to vet individual inspectors. Rather, as it clarified, 2Source was merely attempting to ensure that Verify's procedures were in line with 2Source's quality and safety standards and, even more importantly, that Verify and its employees did not represent a potential threat to the flying public. 2Source was clear at all times that it was willing to permit Verify to continue inspections once it had provided 2Source with the opportunity to review and approve its processes and procedures. In the absence of such assurances and pending its review and approval of Verify's processes and procedures, 2Source advised UTAS that 2Source was not comfortable with any Verify inspectors being on its site.

27. As documented in an email to UTAS dated September 3, 2015, UTAS made repeated requests to Glegg that he not disclose to any other party any negative information that 2Source might find about Verify if 2Source were to review Verify's policies and procedures. Glegg advised

UTAS in the course of such discussions that given the serious nature of the incident that had occurred, he did not intend to permit his judgment as CEO of 2Source to be compromised. In response to inquiries regarding what might occur if 2Source did not "like" Verify's procedures, Glegg specifically advised UTAS that in the event that he, or his people, discovered anything improper in Verify's processes or procedures, he would take all such steps as may be required by law to deal with the deficiency, including, as necessary, reporting any serious deficiencies or safety violations to the Federal Aviation Administration (the "FAA").

28. UTAS did not require Verify to provide the requested information to 2Source (nor did Verify provide the information directly) and, therefore, 2Source did not allow Verify to return. This meant that UTAS itself had to perform the inspection function at 2Source. Notwithstanding that it had previously advised 2Source that UTAS policy prohibited the return of DSQAR Stamps before the expiry of an eighteen month period, UTAS ultimately opted to return the DSQAR Stamps to 2Source after eight months, in February 2016, so that 2Source could resume its self-inspection process.

UTAS Engages in Discussions with 2Source About a new Long-Term Contract

29. Further to communications between Glegg and Soave in March 2016, on April 14, 2016 Glegg and Catherine King ("King"), Vice-President of Sales and Operations at 2Source, met with Soave and three other representatives of UTAS in Oakville, Ontario to discuss, among other things, a multi-year supply contract to take effect after expiration of the Purchase Agreement. During the discussion, UTAS was very receptive to an increase in its spend with 2Source from 66% of its global landing gear bushing requirements to 100%. In response to 2Source's proposed 3 to 5 year deal, UTAS suggested that a 15 year deal might be appropriate.

30. Following the initial discussions, there was a follow up meeting held in Oakville, Ontario with Soave and others from UTAS on June 30, 2016 to discuss specifics with respect to how the new long-term supply contract would work and how the proposed scope would be increased after December 31, 2016.

31. Soave provided 2Source with an updated version of the standard terms and conditions that accompanied and were incorporated by the Purchase Agreement. By email dated July 21, 2016, Soave inquired as to whether or not 2Source would be in a position to deliver a "red lined document" incorporating its comments by August 8, 2016. Soave advised that UTAS' intention was to review the document with its legal counsel before scheduling a meeting with 2Source in the week thereafter and expressed a desire to allow for sufficient time to complete the negotiations.

32. In early August 2016, 2Source provided Soave with its comments on the UTAS Standard Terms and Conditions that would form the basis for a new long-term purchase agreement between 2Source and UTAS. Thereafter, UTAS continued to engage in negotiations with 2Source, during which Soave represented that he would be available for a meeting to discuss 2Source's comments on the draft documents during the first week of September.

UTAS Abruptly Terminates Negotiations

33. Glegg began to detect that UTAS was acting in an unusual manner and, as a result, Glegg asked certain questions of UTAS. In response, Glegg immediately received a letter from UTAS dated August 23, 2016. UTAS' August 23, 2016 letter abruptly advised 2Source that UTAS would not be renewing or extending the Purchase Agreement despite the fact that UTAS had been engaged in serious negotiations with 2Source for many months. The letter received by 2Source from UTAS was signed by Soave and David Lycklama (Manager, Commodity Management at

UTAS) and directly contradicted UTAS' previous representations and course of conduct regarding its interest in continuing to proceed with 2Source as its primary and perhaps exclusive supplier of certain component parts.

34. Unbeknownst to 2Source, during the period in which it was engaged in good faith negotiations for a new long-term supply contract, UTAS, Soave and others at UTAS were working behind the scenes to replace 2Source with new suppliers while intentionally deceiving 2Source regarding their intentions in that regard. Representatives of UTAS subsequently admitted to Glegg that the decision to end its relationship with 2Source was made in the Fall of 2015 as a result of UTAS' displeasure with how Glegg had reacted to the pulling of 2Source's DSQAR Stamps and, in particular, how Glegg had excluded Verify as a result of his concerns about the safety of the flying public.

35. Notwithstanding that UTAS had decided to end its relationship with 2Source, UTAS decided to mislead 2Source and cause it to believe that it would be continuing as a supplier to UTAS. Soave was the chief architect and artisan of this duplicitous scheme. He did so in his capacity as an employee of UTAS. He knew and intended that his deceitful representations would cause 2Source to suffer losses.

36. UTAS' actions in this regard are contrary to the UTC Code of Ethics, which states:

It is never acceptable to sacrifice our integrity or values to achieve business success. We are a company committed to always doing the right thing. No exceptions.

...

We will deal fairly with our suppliers and partners. We will seek long-lasting business relationships, without discrimination or deception.

37. 2Source also learned that immediately after UTAS' receipt of correspondence from Glegg detailing the misrepresentations that had been made by Soave and UTAS, UTAS terminated the employment of Soave and Meringer (who, as described in paragraph 14 above, had sought to have 2Source give a job to his wife after she ceased to be employed by another supplier to UTAS).

Deceit, Conspiracy and Fraudulent Misrepresentation

38. The predominant purpose of the unlawful conduct of UTAS, Goodrich Canada, Goodrich Corporation and Soave was specifically directed at 2Source and was intended to cause injury to 2Source, who they knew or ought to have known would refrain from seeking alternative sources of business based on their misrepresentations regarding UTAS' intention to expand its contractual relationship with 2Source in a fifteen year agreement. UTAS, Goodrich Canada, Goodrich Corporation and Soave are therefore liable for predominant purpose conspiracy and unlawful act conspiracy.

39. UTAS, Goodrich Canada, Goodrich Corporation and Soave fraudulently misrepresented that UTAS intended to extend, expand and renew its contractual relationship with 2Source with the express intention to deceive 2Source. As a result of the misrepresentations of UTAS, Goodrich Canada, Goodrich Corporation and Soave, 2Source was induced to refrain from seeking alternative business opportunities that would have avoided or reduced its losses.

40. UTAS, Goodrich Canada, Goodrich Corporation, Soave and other employees of UTAS, whose identities are not known to 2Source at this time, but who are known to UTAS, conspired and colluded with each other to further the misrepresentations made to 2Source. The full particulars of the conspiracy and agreement to engage in misrepresentations and deceive 2Source are in the knowledge of UTAS, Goodrich Canada, Goodrich Corporation and Soave. UTAS,

Goodrich Canada, Goodrich Corporation and Soave are in possession of emails, correspondence, reports and other documents that evidence such conspiracy.

Unlawful Interference with Economic Interests

41. In making the false and misleading representations described above, UTAS, Goodrich Canada, Goodrich Corporation and Soave intended to cause loss to 2Source. UTAS, Goodrich Canada, Goodrich Corporation and Soave did so for the purpose of protecting UTAS' uninterrupted supply of component parts through the end of 2016 and as a vindictive response to UTAS' displeasure with Glegg's insistence on the inclusion of a cap on liability for consequential damages in the Purchase Agreement and Glegg's response to the unfit Verify inspector retained by UTAS. This conduct caused significant damage to 2Source, which was left with insufficient time to seek alternative business opportunities.

The Defendants' Violated the *Competition Act*

42. Soave, in his role as Senior Sourcing Machining Manager, Aircraft Systems & APS Segments at UTAS and on behalf of UTAS, falsely misrepresented in emails to 2Source that UTAS intended to negotiate in good faith the extension of the Purchase Agreement by way of a long-term supply contract. In so doing, UTAS, Goodrich Canada, Goodrich Corporation and Soave committed actionable violations of section 52.01(2) of the *Competition Act*, RSC 1985 c C-34. This entitles 2Source to recover its resulting damages under section 36 of the *Competition Act*, RSC 1985 c C-34.

43. In so misrepresenting, UTAS, Goodrich Canada, Goodrich Corporation and Soave promoted UTAS' business interests in ensuring the continued and uninterrupted supply to UTAS

and UTC of parts supplied by 2Source. The representations made by UTAS, Goodrich Canada, Goodrich Corporation and Soave in this regard were false and misleading, which UTAS, Goodrich Canada, Goodrich Corporation and Soave knew or ought to have known would cause 2Source to suffer significant damages (which in fact it did).

Verify Breached the Terms of its Contract and was Negligent

44. Verify was obligated and had a duty in accordance with the terms of the Supplier Funded Initiative Agreement executed with Verify on March 11, 2015, to provide to 2Source inspectors who were qualified, well-trained, competent and capable of performing the services contracted for.

45. Contrary to the terms of the Supplier Funded Initiative Agreement, Verify failed to provide qualified, competent inspectors to 2Source. Verify failed to properly hire, train, instruct and/or supervise the work performed by its employees, servants, agents, contractors and/or subcontractors and to ensure that its employees, servants, agents, contractors and/or subcontractors exercised due care and skill. Rather, Verify hired incompetent employees, servants, agents, contractors and/or subcontractors without the proper expertise or knowledge required to adequately conduct the quality and safety inspections required by 2Source. Verify further failed to warn 2Source when it knew or ought to have known that there was a risk to the flying public arising from the incompetency of its inspectors and as such, failed to take all reasonable care in the circumstances.

46. As a result of Verify's negligence and breach of the Supplier Funded Initiative Agreement, 2Source sustained damages, including, among other damages, a significant loss in revenue. 2Source has suffered irreparable harm and will suffer ongoing losses to its business.

47. Verify and UTAS are vicariously liable for the negligence and other wrongful acts of their servants, agents, employees, contractors and/or subcontractors in relation to the losses and damages suffered by 2Source.

The Defendants' Conduct has Caused the Plaintiff to Incur Damages

48. 2Source has suffered significant damages as a result of the defendants' conduct. The misrepresentations regarding UTAS' intention to enter into a long term supply contract following expiration of the Purchase Agreement and to increase 2Source's production made by UTC, Goodrich Canada, Goodrich and Soave caused 2Source to refrain from securing alternative customers. UTAS' abrupt termination of the Purchase Agreement following Verify's breach of the Supplier Funded Initiative Agreement and negligent provision of inspectors left 2Source with insufficient time to avoid costly and potentially devastating production stoppages.

49. 2Source's losses will be the entire value of 2Source's business.

50. Moreover, as a result of the misrepresentations made by UTAS, Goodrich Canada, Goodrich Corporation and Soave described herein, 2Source has been unable to comply with certain of its financial obligations as they become due. As such, 2Source is at risk of becoming insolvent and being required to reduce or entirely eliminate its workforce.

51. 2Source has taken and continues to take all reasonable steps to mitigate its damages.

Punitive Damages

52. The conduct of UTC, Goodrich Canada, Goodrich and Soave as described herein constitutes callous and deceitful conduct, a flagrant disregard for 2Source's rights and is deserving

of full condemnation warranting deterrence. As a result, 2Source is entitled to recover punitive damages.

53. The defendants are jointly and severally liable for the damages incurred by 2Source.

54. 2Source pleads and relies on the *Negligence Act*, RSO 1990 c N 1.

Service Outside Ontario

55. 2Source may serve the Statement of Claim outside Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this claim is:

- (a) a claim in respect of a tort committed in Ontario (17.02(g)); and
- (b) a claim in respect of damages sustained in Ontario (17.02(h)).

Place of Trial

56. The plaintiffs propose that this action be tried at the City of Toronto.

Date: January 10, 2017

BENNETT JONES LLP
3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

James D. Patterson (#28199C)
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Lawyers for the plaintiff

2SOURCE MANUFACTURING INC.
Plaintiff

-and-

UNITED TECHNOLOGIES CORPORATION et al
Defendants

Court File No. CV-17-567429-
00

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto ON M5X 1A4

James D. Patterson (#28199C)

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Telephone: (416) 777-6250/5393

Facsimile: (416) 863-1716

Lawyers for the plaintiff

TAB B

This is **Exhibit "B"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS
Amanda C. McLachlan

Court File No. CV-17-567429

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2SOURCE MANUFACTURING INC.

Plaintiff

- and -

UNITED TECHNOLOGIES CORPORATION, GOODRICH AEROSPACE CANADA LTD.
GOODRICH CORPORATION, DINO SOAVE and VERIFY, INC.

Defendants

NOTICE OF INTENT TO DEFEND

THE DEFENDANTS, United Technologies Corporation, Goodrich Aerospace Canada Ltd, Goodrich Corporation and Dino Soave ("UTAS Defendants") intend to defend this action.

This action should be stayed. The NY courts have exclusive jurisdiction over this dispute in accordance with the forum selection clause in the United Technologies Corporation Standard Terms and Conditions of Purchase dated September 2013 which are incorporated by reference in the Long Term Purchase Agreement between Goodrich Aerospace Canada Ltd. and 2Source Manufacturing Inc. UTC elects NY as the jurisdiction for this dispute. The UTAS Defendants will be bringing a motion to stay.

DATE: January 31, 2017

BORDEN LADNER GERVAIS LLP
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ghamilton@blg.com

Lawyers for the Defendants, United
Technologies Corporation, Goodrich
Aerospace Canada Ltd, Goodrich
Corporation and Dino Soave

TO: **BENNETT JONES**
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Lawyers for the Plaintiff

2Source Manufacturing Inc.

and

United Technologies Corporation et al.

Plaintiffs

Defendants

Court File No. CV-17-567429-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at TORONTO

NOTICE OF INTENT TO DEFEND

BORDEN LADNER GERVAIS LLP

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Kirsten Crain

LSUC No. 44529U

Graeme Hamilton

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(613) 237-5160 telephone

(613) 230-8842 facsimile

Lawyers for the Defendants United Technologies Corporation,
Goodrich Aerospace Canada Ltd, Goodrich Corporation and Dinc
Soave
Box 368

File No: 297293-2

TAB C

This is **Exhibit "C"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

AMENDED THIS 12 MAY 2017 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (A)

Court File No. CV-17-567429-00

THE ORDER OF
L'ORDONNANCE DU

DATED / FAIT LE

ONTARIO

Helena Tsakiris Helena Tsakiris

SUPERIOR COURT OF JUSTICE

LOCAL REGISTRAR GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE COUR SUPERIEURE DE JUSTICE

2SOURCE MANUFACTURING INC.

Plaintiff

- and -

UNITED TECHNOLOGIES CORPORATION, GOODRICH AEROSPACE CANADA
LTD., GOODRICH CORPORATION, DINO SOAVE and VERIFY, INC.

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date 10 JANUARY 2017 Issued by << D. JONAS >>
Local Registrar

Address of
court office: 393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: **UNITED TECHNOLOGIES CORPORATION**
10 Farm Springs Road
Farmington, Connecticut 06302

AND TO: **GOODRICH AEROSPACE CANADA LTD.**
1400 South Service Road W
Oakville, ON L6L 5Y7

AND TO: **GOODRICH CORPORATION**
160 Mine Lake Ct Ste 200
Raleigh, NC 27615

AND TO: **DINO SOAVE**

CLAIM

1. The plaintiff, 2Source Manufacturing Inc. ("2Source") claims as against the defendants, United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and Dino Soave;

- (a) damages in the amount of at least \$25,000,000 (CAD), or such other amounts as may be proven at trial, for breach of the *Competition Act*, RSC 1985 c C-34, fraudulent misrepresentation, deceit, conspiracy and unlawful interference with economic interests;
- (b) punitive damages in the amount of \$5,000,000 (CAD);
- (c) pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this proceeding, plus all applicable taxes; and
- (f) such further and other relief as to this Honourable Court may seem just.

The Parties

2. 2Source is a corporation incorporated pursuant to the laws of Ontario. It operates as a supplier and manufacturer of component parts used in the manufacture of aircraft landing gear. It has approximately 70 employees.

3. Robert Glegg ("Glegg") is an individual resident in Ontario and is the Chief Executive Officer and Chairman of the Board of Directors of 2Source.

4. The defendant, United Technologies Corporation ("UTC") is a corporation incorporated pursuant to the laws of Delaware. UTC serves customers worldwide in the commercial aerospace, defense and building industries. It enjoys annual revenues in excess of \$50 billion and employs approximately 200,000 individuals worldwide. UTC acquired Goodrich Aerospace Canada Ltd. and Goodrich Corporation in 2012.

5. Goodrich Aerospace Canada Ltd. ("Goodrich Canada") is a corporation incorporated under the laws of Canada.

6. Goodrich Corporation is a corporation incorporated under the laws of New York and operates in Troy, Ohio.

7. Goodrich Canada and Goodrich Corporation operate in Canada and the United States as UTC Aerospace Systems ("UTAS"), one of the largest suppliers of integrated landing systems in the world, providing landing gear and braking systems for a wide range of aircraft applications. UTC directly or indirectly owns all of the shares of Goodrich Canada and Goodrich Corporation. It exercises near total control of the management of the business and affairs of all of its subsidiaries, including Goodrich Canada and Goodrich Corporation and effectively dominates the decision making processes of its subsidiaries. Unless otherwise indicated, references below to UTAS shall include UTC as sole shareholder and directing mind and will of Goodrich Canada and Goodrich Corporation.

8. Dino Soave ("Soave") is a resident of Ontario and was employed by Goodrich Canada in the role of Senior Sourcing Machining Manager, Aircraft Systems & APS Segments during the relevant period. In that role, Soave was 2Source's primary contact at UTAS.

9. This claim is about a carefully conceived and orchestrated scheme of deception by UTAS against 2Source. UTAS' scheme of deception has resulted in the crippling of 2Source's business.

The Long-Term Purchase Agreement

10. Prior to UTC's acquisition of Goodrich Canada in or about 2012, 2Source contracted with Goodrich Canada directly for the supply of certain landing gear component parts. 2Source began contracting with Goodrich Canada in or about 2005.

11. Pursuant to an agreement dated January 1, 2015, Goodrich Canada, operating as UTAS, entered into a contract with 2Source for the continued purchase of aircraft component parts for a further period of two years (the "Purchase Agreement"). UTAS was 2Source's largest customer. Sales to UTAS in 2016 represented approximately 50% of 2Source's revenues.

12. During the course of 2Source's previous long-term purchase agreement with UTAS, which was scheduled to expire on December 31, 2014, Paul Meringer ("Meringer") (Director of Procurement, Landing Systems at UTAS) inquired as to whether or not 2Source was interested in hiring his wife, who was employed by Noranco Inc. ("Noranco"), another company engaged in the manufacture of aircraft component parts. Noranco is a major supplier to UTAS. Meringer explained that his wife's employment at Noranco was coming to an end. 2Source declined to hire Meringer's wife as requested.

13. In the course of negotiations to put in place a new long-term agreement beginning January 1, 2015, 2Source advised UTAS that it was unable to agree to unlimited liability for consequential damages. 2Source required that its liability for such damages be capped at \$750,000. Glegg considered it negligent for any company to agree to unlimited consequential damages with its customers; in fact, UTAS informed 2Source that UTAS never agrees to unlimited consequential damages with its own customers. As explained below, UTAS reacted very negatively to this position and although it ultimately agreed to include such a damages cap in the Purchase Agreement, it decided that 2Source should be punished for the position that it had asserted.

14. The Purchase Agreement also incorporated by reference the UTC Standard Terms and Conditions of Purchase (the "UTC Terms and Conditions"). The UTC Terms and Conditions defined "Buyer" for the purposes of the agreement as UTC or an affiliate of UTC, and outlined further terms and conditions applicable to the relationship between 2Source, UTAS and UTC. In negotiating supply contracts, Goodrich Canada and Goodrich Corporation acted on their own behalf and as agents on behalf of UTC and the entire family of UTAS companies.

2Source's Exemplary Quality

15. Industry and regulatory standards require very careful inspection of all parts prior to their installation into aircraft landing gear.

16. As a result of the exemplary quality of the products delivered by 2Source, 2Source inspectors were permitted by UTAS to self-inspect and affix UTAS' designated supplier quality assurance representative stamp ("DSQAR Stamp") on parts supplied to UTAS for use in aircraft landing gear.

17. 2Source's exemplary quality was acknowledged and depended upon by UTAS.

UTAS Revokes 2Source's DSQAR Stamps as an Act of Reprisal

18. In early 2015, Glegg was warned by a procurement executive at UTAS that there would be reprisals against 2Source as a result of its insistence on the inclusion of the consequential damages cap in the Purchase Agreement.

19. This warning materialized within the first six months of 2015 when UTAS revoked all of 2Source's DSQAR Stamps. 2Source immediately protested the decision as there was no quality basis for the revocation of the DSQAR Stamps. Immediately after the last DSQAR Stamp was revoked, Glegg was advised by another procurement executive at UTAS (not the executive referenced above) that UTAS had revoked the DSQAR Stamps in retaliation for 2Source's insistence on the consequential damages cap in the Purchase Agreement.

20. 2Source was advised that it would be required, at its own expense, to use a third party inspection service, Verify, Inc. ("Verify"), selected by UTAS. UTAS also advised that the shortest possible timeframe for the return of its DSQAR Stamps was, based on company practice, eighteen months.

21. On July 27, 2015, an inspector employed by Verify at 2Source sent an email to a 2Source employee in which he made a number of disturbing and paranoid statements, including allegations that he was being watched while on the job and while using the washroom and that individuals "from his past" were attempting to "jeopardize his employment". Upon reviewing the email, Glegg and a number of other 2Source employees became concerned about the mental health and fitness of the Verify inspector to perform his job duties satisfactorily. After reviewing the email and

interviewing the Verify inspector, a senior UTAS employee present on the 2Source site that day described the Verify inspector in his own words as "mentally unfit" and as being "in the Twilight Zone".

22. Given his serious and well-founded concerns about the suitability of the Verify inspector, Glegg determined that it was necessary to remove the Verify inspector from the 2Source facility. Upon further reflection, Glegg determined that all Verify inspectors should be removed from the 2Source facility pending investigation of the email and certain of Verify's processes and procedures. Specifically, 2Source requested that Verify provide information pertaining to its personnel selection process, training and inspection procedures.

23. In a letter dated July 29, 2015 responding to 2Source's request, UTAS thanked 2Source for identifying the problematic Verify inspector and acknowledged that its own subsequent interview of such employee had "raised concern that was not identified during their original screening" and that removal of the individual from the list of approved contractors was "rational". Notwithstanding this acknowledgement, the letter went on to advise that UTAS maintained the exclusive right to approve or disapprove of any individual authorized to perform inspections on its behalf and that vetting individual inspectors could create a conflict of interest.

24. 2Source sought to correct UTAS' misunderstanding regarding its request for information from Verify, specifically clarifying on numerous occasions that 2Source's requests were not intended to permit 2Source an opportunity to vet individual inspectors. Rather, as it clarified, 2Source was merely attempting to ensure that Verify's procedures were in line with 2Source's quality and safety standards and, even more importantly, that Verify and its employees did not represent a potential threat to the flying public. 2Source was clear at all times that it was willing

to permit Verify to continue inspections once it had provided 2Source with the opportunity to review and approve its processes and procedures. In the absence of such assurances and pending its review and approval of Verify's processes and procedures, 2Source advised UTAS that 2Source was not comfortable with any Verify inspectors being on its site.

25. As documented in an email to UTAS dated September 3, 2015, UTAS made repeated requests to Glegg that he not disclose to any other party any negative information that 2Source might find about Verify if 2Source were to review Verify's policies and procedures. Glegg advised UTAS in the course of such discussions that given the serious nature of the incident that had occurred, he did not intend to permit his judgment as CEO of 2Source to be compromised. In response to inquiries regarding what might occur if 2Source did not "like" Verify's procedures, Glegg specifically advised UTAS that in the event that he, or his people, discovered anything improper in Verify's processes or procedures, he would take all such steps as may be required by law to deal with the deficiency, including, as necessary, reporting any serious deficiencies or safety violations to the Federal Aviation Administration (the "FAA").

26. UTAS did not require Verify to provide the requested information to 2Source (nor did Verify provide the information directly) and, therefore, 2Source did not allow Verify to return. This meant that UTAS itself had to perform the inspection function at 2Source. Notwithstanding that it had previously advised 2Source that UTAS policy prohibited the return of DSQAR Stamps before the expiry of an eighteen month period, UTAS ultimately opted to return the DSQAR Stamps to 2Source after eight months, in February 2016, so that 2Source could resume its self-inspection process.

UTAS Engages in Discussions with 2Source About a new Long-Term Contract

27. Further to communications between Glegg and Soave in March 2016, on April 14, 2016 Glegg and Catherine King ("King"), Vice-President of Sales and Operations at 2Source, met with Soave and three other representatives of UTAS in Oakville, Ontario to discuss, among other things, a multi-year supply contract to take effect after expiration of the Purchase Agreement. During the discussion, UTAS was very receptive to an increase in its spend with 2Source from 66% of its global landing gear bushing requirements to 100%. In response to 2Source's proposed 3 to 5 year deal, UTAS suggested that a 15 year deal might be appropriate.

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which Soave represented that he would be available for a meeting to discuss 2Source's comments on the draft documents during the first week of September.

UTAS Abruptly Terminates Negotiations

31. Glegg began to detect that UTAS was acting in an unusual manner and, as a result, Glegg asked certain questions of UTAS. In response, Glegg immediately received a letter from UTAS dated August 23, 2016. UTAS' August 23, 2016 letter abruptly advised 2Source that UTAS would not be renewing or extending the Purchase Agreement despite the fact that UTAS had been engaged in serious negotiations with 2Source for many months. The letter received by 2Source from UTAS was signed by Soave and David Lycklama (Manager, Commodity Management at UTAS) and directly contradicted UTAS' previous representations and course of conduct regarding its interest in continuing to proceed with 2Source as its primary and perhaps exclusive supplier of certain component parts.

32. Unbeknownst to 2Source, during the period in which it was engaged in good faith negotiations for a new long-term supply contract, UTAS, Soave and others at UTAS were working behind the scenes to replace 2Source with new suppliers while intentionally deceiving 2Source regarding their intentions in that regard. Representatives of UTAS subsequently admitted to Glegg that the decision to end its relationship with 2Source was made in the Fall of 2015 as a result of UTAS' displeasure with how Glegg had reacted to the pulling of 2Source's DSQAR Stamps and, in particular, how Glegg had excluded Verify as a result of his concerns about the safety of the flying public.

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UTAS. Soave was the chief architect and artisan of this duplicitous scheme. He did so in his capacity as an employee of UTAS. He knew and intended that his deceitful representations would cause 2Source to suffer losses.

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...

We will deal fairly with our suppliers and partners. We will seek long-lasting business relationships, without discrimination or deception.

35. 2Source also learned that immediately after UTAS' receipt of correspondence from Glegg detailing the misrepresentations that had been made by Soave and UTAS, UTAS terminated the employment of Soave and Meringer (who, as described in paragraph 14 above, had sought to have 2Source give a job to his wife after she ceased to be employed by another supplier to UTAS).

Deceit, Conspiracy and Fraudulent Misrepresentation

36. The predominant purpose of the unlawful conduct of UTAS, Goodrich Canada, Goodrich Corporation and Soave was specifically directed at 2Source and was intended to cause injury to 2Source, who they knew or ought to have known would refrain from seeking alternative sources of business based on their misrepresentations regarding UTAS' intention to expand its contractual relationship with 2Source in a fifteen year agreement. UTAS, Goodrich Canada, Goodrich Corporation and Soave are therefore liable for predominant purpose conspiracy and unlawful act conspiracy.

37. UTAS, Goodrich Canada, Goodrich Corporation and Soave fraudulently misrepresented that UTAS intended to extend, expand and renew its contractual relationship with 2Source with the express intention to deceive 2Source. As a result of the misrepresentations of UTAS, Goodrich Canada, Goodrich Corporation and Soave, 2Source was induced to refrain from seeking alternative business opportunities that would have avoided or reduced its losses.

38. UTAS, Goodrich Canada, Goodrich Corporation, Soave and other employees of UTAS, whose identities are not known to 2Source at this time, but who are known to UTAS, conspired and colluded with each other to further the misrepresentations made to 2Source. The full particulars of the conspiracy and agreement to engage in misrepresentations and deceive 2Source are in the knowledge of UTAS, Goodrich Canada, Goodrich Corporation and Soave. UTAS, Goodrich Canada, Goodrich Corporation and Soave are in possession of emails, correspondence, reports and other documents that evidence such conspiracy.

Unlawful Interference with Economic Interests

39. In making the false and misleading representations described above, UTAS, Goodrich Canada, Goodrich Corporation and Soave intended to cause loss to 2Source. UTAS, Goodrich Canada, Goodrich Corporation and Soave did so for the purpose of protecting UTAS' uninterrupted supply of component parts through the end of 2016 and as a vindictive response to UTAS' displeasure with Glegg's insistence on the inclusion of a cap on liability for consequential damages in the Purchase Agreement and Glegg's response to the unfit Verify inspector retained by UTAS. This conduct caused significant damage to 2Source, which was left with insufficient time to seek alternative business opportunities.

The Defendants' Violated the *Competition Act*

40. Soave, in his role as Senior Sourcing Machining Manager, Aircraft Systems & APS Segments at UTAS and on behalf of UTAS, falsely misrepresented in emails to 2Source that UTAS intended to negotiate in good faith the extension of the Purchase Agreement by way of a long-term supply contract. In so doing, UTAS, Goodrich Canada, Goodrich Corporation and Soave committed actionable violations of section 52.01(2) of the *Competition Act*, RSC 1985 c C-34. This entitles 2Source to recover its resulting damages under section 36 of the *Competition Act*, RSC 1985 c C-34.

41. In so misrepresenting, UTAS, Goodrich Canada, Goodrich Corporation and Soave promoted UTAS' business interests in ensuring the continued and uninterrupted supply to UTAS and UTC of parts supplied by 2Source. The representations made by UTAS, Goodrich Canada, Goodrich Corporation and Soave in this regard were false and misleading, which UTAS, Goodrich Canada, Goodrich Corporation and Soave knew or ought to have known would cause 2Source to suffer significant damages (which in fact it did).

The Defendants' Conduct has Caused the Plaintiff to Incur Damages

42. 2Source has suffered significant damages as a result of the defendants' conduct. The misrepresentations regarding UTAS' intention to enter into a long term supply contract following expiration of the Purchase Agreement and to increase 2Source's production made by UTC, Goodrich Canada, Goodrich and Soave caused 2Source to refrain from securing alternative customers. UTAS' abrupt termination of the Purchase Agreement following Verify's breach of the Supplier Funded Initiative Agreement and negligent provision of inspectors left 2Source with insufficient time to avoid costly and potentially devastating production stoppages.

43. 2Source's losses will be the entire value of 2Source's business.

44. Moreover, as a result of the misrepresentations made by UTAS, Goodrich Canada, Goodrich Corporation and Soave described herein, 2Source has been unable to comply with certain of its financial obligations as they become due. As such, 2Source is at risk of becoming insolvent and being required to reduce or entirely eliminate its workforce.

45. 2Source has taken and continues to take all reasonable steps to mitigate its damages.

Summary of the Plaintiff's Case

46. The plaintiff's claims herein relate solely to the tortious conduct and breach of the *Competition Act* by the defendants in connection with the negotiation of a new long-term supply contract. The Purchase Agreement contained no provision for renewal or extension and the defendants had no obligation to renew or extend the Purchase Agreement or to engage in negotiations for a new long-term supply contract. It is no part of 2Source's claims that the defendants breached the Purchase Agreement or committed any tortious or other wrongful act in connection with performance under the Purchase Agreement. Any reference herein to conduct of the defendants in connection with performance under the Purchase Agreement is not intended to found, and does not found, any claim asserted herein, but rather provides the factual background and narrative for the conduct of the defendants upon which 2Source's claims are based (as detailed in paragraphs 27-41 hereof). To be clear, the plaintiff's claims would exist even if the Purchase Agreement had never been made. They are based, and based only, on the fact that the defendants lied in carrying out their scheme of deception relating the supposed negotiation of a new long-term supply contract. The Purchase Agreement neither prohibited nor permitted the defendants to lie as they did.

Punitive Damages

47. The conduct of UTC, Goodrich Canada, Goodrich and Soave as described herein constitutes callous and deceitful conduct, a flagrant disregard for 2Source's rights and is deserving of full condemnation warranting deterrence. As a result, 2Source is entitled to recover punitive damages.

48. The defendants are jointly and severally liable for the damages incurred by 2Source.

49. 2Source pleads and relies on the *Negligence Act*, RSO 1990 c N 1.

Service Outside Ontario

50. 2Source may serve the Statement of Claim outside Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this claim is:

- (a) a claim in respect of a tort committed in Ontario (17.02(g)); and
- (b) a claim in respect of damages sustained in Ontario (17.02(h)).

Place of Trial

51. The plaintiffs propose that this action be tried at the City of Toronto.

Date: January 10, 2017

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Lawyers for the plaintiff

2SOURCE MANUFACTURING INC.
Plaintiff

-and-

UNITED TECHNOLOGIES CORPORATION et al
Defendants

Court File No. CV-17-567429-00

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

BENNETT JONES LLP
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Lawyers for the plaintiff

TAB D

This is **Exhibit "D"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

CITATION: 2Source Manufacturing Inc. v. United Technologies Corporation ONSC 4409
COURT FILE NO.: CV-17-567429-00
DATE: 20170719

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 2SOURCE MANUFACTURING INC., Plaintiff

AND:

UNITED TECHNOLOGIES CORPORATION,
GOODRICH AEROSPACE CANADA LTD.,
GOODRICH CORPORATION, DINO SOAVE
and VERIFY, INC., Defendants

COUNSEL: *James Patterson*, for the Plaintiff

Kirsten Crain, for the Defendants

BEFORE: Monahan, J.

HEARD: June 27, 2017

ENDORSEMENT

[1] 2Source Manufacturing Inc. (“2Source”) is an Ontario corporation engaged in the business of manufacturing and supplying aircraft landing gear. It entered into a two-year agreement, effective January 1, 2015, for the supply of aircraft component parts (the “Supply Agreement”),¹ with Goodrich Aerospace Canada Ltd. and Goodrich Corporation (collectively “UTAS”). The Supply Agreement expired in accordance with its terms on December 31, 2016.

[2] 2Source subsequently brought this action in January 2017 alleging that UTAS, United Technologies Corporation (“UTC”), (the parent company of UTAS), and Dino Soave (collectively, the “Defendants”), deliberately misled 2Source into believing that the Supply Agreement would be renewed when that was not their intention and, moreover, that this course of conduct was intended to retaliate against 2Source for certain actions 2Source had taken during the negotiation and performance of the Supply Agreement. 2Source also alleges that the Defendants’ actions were motivated, in part, by a desire to maintain an uninterrupted supply of landing gear parts under the Supply Agreement up until its expiry. 2Source alleges fraudulent

¹ See Motion Record, Tab 2, at pp. 11-33.

misrepresentation, deceit, conspiracy and unlawful interference with economic relations, as well as breach of the *Competition Act*.²

[3] The Defendants argue that a forum selection clause applicable to the Supply Agreement (the “FSC”) bars the 2Source action, in that the FSC requires that these claims be filed in a New York court. They move for summary judgment staying the action.

Facts

[4] In its claim, 2Source alleges that between March and August 2016, the Defendants deceived 2Source into believing that the Supply Agreement would be renewed when, in fact, they had decided to end their relationship with 2Source when the Agreement expired on December 31, 2016. 2Source claims that the Defendants’ actions were motivated by a negative reaction to 2Source’s insistence that the latter’s liability for consequential damages under the Supply Agreement be capped. 2Source also claims that the Defendants were upset with 2Source’s handling of a dispute about the quality assurance inspection process applicable to products supplied by 2Source under the Supply Agreement. They allege that they suffered harm in that they were induced to refrain from seeking alternative business opportunities upon the conclusion of the Supply Agreement.

[5] The Supply Agreement incorporated the September 2013 version of the United Technologies Corporation Standard Terms and Conditions (the “STCP”).³ The STCP included an Applicable Law and Forum section that provides as follows:

“Applicable Law and Forum

27.1 The Order shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of New York, USA...without regard to conflicts of law principles...Buyer may, but is not obligated to, bring any action or claim relating to or arising out of the Order in the appropriate court, or arbitration forum, if arbitration is required by law or the Order, in the jurisdiction described above, and Supplier hereby irrevocably consents to personal jurisdiction and venue in any such court...If Supplier or any of its property is entitled to immunity from legal action on the grounds of sovereignty or otherwise, Supplier hereby waives and agrees not to plead such immunity in any legal action arising out of an Order or the Agreement.

27.2 Any action or claim by Supplier with respect hereto shall also be brought in the appropriate court in the jurisdiction described above, if Buyer so elects. Accordingly, Supplier shall give written notice to Buyer of any such intended action or claim, including the intended venue thereof, and shall not commence such action or claim

² R.S.C. 1985, c.C-34, s.36.

³ See ss.1 & 12 of the Supply Agreement, incorporating the STCP; the latter can be found at Motion Record, Tab 2, pp. 35-69.

outside of such jurisdiction if Buyer, within thirty (30) days from receipt thereof, makes its election as aforesaid...”

[6] The STCP also included definitions of “Order”, “Agreement” and “Buyer” as follows:

“2.14 “Order” means a paper or electronic document sent by Buyer to Supplier, or where provided for in an Agreement, an entry on a Buyer web site, to initiate the ordering of Goods or Services, such as a purchase order, a scheduling agreement, or other authorization or Order, and including change notices, supplements or modifications thereto. The phrase “in connection with the Order” includes performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order. Where the context permits, the term Order includes Agreement.

2.2 “Agreement” means the master terms agreement, long term agreement, subcontract, or other agreement that references these terms and conditions, and pursuant to which Orders are issued to Supplier.

2.3 “Buyer” means United Technologies Corporation (“UTC”) or the UTC Affiliate that issues an Order referencing these Terms and Conditions, and any successor or assignee of Buyer.”

[7] Goodrich Aerospace Canada Ltd. and Goodrich Corporation are “UTC Affiliates” within the meaning of the STCP.

[8] On August 23, 2016, UTAS advised 2Source by letter that it would not be renewing the Supply Agreement.

[9] On January 4, 2017, in response to a threat from 2Source to commence the current legal action, counsel for the Defendants advised 2Source that it was relying on the FSC and that it would not consent to litigation being filed in any forum other than New York State. Notwithstanding that notice, 2Source commenced this action on January 10, 2017.

[10] On January 31, 2017, counsel for the Defendants advised 2Source that the current motion for a stay based on the FSC would be brought.

Motion for Summary Judgment

[11] As the Supreme Court of Canada has explained in *Hryniak v. Mauldin*,⁴ there is no genuine issue for trial when the motions judge is able to reach a fair and just determination on the merits. This will be the case when the process: (i) allows the judge to make the necessary findings of fact; (ii) allows the judge to apply the law to the facts; and (iii) is a proportionate, more expeditious and less expensive means to achieve a just result.

⁴ [2014] 1 S.C.R. 87.

[12] Here the motion for summary judgment engages the interpretation of the FSC in light of facts that are uncontested. As such it is an appropriate case for determination on a summary judgment motion.

Legal Principles Applicable to Forum Selection Clauses

[13] The leading authority on the interpretation and enforceability of forum selection clauses, at least in the commercial context, remains that of the Supreme Court of Canada in *Z.I. Pompey Industries v. ECU-Line N.V.*⁵ Justice Bastarache for a unanimous Court noted that forum selection clauses are common components of international commercial transactions and that such clauses “have been applied for ages” by the courts. They are “generally to be encouraged by the courts as they create certainty and security in transactions, derivatives of order and fairness, which are critical components of private international law.”⁶ The enforceability of such clauses reflects the desirability that “parties honour their contractual commitments and is consistent with the principles of order and fairness at the heart of private international law.”⁷ Moreover the certainty that flows from enforcing forum selection clauses reduces litigation risk, which generates savings that can be passed on to consumers.⁸

[14] This framework applies even if the contract is in standard form, since such agreements are typically entered into by sophisticated parties who could have attempted to negotiate such terms and should in normal circumstances be held to their bargain.⁹

[15] *Pompey* directs a two stage analysis with respect to forum selection clauses. First, the court must determine whether the forum selection clause is enforceable and applies to the circumstances. Second, the court must assess whether there is a “strong cause” in favour of denying a stay, despite an enforceable forum selection clause.¹⁰

[16] Although 2Source advanced arguments against the enforceability and/or applicability of the FSC under both stages of the *Pompey* test, in argument counsel candidly acknowledged that he was relying primarily on the first stage of *Pompey*. In particular, counsel for 2Source argues that the FSC is ambiguous and is not framed in sufficiently broad terms to bar the claims

⁵ [2003] 1 S.C.R. 450 (“*Pompey*”). Although the recent Supreme Court of Canada decision in *Douez v. Facebook Inc.*, 2017 SCC 33 (Judgment rendered June 23, 2017) (“*Facebook*”), established a different framework for consumer contracts, the Court expressly confirmed that *Pompey* remains the governing authority on the enforceability of forum selection clauses in the commercial context.

⁶ *Pompey* at paragraph 20.

⁷ *Pompey* at paragraph 27.

⁸ *Facebook* at paragraph 160.

⁹ *Pompey* at paragraphs 28-29; *Facebook* at paragraph 148 (per the Chief Justice and Coté J., dissenting, although not on this point.)

¹⁰ *Pompey* at paragraph 39; *Expedition Helicopters Inc. v. Honeywell Inc.*, 2010 ONCA 351, 100 O.R. (3d) 241 and “*Expedition Helicopters*”.

advanced by 2Source, which are based on the Defendants' allegedly tortious conduct as well as breach of the *Competition Act*.¹¹

[17] 2Source relies particularly on the decision of the Court of Appeal in *Matrix Integrated Solutions Ltd. v. Naccarato et al.*,¹² where the Court allowed claims for conspiracy and breach of fiduciary duty to proceed despite a forum selection clause which gave Texas courts exclusive jurisdiction over all disputes that “may arise out of, or in connection with this Agreement.” The Court of Appeal held that the agreement in that case was “merely part of the factual background” to the claim, which did not depend upon the agreement. Justice Sharpe held that the application of the forum selection clause turned on whether the claims advanced were “contractual in substance”:¹³

“...[T]he claims for breach of fiduciary duty and conspiracy advanced in the amended statement of claim cannot fairly be described as “contractual in substance”...they are “in pith and substance” centered on a fiduciary relationship with the allegation that Radiant conspired with and knowingly assisted Naccarato and Markou to breach their fiduciary obligations. The RA [Reseller Agreement] is merely part of the factual background that explains the existence and nature of the relationship that existed between Matrix and Radiant prior to the alleged wrongs that form the basis of this action. In my view, the claims for conspiracy and knowing assistance do not arise out of or in connection with the provisions of the RA. The elements of the causes of action asserted do not depend upon the RA, and the RA can be removed from the picture without undermining those claims.”

[18] Similarly, 2Source alleges, the claims advanced in the present case are not “contractual in substance” as they result from the allegedly tortious conduct of the Defendants. As such they do not “relate to” the Supply Agreement and would exist even if the Supply Agreement had never been made. Accordingly, the FSC is no bar to the commencement of this proceeding in Ontario.

Pompey Stage One: Meaning and Scope of the FSC

[19] It is settled law that the interpretation of contractual provisions should be consistent with the expectations of the parties as well as commercial reality; *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*¹⁴ Courts should avoid interpretations that bring about

¹¹ There is no dispute between the parties that, assuming the FSC applies and is otherwise enforceable, UTC and UTAS invoked the clause in a timely way, in accordance with its terms.

¹² 2009 ONCA 593 (CanLII), 97 O.R. (3d) 693 (“Matrix”).

¹³ *Matrix* at paragraph 11.

¹⁴ [2016] 2 S.C.R. 23 (“Ledcor”) at paragraph 63.

unrealistic results or results that the parties would not have contemplated in the commercial atmosphere in which they negotiated the contract.¹⁵

[20] Applying these broad principles to the FSC, I begin with the observation that it is in two parts; section 27.1 applies to claims brought by the Buyer, while s.27.2 applies to claims brought by a Supplier. Although this proceeding is brought by 2Source as a supplier, and thus is governed by s.27.2, the proper meaning of s.27.2 can be discerned only by reading it in the context of 27.1.

[21] Section 27.1 is far from a model of clarity in drafting. Section 27.1 primarily refers to claims “relating to or arising out the Order”. An “Order” is defined in s.2.14 as a document “to initiate the ordering of Goods and Services” and the phrase “in connection with the Order” includes “performance of the Order, performance in anticipation of the Order, and preparation of a bid or proposal for the Order.”

[22] It is evident that the claims in this proceeding do not relate to or arise out of an “Order” in the narrow sense of a document “to initiate the ordering of Goods and Services”. However, as noted above, s.2.14 also provides that “where the context permits, the term Order includes Agreement.” This gives rise to the possibility that s.27.1 could be read as applying to claims “relating to or arising out of the Agreement.”

[23] Some support for this broader interpretation might be thought to arise from the fact that s.27.1 refers throughout to “the Order”. If s.27.1 was merely intended to apply to the interpretation of, or disputes relating to “an Order” one might have expected to see the use of the indefinite article “an” as opposed to the definite article “the” accompanying references to “Order”.

[24] Further, the final sentence of s.27.1, in dealing with claims of legal immunity by a Supplier, refers to legal actions arising out of “an Order or the Agreement.” The reference to claims arising out of “the Agreement” only makes sense if such claims otherwise fall within the scope of s.27.1. This can only be the case if the earlier references to “The Order” include claims arising out of “the Agreement.”

[25] Finally, commercial reality supports a reading of s.27.1 as encompassing all claims arising from the Agreement. It would make no sense for UTAS to specify that claims regarding “Orders”, a narrow category, must be in New York, while claims relating to the Agreement in general, a broader category, would fall outside the ambit of s.27.1. Moreover this interpretation would give rise to the necessity of distinguishing between claims relating to the “Order” as opposed to those relating to the “Agreement”. This would lead to uncertainty, promote litigation, and increase transactions costs, thereby defeating one of the main purposes of including the FSC in the first place.

¹⁵ *Ledcor* at paragraph 78.

[26] On balance, therefore, I interpret s.27.1 as including claims relating to or arising out the Agreement.

[27] That being said, s.27.1 applies only to claims brought by the Buyer. A claim by the Supplier, which is what has occurred here, is governed by s.27.2, which does not use the terms “Order” or “Agreement”. Instead, s.27.2 states that it applies to “any action or claim by Supplier with respect hereto”. The question is what meaning is to be given to the words “with respect hereto”?

[28] The commercially sensible interpretation of the FSC is that ss.27.1 and 27.2 should have the same ambit. There would be no commercial justification for the UTAS to leave itself more exposed to litigation in fora other than New York in respect of claims brought against it under s.27.2, as distinct from claims which it initiates under s.27.1.

[29] I have already noted that s.27.1 applies to claims relating to the Agreement. I therefore further conclude that the phrase “with respect *hereto*” in s.27.2 should be read as meaning “with respect to *the Agreement*.”

[30] Counsel for 2Source argued that the terms “with respect to” have been interpreted narrowly, contrasting this phrase with the wording of other forum selection clauses that have used language counsel characterizes as more expansive.

[31] In my view, the legal principles applicable to forum selection clauses, as articulated by the Supreme Court of Canada in *Pompey*, militate against a technical or formalistic approach to the interpretation of phrases such as “with respect to” or “arising out of” (as found in s.27.1 of the FSC). Courts should ensure that such clauses are read and applied so as to further the reasonable expectations of the parties, promote certainty, and reduce litigation and transaction costs.

[32] With this in mind, I would apply the approach set out by the Court of Appeal in *Matrix*, where the forum selection clause was held to apply to claims that were “in pith and substance contractual”. Such claims would include, at the very least, (i) claims relating to the formation, performance, or termination of the contract; (ii) claims relating to its interpretation or implementation; or (iii) where the existence of a contractual obligation is a necessary element to found or defeat a claim.¹⁶

[33] Moreover, it is well established that a party cannot escape the ambit of a forum selection clause by careful drafting. Even though a claim may be framed as one in tort or otherwise, it will nevertheless be subject to a valid forum selection clause in a contract where the subject matter of the claim is in pith and substance contractual.¹⁷

¹⁶ *Matrix* paragraphs 10-18; *Novatrax International Inc. v. Hägele Landtechnik GmbH*, 2016 ONCA 771 (“*Novatrax*”) at paragraph 11.

¹⁷ *Novatrax* at paragraph 15.

[34] In this case, although 2Source has framed its claim in tort or as involving a breach of a statutory provision, it is evident that the claim is in substance contractual. 2Source alleges that the wrongful acts committed by the Defendants were “punishment” for 2Source’s insistence that consequential damages be capped in the Supply Agreement. 2Source also alleges that the Defendants were seeking to retaliate for a dispute over the quality assurance inspection process applicable to products supplied by 2Source pursuant to the Supply Agreement. It alleges that the Defendants’ deceit was designed, in part, to ensure an uninterrupted supply of parts under the Agreement. Indeed, 2Source’s fundamental complaint is that the Defendants fraudulently misrepresented their intention to renew the Agreement. All of these claims and concerns relate directly or indirectly to the performance, termination or renewal of the Supply Agreement and, in that sense, are clearly in pith and substance contractual.

[35] It is evident that these facts are quite different from those considered in *Matrix*. In that case, the plaintiff Matrix had commenced an action against two former employees who had left the company and were allegedly competing with Matrix, in breach of their fiduciary duty and duty of loyalty. Matrix further claimed that Radiant Hospitality had knowingly assisted the former employees in breaching their fiduciary duties. On these facts, the claim was in substance one for breach of duty and, on this basis, the action could be commenced in Ontario despite a forum selection clause in a contract between Matrix and Radiant.

[36] In contrast, the claims in this case all arose during the performance of the contract, and relate directly or indirectly to its performance, termination or renewal. 2Source cannot escape the application of the FSC by framing what are in substance contractual claims as being ones in tort or for breach of a statutory duty. Moreover, the fact that they have also claimed against Soave, who is not a party to the contract, does not preclude the application of the FSC where the claim against Soave arises out of the same transactions and occurrences and raises common questions of fact and law.¹⁸

[37] I conclude that the FSC is valid and enforceable and that it applies to the claim by 2Source.

Pompey Stage 2: “Strong Cause”?

[38] Once it has been determined that there is an enforceable forum selection clause that is applicable to the action in question, the burden then shifts to the plaintiff to demonstrate “strong cause” as to why the court should decline to give effect to the clause. The Court of Appeal has held that the factors that may justify a departure from the general principle that forum selection clauses are to be enforced are “few”:

“The factors that may justify departure from that general principle are few. The few factors that might be considered include the plaintiff was induced to agree to the clause by fraud or improper inducement or the contract is otherwise unenforceable, the court in

¹⁸ *Novatrax* at paragraph 21.

the selected forum does not accept jurisdiction or otherwise is unable to deal with the claim, the claim or the circumstances that have arisen are outside of what was reasonably contemplated by the parties when they agreed to the clause, the plaintiff can no longer expect a fair trial in the selected forum due to subsequent events that could not have been reasonably anticipated, or enforcing the clause in the particular case would frustrate some clear public policy. Apart from circumstances such as these a forum selection clause in a commercial contract should be enforced.¹⁹

[39] There is no reason why 2Source should not be held to its bargain. It has not alleged that it was induced to agree to the FSC by fraud or some improper inducement, or that the initial Supply Agreement is otherwise unenforceable. It has not provided any evidence that the State of New York does not accept jurisdiction or is otherwise unable to deal with the claim, or that it could not receive a fair trial in New York. Moreover, a dispute over the renewal of the Supply Agreement is the very sort of dispute that would have been reasonably contemplated by the parties when they agreed to the FSC.

[40] 2Source does not avoid the FSC by pleading a statutory cause of action under the *Competition Act*. The interpretation and application of the *Competition Act* claim advanced by 2Source would be entirely straight forward for a New York court. There is no suggestion that a New York court would refuse to apply Canadian law and the facts pleaded in support of the *Competition Act* claim are materially identical to the facts pleaded in support of the other causes of action it advances. The legal elements of the *Competition Act* claim substantially overlap with the legal elements of several of the other claims. The damages associated with the *Competition Act* claim are the same general damages 2Source claims in respect of all of its causes of action.

[41] If 2Source wished to have the option of bringing this claim in Ontario it could have negotiated this term of the Supply Agreement. 2Source was a sophisticated commercial party and the Supply Agreement included a number of other negotiated modifications to UTAS' standard terms, including the provision capping consequential damages.

Conclusion

[42] 2Source seeks to use the Supply Agreement as the factual basis for its allegations while at the same time ignoring the FSC contained in the Supply Agreement. The FSC is clearly applicable to the claims advanced and 2Source has not shown any cause as to why it should not be held to its bargain. It has also not demonstrated any prejudice that will result from it bringing this claim in New York as per the terms of the Supply Agreement.

[43] For the foregoing reasons, I would order a stay of proceedings pursuant to section 106 of the *Courts of Justice Act* and grant the applicants their costs of this proceeding on a partial

¹⁹ *Expedition Helicopters* at paragraph 24.

indemnity basis, payable within 30 days. If the parties are unable to agree on the quantum of costs, I will receive submissions in writing of up to three (3) pages excluding any bills of costs or offer to settle, three (3) weeks from today's date.

Monahan, J.

Date: July 19, 2017

T A B L E

This is **Exhibit "E"** referred to in the

Affidavit of Robert Glegg

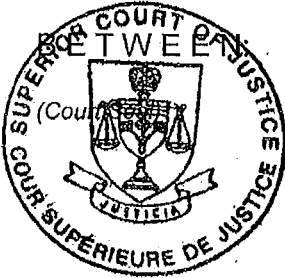
Sworn before me, this 22th day of August, 2017

A handwritten signature in cursive script, appearing to read "Amanda C. McLachlan", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

**ONTARIO
SUPERIOR COURT OF JUSTICE**



2SOURCE MANUFACTURING INC.

Plaintiff

- and -

**MESSIER-DOWTY INC., MESSIER-BUGATTI-DOWTY SA,
MESSIER-DOWTY LTD., MESSIER-DOWTY MEXICO SA de CV, and
MESSIER-DOWTY SUZHOU CO. LTD.**

Defendants

NOTICE OF ACTION

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the Statement of Claim served with this Notice of Action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Notice of Action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

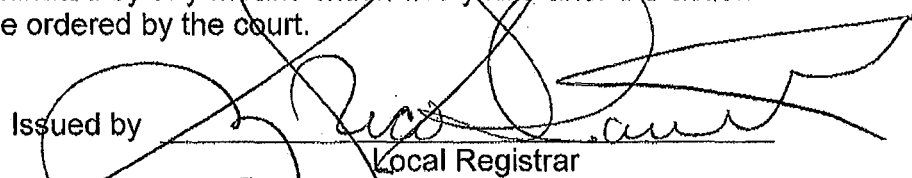
Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date October 7, 2015

Issued by 

Address of court office 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Messier-Dowty Inc.
574 Monarch Avenue
Ajax, Ontario
L1S 2G8

AND TO: Messier-Bugatti-Dowty SA
Inovel Parc Sud
78140 Velizy-Villacoublay
France

AND TO: Messier-Dowty Ltd.
Cheltenham Road East
Gloucester, England
GL2 9QH

AND TO: Messier-Dowty Mexico SA de CV
Carretera Estatal 200, M 22 N 547 B
Parque Aeronautico de Queretaro
Colon, Queretaro
76278
Colon, Mexico

AND TO: Messier-Dowty Suzhou Co. Ltd.
70 Qiming Road, Export Processing Zone B
Suzhou Industrial Park
Jiangsu, China
215121

CLAIM

1. The Plaintiff's claim is for:
 - (a) US\$9.6 million or its equivalent in CDN dollars as damages for breach of contract and misrepresentation;
 - (b) prejudgment and postjudgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (c) costs of this proceeding;
 - (d) payment of applicable taxes on all sums that may be awarded in favour of the Plaintiff, including costs; and
 - (e) such further and other relief as this Honourable Court deems just.

2. The Plaintiff, 2Source Manufacturing Inc. ("**2Source**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, carrying on business in Ontario as a manufacturer of aircraft parts.

3. The Defendant, Messier-Dowty Inc., is a corporation incorporated pursuant to the laws of the Province of Ontario, and carrying on business in Ontario, and is a wholly owned subsidiary of the Defendant Messier-Bugatti-Dowty SA, a corporation incorporated in France. The Defendant, Messier-Dowty Ltd. is a corporation incorporated in England. The Defendant, Messier-Dowty Mexico SA de CV, is a corporation incorporated in Mexico. The Defendant, Messier-Dowty Suzhou Co. Ltd. is a corporation incorporated in China.

4. The Defendants (collectively, "**Messier**") carry on business as a supplier of aircraft landing gear, and are subsidiaries of Safran Group, which is the largest such supplier in the world.

5. By contract executed as at November 1, 2012 (the "**Contract**"), 2Source and Messier agreed that 2Source would manufacture and supply products to Messier for a variety of aircraft.

6. 2Source originally refused to execute the contemplated contract with Messier as a result of learning that Messier had misrepresented to 2Source the opportunity to manufacture bushings for the Boeing 787 aircraft.

7. As a result, and in order to induce 2Source to execute the Contract, Messier represented to 2Source that Messier would purchase 100 shipsets of custom bushings for Maintenance Repair Overhaul (MRO) purposes on the Airbus A320 aircraft (the "**A320 MRO custom bushings**") during each of the 6 years of the Contract at a price of US\$16,000 per shipset for a total purchase price of US\$9.6 million.

8. 2Source relied upon the above-noted representation in executing the Contract.

9. The executed Contract incorporated the agreed A320 MRO custom bushings.

10. In contemplation of the large order for A320 MRO custom bushings, 2Source purchased materials and manufactured parts, and still retains inventory, in the amount of US\$270,000.

11. At the same time that it was making the representation set out above, and unknown to 2Source at the time, Messier was preparing to manufacture the A320 MRO custom bushings in its manufacturing plant in Mexico. Messier thereafter did manufacture the bushings in their own plant, knowingly interfering with its agreement to purchase the bushings from 2Source.

12. In the result, Messier, in breach of its representation and the Contract, failed or refused to order the required 100 shipsets of A320 MRO custom bushings from 2Source in 2013 or thereafter.

13. 2Source has suffered substantial damages as a result of this breach of Contract and misrepresentation, for which Messier is liable.

14. The Contract provides that it is to be governed by and construed and enforced in accordance with the laws of Ontario, and the Courts of Ontario having exclusive jurisdiction.

15. 2Source relies upon *Rule* 17.02(a), 17.02(f), 17.02(g), and 17.02(p) of the *Rules of Civil Procedure* in serving this claim outside of Ontario.

October 7, 2015

BERKOW, COHEN LLP
Barristers
141 Adelaide Street West, Suite 400
Toronto ON M5H 3L5

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Tel: (416) 364-4900
Fax: (416) 364-3865

**Lawyers for the Plaintiff,
2Source Manufacturing Inc.**

RCP-E 14C (June 9, 2014)

2SOURCE MANUFACTURING INC.
Plaintiff

- and - MESSIER-DOWTY INC. et al
Defendants

CV-15-537943
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at
Toronto

NOTICE OF ACTION

BERKOW, COHEN LLP
Barristers

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Toronto ON M5H 3L5

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Fax: (416) 364-3865

**Lawyers for the Plaintiff,
2Source Manufacturing Inc.**

File Number: 150271
RCP-E 4C (July 1, 2007)

Court File No. CV-15-537943

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2SOURCE MANUFACTURING INC.

Plaintiff

- and -

**MESSIER-DOWTY INC., MESSIER-BUGATTIDOWTY SA, MESSIER-DOWTY LTD.,
MESSIER-DOWTY MEXICO SA de CV, and MESSIER-DOWTY SUZHOU CO. LTD.**

Defendants

STATEMENT OF CLAIM

(Notice of Action Issued October 7, 2015)

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date October 13, 2015

Issued by

Local registrar

Address of
court office

393 University Avenue, 10th Floor
Toronto, Ontario
L5G 1E6

TO: Messier-Dowty Inc.
574 Monarch Avenue
Ajax, Ontario L1S 2G8

AND TO: Messier-Bugatti-Dowty SA
Inovel Par Sud
78140 Velizy-Villacoublay
France

AND TO: Messier-Dowty Ltd.
Cheltenham Road East
Gloucester, England
GL2 9QH

AND TO: Messier-Dowty Mexico SA de CV
Carretera Estatal 200, M 22 N 547 B
Parque Aeronautico de Queretaro
Colon, Queretaro
76278
Colon, Mexico

AND TO: Messier-Dowty Suzhou Co. Ltd.
70 Qiming Road, Export Processing Zone B
Suzhou Industrial Park
Jiangsu, China
215121

CLAIM

1. The Plaintiff, 2Source Manufacturing (“**2Source**”) claims:
 - (a) a declaration that the Contract (as defined below in paragraph 17) was validly terminated, voided and rescinded by 2Source effective September 30, 2015 or in the alternative effective October 13, 2015;
 - (b) damages for breach of contract and misrepresentation in the sum of \$4,030,000 USD;
 - (c) punitive damages in the sum of \$500,000;
 - (d) the costs of this action on a substantial indemnity basis plus applicable taxes; and
 - (e) such further and other heads of relief as counsel may advise and/or this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, 2Source, is a company incorporated under the laws of Ontario, with its registered office located in Mississauga, Ontario. 2Source is a certified manufacturer and supplier of precision machined parts for the aeronautics and oil and gas industries.
3. The Defendants, Messier-Dowty Inc., Messier-Bugatti-Dowty SA, Messier-Dowty Ltd., Messier-Dowtry Mexico SA de CV, and Messier-Dowty Suzhou Co. Ltd (collectively referred to as “**Messier**”) are members of a group of companies engaged in the management, design, development, manufacture and support of aircraft landing gear systems and braking systems for various original equipment manufacturers (“**OEMs**”) in the aeronautics industry.
4. The Defendant, Messier-Dowty Inc., is a corporation incorporated pursuant to the laws of the Ontario and conducts business at 574 Monarch Avenue, Ajax, Ontario.

5. The Defendant, Messier Bugatti-Dowty SA, is company incorporated under the laws of France and is located at Inovel Parc Sud, 8140 Veizy-Villabcoublay, France.

6. The Defendant, Messier-Dowty Ltd., is a company incorporated under the laws of England and is located at Cheltenham Road East, Gloucester, England.

7. The Defendant, Messier-Dowty Mexico SA de CV, is company incorporated under the laws of Mexico and is located at Carreter Estatal 200, M 22 N 547 B, Parque Aeroespacial de Queretaro, Colon, Queretaro, Mexico.

8. The Defendant, Messier-Dowty Suzhou Co. Ltd., is a company incorporated under the laws of China and is located at 70 Qiming Road, Export Processing Zone B, Suzhou Industrial Park, Jiangsu, China.

THE CONTRACT

9. In or about March, 2012, Messier approached 2Source to inquire whether 2Source was interested in becoming a principal supplier to Messier of custom bushings and related custom products which Messier would utilize in its manufacturing of landing gear systems that it supplies to various aircraft OEMs. At this time, Messier represented and warranted to 2Source that, if the parties reached an agreement, 2Source would be awarded a significant portion of Messier's requirements for custom bushings for use in Messier's manufacturing of landing gear systems for the Boeing 787 Dreamliner (the "**Boeing 787 Representation**").

10. 2Source relied upon the Boeing 787 Representation in deciding whether to engage in negotiations with Messier. Given the economics associated with the supply of custom bushings for the Boeing 787 Dreamliner relative to other aircraft, among other factors, 2Source would not have entered into negotiations with Messier in 2012 but for the Boeing 787 Representation.

11. Between March, 2012 and November, 2012, Messier and 2Source had numerous meetings and communications around the terms of a principal supplier arrangement.

12. In or about October, 2012, 2Source and Messier attended at a meeting to discuss the terms of the principal supplier arrangement. The meeting took place in Messier's offices in Ajax, Ontario. Robert Glegg and Robert Waslyk represented 2Source and Pierre Borie and Brett Moore represented Messier. During the meeting, Messier provided 2Source with an anticipated volume and revenue forecast for the principal supplier arrangement (the "**Volume Forecast**"). The Volume Forecast was important because, as is typical in the aeronautics manufacturing industry, the draft agreement itself was silent on the issue of volumes given that Messier's volume needs ultimately depended on the needs of its customers. Nevertheless, Messier provided the Volume Forecast to 2Source with the understanding that, as long as the needs of Messier's customers remained as anticipated, and other key assumptions remained unchanged, 2Source would obtain the volumes and revenues set out in the Volume Forecast. The Volume Forecast was binding upon Messier upon the signing of the Contract.

13. After reviewing the Volume Forecast provided by Messier, Glegg of 2Source noticed that the document failed to include any worthwhile volumes for the Boeing 787 Dreamliner. Glegg brought this to the attention of Borie and Moore, and demanded an explanation. In response, Borie and Moore explained that 2Source was no longer being considered by Messier as a significant supplier for the Boeing 787 Dreamliner.

14. In response to this information from Messier, Glegg advised Borie and Moore that the negotiations were over and that 2Source would not be signing any principal supplier agreement with Messier.

15. During another meeting between 2Source and Messier in or about October, 2012, in response to the collapse of the negotiations, and in order to induce 2Source to sign and execute

the principal supplier agreement, Borie represented and warranted to Glegg that Messier would be prepared to guarantee to 2Source an additional line of volume over and above what was already provided for in the Volume Forecast. In particular, Borie represented and warranted to Glegg (the **"Inducing Covenant"**) that Messier would purchase 100 shipsets of custom bushings for Maintenance Repair Overhaul (**"MRO"**) purposes for the Airbus A320 aircraft (the **"A320 MRO Custom Bushings"**) during each of the 6 years of the principal supplier agreement at a price of \$16,000 USD per shipset.

16. Messier revised the draft principal supply agreement to include the price of the A320 MRO Custom Bushings. However, consistent with the practice in the aeronautics manufacturing industry, the volume guarantee contained in the Inducing Covenant was not expressly incorporated into the agreement as the agreement itself was silent on volumes.

17. In or about December, 2012, Messier and 2Source agreed to the principal supplier agreement outlining the general terms that would apply to Messier's ordering and 2Source's supply of custom bushings and related products to Messier for a term of six years (the **"Contract"**). The Contract was dated November 1, 2012.

18. The Inducing Covenant constitutes a binding representation, collateral covenant, collateral contract and warranty.

19. 2Source materially relied upon the Inducing Covenant in deciding to sign the Contract and would never have signed the Contract but for the Inducing Covenant. 2Source would have walked away from the negotiations but for the Inducing Covenant. Messier knew this at the time.

20. 2Source also relied upon the Inducing Covenant after signing the Contract by expending substantial financial and human capital resources in order to ensure it would be able to supply Messier with the A320 MRO Custom Bushings.

NON-PERFORMANCE OF THE INDUCING COVENANT

21. In 2013, Messier ordered forty shipsets of A320 MRO Custom Bushings. Despite many attempts by 2Source to encourage Messier to comply with the Inducing Covenant, Messier failed to order the remaining sixty shipsets of A320 MRO Custom Bushings in 2013.

22. In 2014, Messier did not order any A320 MRO Custom Bushings.

23. In 2015, Messier did not order any A320 MRO Custom Bushings.

24. Despite numerous attempts by 2Source to encourage Messier to comply with the Inducing Covenant, Messier has outright refused to satisfy its obligations.

25. On or about September 25, 2015, Gregory Robiquet of Messier verbally acknowledged to 2Source that Messier had made a commitment to 2Source in relation to the A320 MRO Custom Bushings. Nevertheless, Messier has continued to refuse to comply with the Inducing Covenant.

26. On or about September 30, 2015, Patricia Varanges of Messier verbally acknowledged to Glegg that Messier had indeed provided the Inducing Covenant to 2Source, but indicated that Messier did not consider itself bound by the Inducing Covenant in light of the express terms of the Contract.

27. At all material times, 2Source has complied with the Contract.

2SOURCE'S CLAIM AGAINST MESSIER

28. At the time that it made the Inducing Covenant, Messier never intended to, or was reckless as to whether or not it could, comply with the Inducing Covenant. The Inducing Covenant was made knowingly, recklessly and/or carelessly in order to induce 2Source to sign the Contract. In addition, at the same time as Messier was making the Inducing Covenant,

Messier was preparing to manufacture A320 MRO Custom Bushings in its manufacturing plant in Mexico, which is inconsistent with the Inducing Covenant.

29. The Contract was therefore induced by deceit. The Inducing Covenant also constituted a misrepresentation *in substantialibus*.

30. As a result of the Inducing Covenant and Messier's stated refusal to comply with the obligations therein, the Contract became voidable and subject to immediate termination and prospective rescission at the election of 2Source. In addition, Messier's refusal to comply with the Inducing Covenant constituted a repudiation of the Contract and 2Source has elected to terminate the Contract as a result of Messier's repudiation.

31. On September 30, 2015, in light of Messier's refusal to comply with the Inducing Covenant, 2Source placed a hold on all product ordered by Messier. 2Source pleads that it rescinded and voided the Contract as of this date. In the alternative, 2Source rescinded and voided the Contract effective the filing of this Statement of Claim.

DAMAGES FOR BREACH OF CONTRACT

32. Messier is in breach of the Inducing Covenant, which constitutes a binding contractual obligation on Messier. Messier failed to order the full one hundred A320 MRO Custom Bushings for each of the years 2013, 2014 and 2015, as agreed. 2Source claims compensatory damages for these breaches.

33. 2Source claims damages for the unperformed portion of the Inducing Covenant for 2013, 2014, and 2015 in the amount of \$3,760,000 USD.

34. In the alternative, if the Contract was not properly terminated, voided and/or rescinded by 2Source, than 2Source claims compensatory damages for Messier's breach of the Inducing Covenant for the years 2013-2018 inclusive.

35. 2Source also claims damages in the amount of \$270,000 USD on account of out-of-pocket expenses and detrimental reliance caused by the Inducing Covenant.

36. 2Source claims punitive damages in the amount of \$500,000 on account of Messier's intentional, reckless, highhanded and outrageous behaviour.

SERVICE OUTSIDE ONTARIO

37. 2Source pleads and relies upon Rules 17.02(a), 17.02(c), and 17.02(f) of the Ontario *Rules of Civil Procedure* for the purpose of service outside Ontario. Section 16.1.1 of the Contract provides that the Contract shall in all respects be governed by and construed and enforced in accordance with the laws of the Province of Ontario, Canada. Section 16.1.1 also provides that the Contract is under the exclusive jurisdiction of the courts of the Province of Ontario.

38. Such other grounds as counsel may advise and/or this Honourable Court deems just.

October 13, 2013

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Bank Tower
Toronto ON M5K 1E6

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Sapna Thakker LSUC#: 68601U
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Lawyers for the Plaintiff

TO: Messier-Dowty Inc.
574 Monarch Avenue
Ajax, Ontario L1S 2G8

AND TO: Messier-Bugatti-Dowty SA

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78140 Velizy-Villacoublay
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AND TO: Messier-Dowty Ltd.
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AND TO: Messier-Dowty Mexico SA de CV
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76278
Colon, Mexico

AND TO: Messier-Dowty Suzhou Co. Ltd.
70 Qiming Road, Export Processing Zone B
Suzhou Industrial Park
Jiangsu, China
215121

2 Source Manufacturing Inc.
Plaintiff

and

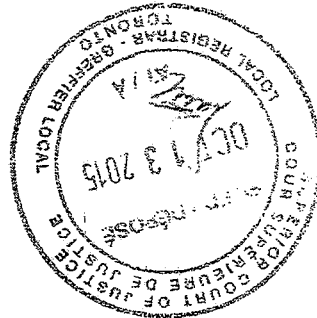
Messier-Dowty Inc. et al.
Defendants

Court File No: CV-15-537943

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM



McCarthy Tétrault LLP

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Lawyers for the Plaintiff

TAB F

This is **Exhibit "F"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

Court File No. CV-15-537943

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

2SOURCE MANUFACTURING INC.

Plaintiff/Defendant by Counterclaim

- and -

MESSIER-DOWTY INC., MESSIER-BUGATTI-DOWTY SA, MESSIER-DOWTY LTD.,
MESSIER-DOWTY MEXICO SA de CV and MESSIER-DOWTY SUZHOU CO. LTD.

Defendants/Plaintiffs by Counterclaim

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendants admit the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 11 (except that there was no discussion of a "principal supplier" arrangement, as alleged), 17 (except that the agreement was not a "principal supplier agreement", as alleged), 22 and 23 of the Statement of Claim.

2. The Defendants deny all other allegations contained in the Statement of Claim and put the Plaintiff to the strict proof thereof. The Defendants deny that the Plaintiff is entitled to the relief sought in paragraph 1 and elsewhere of the Statement of Claim.

THE PARTIES AND BACKGROUND

3. The Defendants, Messier-Dowty Inc., Messier-Bugatti-Dowty SAS (incorrectly described as Messier-Bugatti-Dowty SA), Messier Dowty Ltd., Messier-Dowty Mexico Sa de CV and

Messier-Dowty Suzhou Co. Ltd. (hereinafter collectively referred to as "**Messier**"), are subsidiaries of a world-leading group engaged in the management, design, development and manufacture of aircraft equipment for various aircraft programs, including landing gear, equipment systems, wheels, and brakes. Messier also provides in-service support, maintenance, repair and overhaul services for the aircraft equipment. Messier has operational sites across the globe in Asia, Europe, Canada, Mexico and the United States.

4. Messier's customers include aircraft manufacturers (including, among others, Airbus, Boeing and Bombardier), airlines and operators (the "**Final Customers**").

5. The Plaintiff, 2Source Manufacturing Inc. ("**2Source**"), is a certified supplier for precision machined parts for the aerospace and oil and gas industries.

6. Prior to the events at issue in this litigation, 2Source and Messier-Dowty Inc. had previously done business together, and were parties to a contract bearing contract number MDT-GTA-2007-14135, effective October, 2007 to October, 2010. This contract pertained to the supply of aircraft landing gear parts (including bushings and sleeves).

7. In addition to the above-referenced contract, Messier had a history of placing, from time to time, stand-alone orders with 2Source for parts related to the Airbus A320 Aircraft Maintenance, Repair and Overhaul program ("**A320 MRO**"). The A320 MRO orders were intermittent and were not part any contract or ongoing commitment.

8. In March, 2012, Messier issued a Request for Quotation (the "**RFQ**") to several suppliers with respect to the supply of a variety of bushing requirements on Messier's twin-aisle aircraft programs, including Boeing 787-8, Boeing 787-9 and Airbus A350 XWB.

9. Business concerning the A320 MRO program was not open for proposals under the RFQ.

10. At or about this time, Messier and 2Source commenced discussions regarding the possibility of engaging in a contract for the supply of aircraft landing gear parts, as part of the RFQ process.

11. The RFQ issued to 2Source on March 14, 2012 expressly stated, *inter alia*:

- (a) Messier "shall have the right but not the obligation to negotiate the final contract terms, and all commercial matters with any or all Bidders"; and,
- (b) "This request for quotation does not in any way bind [Messier] to accept any proposal (solicited or unsolicited) and shall not be constructed as a commitment by [Messier] to purchase."

12. A number of potential suppliers responded to the RFQ. Given the highly specialized nature of products supplied by Messier to its Final Customers, to become a supplier of Messier, a candidate must be screened through Messier's Supplier Selection Committee. This includes an analysis of the potential supplier's credentials, including the supplier's performance history (in particular, on-time delivery history and conformity of products), the strength and weakness of each supplier, its industrial capacity and pricing proposals.

13. Negotiations between Messier and 2Source took place from March, 2012 through to November, 2012.

14. Contrary to the allegations contained in paragraphs 9 to 13 of the Statement of Claim, Messier denies that it made representations to 2Source regarding business for the Boeing 787 programs, as alleged. While the RFQ included a request for quotations on the Boeing 787 programs, at no time did Messier make any commitments to 2Source regarding any part of the business related to the Boeing 787 programs.

15. As pleaded above, the RFQ did not bind Messier, and Messier was under no obligation to negotiate with 2Source after 2Source submitted its bid, regarding the Boeing 787 programs, or otherwise.

16. Messier's Supplier Selection Committee recommended that business related to the Boeing 787 programs be awarded to alternate suppliers, and that subject to contractual negotiations, 2Source would be awarded certain business in relation to the Airbus A350 XWB program.

17. Between March through November, 2012, during the course of negotiating the Agreement (as defined below) concerning the Airbus 350 XWB program, Messier advised 2Source that it would also be ordering certain A320 MRO bushings from 2Source in 2013. Contrary to what is alleged in paragraphs 15 to 20, and elsewhere in the Statement of Claim, Messier made no representation that such order would form the basis for future or ongoing orders.

THE AGREEMENT

18. In November, 2012, the parties concluded the "General Terms Agreement", contract number MBD_MD_INC_1/CGA/GTA/2012/3826 (the "**Agreement**"). The Agreement was made effective November 1, 2012, and was subsequently executed by the parties.

19. Contrary to the allegations contained in paragraphs 9, 15, 17, and elsewhere in the Statement of Claim, the Agreement was not a principal supplier agreement and contained no volume commitments or exclusivity provisions.

20. The Agreement contained the following express terms:

17.5.1 This Agreement and documents incorporated by reference constitute the entire agreement between the Parties hereto and supersede and cancel any and all prior representations, negotiations, undertakings, letters, acceptances, agreements,

understanding and agreements whether oral or written, between the Parties hereto or their agents, with respect to or in connection with any of the matters or things to which this Agreement applies or refers.

17.5.4 The Parties declare that the provisions of this Agreement have been discussed, expressed, understood and agreed to as a result of exchanges over a period of time involving technically and commercially experienced personnel of both Parties.

17.5.5 No amendments or modifications of this Agreement shall bind either Party unless it is in writing and is signed by Buyer's authorised procurement representative and an authorised representative of Supplier.

21. At all material times, both Messier and 2Source were sophisticated parties who negotiated the terms of Agreement.

22. Messier pleads and relies on the express terms of the Agreement, including article 17.5.1, the "Entire Agreement" clause, set out above.

23. No amendments or modifications to the Agreement have been entered into by the parties at any point during the term of the Agreement.

24. The Agreement was a "right to purchase" contract, meaning that Messier did not commit to a specified volume of product. As admitted by 2Source, agreements of this nature are common in the aeronautics manufacturing industry.

25. By purchase orders dated June 26 and 27, 2013, Messier placed orders with 2Source for 40 shipsets of the A320 MRO bushings. Messier had placed similar one-time purchase orders concerning A320 MRO parts with 2Source on prior occasions, well before the Agreement had been entered into.

2SOURCE ALLEGES MISREPRESENTATION AGAINST MESSIER

26. In or around April, 2013, Robert Glegg, the Chief Executive Officer of 2Source, wrote to representatives of Messier and alleged that Messier had previously committed to purchase 100

shipsets of A320 MRO bushings from 2Source in 2013, at a price of \$16,000 USD per shipset. Messier denied that this was the case.

27. After June, 2013, no further complaints were raised by Mr. Glegg or any representative of 2Source regarding the A320 MRO parts until July, 2015.

28. In July, 2015, Mr. Glegg again raised the question of an alleged commitment of Messier to purchase a certain number of A320 MRO bushings. At this stage, however, it was now alleged that Messier previously represented that it would purchase 100 shipsets of A320 MRO bushings during each of the six years of the Agreement, for a total purchase price of approximately \$9,000,000 USD.

29. Messier again denied the existence of an alleged commitment.

30. In response, Mr. Glegg demanded that Messier immediately place purchase orders in the amount of \$8,960,000 USD, representing the alleged remaining 560 shipsets of A320 MRO bushings for the remaining term of the Agreement, in addition to placing a purchase order in the amount of \$268,316 USD, representing an alleged inventory of A320 MRO materials that 2Source held.

31. Messier did not agree to the demands of 2Source, which bore no relation to the Agreement between the parties. However, as a commercial gesture, Messier offered to pay 2Source for the alleged additional inventory on hand in an attempt to avoid a dispute. This limited offer was not an admission of any liability on the part of Messier.

32. Messier's offer concerning the inventory was not accepted by 2Source.

2SOURCE INTENTIONALLY DEFAULTS

33. On September 30, 2015, without any notice, Mr. Glegg advised Messier, in writing, of 2Source's intention to cease all shipments from 2Source to Messier as of that day, on the basis that Messier would not comply with Mr. Glegg's demands.

34. 2Source's shipments to Messier ceased as at September 30, 2015.

35. 2Source's termination of deliveries constituted an intentional act of default under article 10.3 of the Agreement.

36. The sudden termination of the supply of products under the Agreement put Messier in an extremely difficult position. As 2Source was aware, Messier relied on products from 2Source, which were ultimately used to fulfil Messier's contracts with its Final Customers. 2Source's intentional and material breach placed Messier at risk of defaulting under contracts with its Final Customers.

37. On October 5, 2015, Messier formally demanded that 2Source resume performance under the Agreement.

38. Despite repeated demands, 2Source has refused and failed to resume performance under the Agreement.

39. 2Source has now taken the position that it is somehow entitled to terminate the Agreement. Messier pleads, and the fact is, there are no such rights of termination in favour of 2Source under the Agreement.

40. In discontinuing service, and in failing to resume performance for the remaining term of the Agreement, 2Source is now in a continuing breach of its obligations owed to Messier.

NO LIABILITY FOR LOSSES CLAIMED

41. Messier denies that it breached any contractual obligations owed to 2Source. The only party in breach of the Agreement is 2Source with respect to the termination of deliveries under the Agreement.

42. Messier pleads and relies on the express and clear terms of the Agreement. There were no additional agreements or amendments that altered the terms of the Agreement.

43. 2Source is a sophisticated commercial party. 2Source has no documentary evidence regarding the alleged A320 MRO "inducing covenant". To the extent that 2Source required any terms, conditions or commitments related to the A320 MRO program or the 787 Boeing programs, as alleged, it ought to have negotiated such terms with Messier.

44. In any event, and as pleaded by 2Source at paragraphs 12 and 16 of the Statement of Claim, it is typical in the aeronautics manufacturing industry for a supply agreement to be silent on volume. This is because it is difficult for a purchasing party, such as Messier, to confirm the volumes to its supplier, given that volumes are conditional upon the Final Customer's forecast and orders, which may vary.

45. While 2Source admits that volume guarantees are not expressly incorporated into an agreement, it goes on to allege that Messier, a sophisticated and world-leading industrial player, would, in the face of a clear "Entire Agreement" clause, orally agree to purchase a specified volume of 100 shipsets of A320 MRO bushings, each year for a six year term. The position taken by 2Source is contradictory.

46. Messier states, and the fact is, that it would never agree to purchase a specific and recurring volume of A320 MRO shipsets for a six year term, or otherwise, as alleged by 2Source.

2Source's allegations regarding the alleged inducement or commitment make no commercial sense and strain all credibility.

47. In the alternative, if the parties discussed any additional terms or programs during the course of negotiation of the Agreement, which is expressly denied, such agreements have been superseded and cancelled as per the "Entire Agreement" clause as contained in article 17.5.1 of the Agreement.

48. In the further alternative, to the extent that there were any further discussions or negotiations between Messier and 2Source outside the scope of the Agreement, such alleged discussions or negotiations related only to a one-time purchase of product related to the A320 MRO bushings in 2013. Messier had a history of placing one-time orders with 2Source that were not the subject of a formal agreement. The purchase of the A320 MRO bushings did not create any additional obligations on the part of Messier, nor did it affect the terms of the Agreement.

49. Messier expressly denies the allegations contained in paragraphs 25 and 26 of the Statement of Claim. At no time did any of Messier's representatives or employees acknowledge that there was a commitment to purchase any products other than those expressly set out in the Agreement.

NO DAMAGES

50. Messier denies that 2Source has suffered any losses or damages, as alleged or at all. There were no contracts, agreements, covenants, or otherwise, outside of the express terms of the Agreement.

51. In the alternative, if any damages were sustained by 2Source, which is expressly denied, Messier states that any such damages were caused or contributed to by the conduct of 2Source, and 2Source's breach of the Agreement. Messier pleads that 2Source has failed to mitigate any such damages.

LIMITATION PERIOD

52. Messier pleads and relies upon the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B.

53. 2Source first raised the events giving rise to this proceeding in April, 2013. This proceeding was commenced on October 7, 2015, by way of Notice of Action, more than two years after 2Source discovered, or ought to have reasonably discovered, its purported claim. As such, Messier pleads that this action is statute-barred, and Messier pleads ss. 4 and 5 of the *Limitations Act*, and the *Limitations Act*, in general.

54. Messier asks that the 2Source's claims be dismissed with costs on a substantial indemnity basis.

COUNTERCLAIM

55. Messier claims:

- (a) Liquidated Damages in the amount of \$96,000 CAD, in accordance with article 5.1.2 of the Agreement, for 2Source's failure to deliver the products in accordance with the Agreement;
- (b) Damages in the amount of \$1,500,000 CAD for breach of contract;
- (c) Pre-judgment and post-judgement interest in accordance the *Courts of Justice Act*, R.S.O., 1990, c. C. 2; and,

- (d) Costs of this Counterclaim on a substantial indemnity basis, plus all applicable taxes.

56. Messier pleads and relies upon all of the paragraphs in its Statement of Defence herein.

MESSIER'S SUPPLIERS

57. As stated above, Messier has contractual relationships with its Final Customers, including, among others, Airbus, Bombardier, and Boeing.

58. Messier is dependent upon its suppliers, including 2Source, for the delivery of products and components which are then used to fulfil Messier's contractual obligations to the Final Customers.

59. Given the highly specialized nature of the aeronautics industry, any resourcing within Messier's supply chain is subject to detailed validation processes relating to, *inter alia*, supplier qualification, part qualification, and industrial plan validation. Messier has a strict purchasing policy to ensure that its suppliers, such as 2Source, as well as the parts supplied by the suppliers, comply with industrial policy regarding technical and quality requirements. All suppliers are to be qualified according to certification processes. Resourcing and industrialization is a time consuming and thorough endeavor, which engages significant human and financial resources.

2SOURCE INTENTIONALLY BREACHED THE AGREEMENT

60. The Agreement between Messier and 2Source expressly provides as follows:

5.1 Schedule Requirements

5.1.2 Supplier accepts the challenge and goal to deliver one hundred percent (100%) of the total number of delivered Products on time. Should Supplier fail to achieve these goals, Supplier shall pay liquidated damages to the Buyer. These damages shall apply should Supplier fail to achieve these goals for normal orders

accepted by Supplier within normal leadtime. These damages would not apply to any order, if Buyer requests a schedule change that requires the initial order to be delivered inside of lead time. Supplier may accept an order, but refuse the delivery schedule if it is not within normal lead time. Supplier recognizes that delivery is critical to not impact production. Damages will be calculated at the rate of two percent (2%) of Product price for up to one (1) week late, five percent (5%) of Product price for up to four (4) weeks and ten percent (10%) of Product price for a delay of greater than four (4) weeks (hereinafter referred to as "Cap"), commencing on the day following the delivery date, as specified in the applicable Purchase Order accepted by Supplier (hereinafter referred to as "Delivery Date"). In no case will the liquidated damages be (i) an aggregate of these percentages or (ii) lower than fifty United States Dollars (\$50.00 USD). [...]

10.3 Termination for Default, Remedies and Other Rights

10.3 Supplier shall be considered to be in default when one (1) or more of the following events of default occur: (a) Supplier fails to carry out any of its obligations under this Agreement or any Purchase Order; (b) Supplier fails to deliver Products to Buyer when or as required by this Agreement or any Purchase Order; (c) Supplier fails to meet the requirements referenced in this Agreement and associated documents; (d) Supplier becomes bankrupt or insolvent, or proceedings are commenced against Supplier or by Supplier under the Bankruptcy Act or any similar statute or law, or an order is made or resolution passed for the winding-up of Supplier; (e) Supplier stops or threatens to stop activities or; (f) Supplier refuses to accept a Purchase Order issued by Buyer. If and when any of the events of default occur, then Buyer may, by giving written notice to Supplier, terminate this Agreement or any Order issued thereunder, in whole or in part, if Supplier does not cure such reason(s) for default within thirty (30) days (or more if authorised in writing by Buyer) after receipt of termination for default notice from Buyer specifying the failure. If Buyer terminates the Order in whole or in part, it may acquire, under the terms and in the manner considered appropriate, Products similar to the Products terminated, and the Supplier will be liable to Buyer for any reasonable excess costs for the similar Products. However, Supplier shall continue the Work on the Products not terminated. In addition to Buyer's rights to claim any amounts owed by Supplier to Buyer, Buyer shall have the right to deduct such amounts from any amounts or balances due or that will become due to be paid to Supplier by Buyer.

61. Messier relied on 2Source to deliver the products on order in accordance article 5.1 of the Agreement, and in accordance with the express terms of the Agreement.

62. 2Source's conduct, as set out herein, constituted a breach of the express terms of the Agreement. In delivering sudden, written notice of its intention to stop the delivery of the

products, 2Source unilaterally defaulted in its obligations to Messier. 2Source's default constitutes a material breach of contract.

LIQUIDATED DAMAGES

63. In accordance with article 5.1.2 of the Agreement, 2Source agreed to pay liquidated damages to Messier for its failure to deliver 100% of the total number products ordered.

64. 2Source has not delivered any products since September 30, 2015, and has advised of its intention not to do so. As a result, Messier is entitled to liquidated damages in the amount of \$96,000 CAD, representing 10% of the product price for purchase orders place by Messier.

GENERAL DAMAGES

65. As a result of 2Source's default and breach of the Agreement, Messier was left without any of the products it required for its Final Customers. 2Source's intentional breach placed Messier at risk of defaulting under its contracts with its Final Customers. Without the products from 2Source, Messier could not fulfil its obligations its Final Customers, and 2Source was fully aware of this reality.

66. As a result of 2Source's default, Messier was forced to source new suppliers and ultimately transfer the business previously conducted by 2Source to alternative suppliers. This resourcing occurred in an extremely limited time frame, so as to avoid Messier defaulting in its contractual obligations owed to the Final Customers.

67. Messier has incurred significant damages related to the unexpected and sudden cost of shifting the business previously conducted by 2Source under the Agreement. Messier was required to find alternative suppliers for approximately 300 different products/parts as a result of 2Source's breach.

68. As a consequence, Messier has incurred some \$1,500,000 CAD in damages related to its resourcing of alternative suppliers, conducting risk management assessment and analysis, conducting a detailed review on industrialization and qualifications, and procurement. 2Source is directly liable to Messier for these damages, over and above the liquidated damages amount owed.

69. Further particulars of Messier's damages will be provided prior to the trial of this Counterclaim.

70. Messier submits that this Counterclaim be tried at the same time, or immediately following the trial of the main action.

November 20, 2015

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2SOURCE MANUFACTURING INC. MESSIER-DOWTY INC. et al.
Plaintiff and Defendants

Court File No: CV-15-537943

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

**STATEMENT OF DEFENCE AND
COUNTERCLAIM**

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TAB G

This is **Exhibit "G"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017

A handwritten signature in cursive script, appearing to read "A McLachlan", written above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

Court File No. CV-15-537943

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2SOURCE MANUFACTURING INC.

Plaintiff

and

MESSIER-DOWTY INC., MESSIER-BUGGATTI-DOWTY SA,
MESSIER-DOWTY LTD., MESSIER-DOWTY MEXICO SA DE CV and
MESSIER-DOWTY SUZHOU CO. LTD.

Defendants

REPLY AND DEFENCE TO COUNTERCLAIM

1. Save as expressly acknowledged and admitted herein, the Plaintiff denies every allegation in the Defendants' Statement of Defence and Counterclaim and puts the Defendants to the strict proof thereof.
2. The Plaintiff pleads and relies on the terms as defined in its Statement of Claim.

How Messier Ended Up Illegally Reneging on its 6-Year Contract to 2Source

To understand why Messier reneged on its legal, binding contract to 2Source to buy \$US 9.6 million of bushings for the Airbus A320 aircraft, MRO (maintenance, repair and overhaul) program is, unfortunately, to understand the mindset of a large company, the largest manufacturer of aircraft landing gear in the world, and its utter contempt for the legal, supposedly binding contracts it has with its suppliers.

Brief corporate biography of Robert Glegg, CEO of 2Source

Robert Glegg ("Glegg") is the Chairman, CEO and majority shareholder of 2Source. At 64 years old, Glegg is a very able and highly experienced corporate leader. He has an engineering degree and masters of business administration degree from McGill University.

At 26 years of age (in 1978) following a short period of time as Director of Sales for a manufacturer of industrial water treatment equipment, Glegg started his own company making similar equipment, founding Glegg Water Conditioning, Inc. ("GWCI"), which he sold in 1999. During these twenty-one years GWCI became a leading worldwide supplier of ultra-pure water systems to the semiconductor industry. In 1994, Intel Corporation, the largest manufacturer of semiconductors in the world, selected GWCI as its sole provider of ultra-pure water systems for all of its global sites – a reflection of GWCI's capabilities in terms of technology, quality, delivery performance, competitive pricing, and dependability. GWCI's revenues grew to about \$135 million per year, with 350 employees, including dozens of engineers and technical staff, three factories in Guelph, Ontario (near Toronto), and an enviable track record of customer satisfaction. In 1999, Glegg sold GWCI to General Electric Inc., a very sophisticated and discerning acquirer, for approximately \$100 million.

In 2004 Glegg acquired 2Source, a company based in Mississauga, Ontario (near Toronto) that had a tremendous track record of machining high-quality small parts. However, the company had no product specialization and was close to bankruptcy. Glegg realized that 2Source had the ideal people, machines and experience to make aircraft landing gear bushings and, beginning in 2005, Glegg focused 2Source on becoming a leader in this area by providing innovative product solutions, consistent high-quality, on-time delivery and competitive pricing to its customers in North America, Europe and Asia. Today, 2Source is a very successful supplier of aircraft landing gear bushings with revenues of about \$18 million per year. Its largest customer is United Technologies Aerospace Systems ("UTAS"), who is the second-largest manufacturer of landing gear in the world. 2Source is their largest supplier of bushings for its landing gear, producing bushings for many of their aircraft. 2Source has a modern 35,000 square foot facility with about 90 employees.

2Source's senior employees hold significant shares in the company. In addition, 2Source's minimum wage is \$22 per hour, significantly exceeding the legal minimum wage in Ontario of \$11.25 per hour.

A bit about bushings and their role in landing gear

A bushing acts as a buffer between two moving parts, protecting them from wear and tear. So, when the bushing itself wears out, it can be replaced at regular intervals, while the other, often large, parts remain relatively intact over a long period of time. The bushings that 2Source manufactured for Messier were specifically for aircraft landing gear, enabling the landing gear to be raised and lowered over the course of many flights. They are machined with extremely high precision, often within five tenths of a

thousandth of an inch. At regular intervals, landing gear bushings are all replaced according to scheduled maintenance, repair and overhaul (MRO) programs.

The landing gear of one large commercial aircraft may contain as many as 1,500 bushings, made of various metal alloys, often in over a hundred different shapes and sizes. The entire set of bushings required for the landing gear of one aircraft is called a “ship set” or “kit.”

Previous business between Messier and 2Source

By the time Messier and 2Source were negotiating their substantial 6-year contract in 2012, 2Source had already been doing business with Messier for several years, producing bushings for a number of their aircraft landing gear, including several Bombardier aircraft, the Boeing-Bell V22 aircraft, the Airbus A320 OEM (original equipment manufacturer; i.e. for new planes), Boeing 737 NG MRO ship sets, and various bushings for the A320 MRO in a non-ship set format.

Messier's previous breach of contract: a sign of things to come

Back in 2009, however, 2Source had had its first taste of Messier's cavalier attitude regarding their contracts when Messier refused to receive a US\$ 250,000 shipment of finished bushings on valid purchase orders, citing poor economic times. Although Glegg eventually convinced Messier to honour that particular contract, Messier conceded to take the shipment only bit by bit, over a period of several months. Little did Glegg realize, at the time, that this was not an aberration on the part of Messier, but, unfortunately, simply Messier's particular way of doing business: to ignore legal and binding contracts whenever it suited them.

Messier's eagerness to sign up 2Source for the new but complex, low-volume A350 bushings

By 2012 the high-tech landscape of aircraft manufacturing was changing rapidly. Two new, large, commercial (as opposed to military) aircraft were being developed: the B787, made by Boeing, and the A350, made by Airbus, both constructed of carbon fibre instead of metal. They were at the leading edge of new aircraft technology, requiring parts, including landing gear bushings, that were at a new, and challenging, level of engineering complexity. But 2Source, known for both its innovation and dependability, had become such a highly respected manufacturer of these complex, high-precision bushings, that when Messier needed the bushings to be manufactured for the new A350 landing gear it was making, it contacted 2Source.

However, there were two critical factors regarding the new A350 that, together, made the manufacture of these landing gear bushings a less-than-ideal project. The first was that the A350 was still only in its design stages, with full production several years away (around 2018 or so). So Messier required only a very low quantity of A350 bushings per month for a number of years.

The second factor was that these bushings, being complex, required a tremendous amount of engineering work to interpret the three-dimensional models and prepare for production. Thus, for several years into the future, the new A350 would be not only a *very* low-volume project but, in addition, with *very* high engineering costs. In other words, profitability on these bushings was only far into the future, at the end of about six years.

Because of these factors, 2Source was willing to take on production of the new A350 bushings *only if* the bushings for an additional aircraft were included that would provide immediate profitability (not

including the aircraft which 2Source and Messier were already involved with). And so Messier, eager to have 2Source on board for the complex and low-volume A350 project, included the B787 OEM landing gear bushings in its negotiations with 2Source.

The B787, like the A350, was also a sophisticated new carbon-fibre aircraft with complex, high-tech requirements. However, the B787 was about four years further along than the A350 in its production schedule, and was already close to a significant production rate in 2012. 2Source regarded the B787 as a good, profitable project to accompany the new A350.

And so, throughout the months of 2012, intensive, detailed negotiations proceeded between Messier and 2Source on their comprehensive 6-year contract to be in effect from 2013 through to 2018, and that would include all the bushings that 2Source was currently producing for Messier, as well as bushings for the landing gear of the new A350 and the B787.

But then, in Oct. of 2012, as the contract negotiations were nearing finalization, Messier presented Glegg with an abbreviated set of numbers regarding the contract. However, something didn't look right to Glegg. As he quickly did the math, he realized that the B787 was not included in the proffered contract. He asked about it, and was finally and reluctantly told that actually, no, the B787 wasn't included.

Glegg was absolutely astounded, and furious, that Messier could have been so utterly lacking in integrity to have negotiated with his team, over so many months, in such bad faith. Indeed, if Glegg hadn't caught the discrepancy in the numbers, and questioned them, it wasn't clear when, exactly, Messier would have informed him that the contract included the complex, low-volume, low-profit A350 bushings *but without any of the high-volume B787 bushings*. Disgusted at Messier's deceit, Glegg told Messier that he would not sign the contract without the missing B787 revenue.

But Messier desperately wanted Glegg to return to the negotiations, since 2Source had the expertise and reliability to manufacture the complex, low-volume A350 bushings (as well as the other landing gear bushings that 2Source was currently making for them, also in the 6-year contract). They invited Glegg to another meeting and asked him if he would accept, instead of the B787, the Airbus A320 MRO (maintenance, repair and overhaul) program at the rate of 100 ship sets per year for 6 years, at a price of \$US 16,000 per ship set. (2Source had already been making small quantities of various bushings in a non-ship set format for the A320 MRO for several years for Messier, whenever they sent a purchase order, but these were small orders, not to be confused with the full ship sets set out in the 6-year contract.)

This new offer was roughly equal in value to that of the B787 that had been so badly mishandled by Messier.

Glegg found this alternative acceptable.

Upon Glegg's acceptance of their offer for the A320 MRO ship sets, Messier added seven pages of pricing and description of these ship sets into the 6-year contract (from 2013 to 2018). In the contract, Messier indicated that the price for each A320 MRO ship set purchased from 2Source would be \$US 16,000; the volume (number) that was agreed on, verbally, was 100 ship sets per year. This would work out to \$US 1.6 million per year (\$US 9.6 million total over the 6 years of the contract).

It must be understood that in the aeronautical industry, such contracts are typically "silent on volume." However, this does not mean that there is no contractually agreed-on volume; there is. The only reason the volumes are not put in writing is that it allows some flexibility, from month to month, or year to year, according to the needs of the aircraft manufacturers and overhaulers.

Clearly, if there were no implied volumes in the contract, then, in effect, the contract would be meaningless, and no company would ever sign and commit themselves to such a pointless contract, let alone commit its resources to the manufacture of such aircraft parts. For example, it would have been completely acceptable to 2Source if Messier had ordered the A320 MRO ship sets at a volume of, say, 90 ship sets one year and 110 the next, without buying precisely 100 during any one year.

Thus, “silence on volume” is simply a way of allowing fine-tuning and flexibility in the month-to-month or year-to-year production rate, and in no way allows the purchaser to effectively extinguish and nullify its legal contract and agreement.

With the contract signed, 2Source began the arduous process of setting up the engineering to deliver the complex, low-volume A350 bushings.

The problem, however, was that Messier never fulfilled the vast majority of the legal, binding contract regarding the A320 MRO bushings.

Messier's internal struggle to fulfill its contract to 2Source

In the first half of 2013 (the first year of the contract), following repeated and strenuous efforts on the part of Glegg and his team to convince Messier to comply with the contract regarding the first 100 ship sets of the A320 MRO, Messier finally, in June 2013, placed an order for 24.

But in spite of Herculean efforts on the part of Glegg and his staff, Messier would never place another single order with 2Source for any more A320 MRO ship sets, either in 2013 (approx. 75 more ship set orders were needed to complete the contract for that year), or in 2014, or 2015. The reason for this difficulty soon became apparent to Glegg: Messier didn't need these A320 MRO ship sets from 2Source, since it had already placed its orders for them internally, to be made in its own plant in Queretaro, Mexico, that was in the process of starting up A320 bushing production. (Up until then, production of these bushings had been subcontracted by Messier to various suppliers.)

Did Messier know, when they finalized their contract with 2Source in 2012, that they were double-sourcing the production of these A320 MRO ship sets and could not fulfill their contract with 2Source? In other words, did they deliberately mislead 2Source, without ever having any intention of giving 2Source this work? Or was it simply an outrageously negligent, reckless oversight?

Regardless of the answer, Messier, under tremendous pressure from 2Source, found itself in the ridiculous position of trying to make a convoluted – and ultimately futile – effort to fulfill its contract with 2Source for the A320 MRO ship sets. This huge problem is evident from the emails Messier sent to 2Source regarding the only 24 A320 MRO ship sets they ever ordered. For example:

From Arren Kinder, Operations Director at Messier, May 17, 2013, to Robert Waslyk, Sales Director at 2Source, with the subject heading “RE: 24 A320 MRO BUSHING SHIP SETS”: “I am optimistic that a PO [purchase order] can be placed but cannot say when until I have completed these meetings. *I am doing what I can but as you know it is not straightforward!*” [italics added]

The reason it wasn't straightforward was that Messier, whether deliberately or not, had double-sourced the A320 MRO ship sets to both 2Source and its own Mexican plant.

Barely two weeks later, another email (below) points to the turmoil within Messier itself, as one part of Messier tries to slip – undetected – the 24 unwanted 2Source ship sets of June 2013 into another part of Messier, at their plant in Gloucester, England (where the different landing gear components were being assembled) via a very byzantine route:

Email from Brett Moore, Commodity Buyer at Messier, June 3, 2013 to Robert Waslyk, Sales

Director at 2Source, with the subject heading “RE: A320 MRO June Commitment”: “he [Arren Kinder, above] did receive support for his proposal to take care of the shipsets due at end of June *by having purchase order(s) issued out of Queretaro [Mexico] and then re-directing some of the deliveries from Queretaro to Gloucester afterward.*” [italics added]

So, in Messier's struggle to fulfill their contract with 2Source, they planned to send 2Source's completed A320 MRO bushing ship sets all the way down to their plant in Mexico, and then transfer them to their finishing plant in Gloucester, England – an attempt to veil the fact, within their own (very large) company, that the ship sets were actually being produced at 2Source instead of internally, in Mexico! The title of the email itself also refers, revealingly, to the “A320 MRO June Commitment.”

Regardless of whether Messier's bungled dealings with 2Source were deliberate or not, the fact remains that, after a brief internal struggle to buy 24 ship sets in June of 2013, Messier blatantly breached their legal and binding contract with 2Source to purchase the remaining A320 MRO ship sets outlined in the contract: approx. 75 more in 2013, and 100 per year in each of 2014 and 2015 (and the same through to 2018). This illegal act had tremendous negative consequences for 2Source (please see the last section of this document (“The resulting damage to 2Source”).

2014

Due to the seriousness of Messier's outright refusal to fulfill their contract, Glegg, as CEO, realized that the situation could not be successfully delegated to one of his managers in his small company, but would require his own personal efforts. However, due to his divorce in 2014, followed by the unlawful detention of his daughter outside of Canada by her mother, Glegg's attention was focused on difficult family matters, including bringing his daughter back home to Ontario and gaining sole custody of her (both of which eventually occurred, in 2014 and 2015, respectively). While 2Source was run competently during that time by its senior managers, their responsibilities lay, at that time, with ensuring that 2Source continued to perform well, without the huge difficulty of addressing Messier's breach of contract.

2Source's continued efforts to resolve Messier's breach of contract

In July of 2015 Glegg once again approached Messier and requested that they fulfill their contract regarding the A320 MRO, or replace it with work of equal value (a total of \$US 9.6 million over the 6 years) on other aircraft. In addition, Glegg requested that Messier purchase 2Source's accumulated inventory of raw materials and finished parts, worth \$US 270,000, that were specific for the A320 MRO program and not usable for any other 2Source production.

In mid-August 2015 Messier replied that it would not fulfill the contract in any way, nor would it buy the inventory.

In September 2015 Glegg twice reiterated his two requests, giving all the background details, but to no avail. Finally, Glegg approached Messier yet a third time, with a date by which he expected a response. This time Messier responded, indicating that they would make a proposal to buy the outstanding inventory, but they still refused to honour their contract.

That same day Glegg responded to Messier with the inventory details they had requested (even though he had sent them to Messier several times already), and repeated his request for action regarding the contract.

Messier still refused to honour the contract.

And so, in the face of Messier's continued disregard – and utter contempt – for the legally binding contract that Messier had with 2Source, Glegg finally took action. He indicated to Messier that 2Source was stopping further shipments of bushings to Messier until they purchased the inventory *and* agreed to fulfill the contract, or provide 2Source with work of equal value.

It was only at this stage, following a number of phone calls and emails, that Messier offered to buy the outstanding A320 MRO inventory, and agreed, also, to meet with 2Source at Messier's headquarters in France to begin new negotiations for fulfilling the contract. And so 2Source and Messier began making plans for 2Source's senior staff to meet with Messier staff and come to an agreement in the next few days.

But then Messier changed the plan, and indicated that they wanted 2Source to resume shipments *before* they began negotiations. However, by now Glegg had seen enough of how Messier did business.

2Source indicated that a new agreement needed to be in place *first*, before shipments would be resumed. Messier refused to agree to this.

Effective Sept. 30, 2015, 2Source stopped shipments to Messier and filed for an Order of Rescission, seeking to terminate the agreement between 2Source and Messier. 2Source filed a claim for damages from Messier of \$US 4,530,000.

The resulting damage to 2Source

For a relatively small company such as 2Source, the loss of revenue from the A320 MRO project was huge: \$US 1.2 million in 2013, and \$US 1.6 million per year in each of 2014 and 2015 (when 2Source nullified the contract that extended out to 2018). The loss of this revenue cut 2Source's profit roughly in half, creating difficulties in many different ways.

Also, since much of 2Source's senior team, during most of 2012, had focused their energies on the extensive negotiation process with Messier on the 6-year contract, when Messier breached the contract, it left 2Source unprepared, with no way of filling the revenue gap. And since 2Source's actual sales numbers were no longer meeting its financial forecast, 2Source's forecasting ability was questioned by all concerned, including financial institutions.

In addition, 2Source was left with \$US 270,000 of inventory related to the A320 MRO which was not usable for any other 2Source production, and which Messier refused to buy.

And last but not least, the situation took a tremendous personal toll not only on 2Source's senior staff, but also on Glegg himself, as he expended an inordinate amount of time and effort in attempting to find ways of mitigating the damage to 2Source.

TAB H

This is **Exhibit "H"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

District of:
 Division No.
 Court No.
 Estate No.

Original Amended


-- Form 78 --
 Statement of Affairs (Business Bankruptcy) made by an entity
 (Subsection 49(2) and Paragraph 158(d) of the Act / Subsections 50(2) and 62(1) of the Act)
 In the matter of the bankruptcy of
 2Source Manufacturing Inc.
 of the City of Mississauga, in the Province of Ontario

To the bankrupt:
 You are required to carefully and accurately complete this form and the applicable attachments showing the state of your affairs on the date of the bankruptcy, on the 20th day of July 2017. When completed, this form and the applicable attachments will constitute the Statement of Affairs and must be verified by oath or solemn declaration.

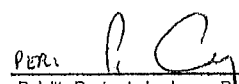
LIABILITIES (as stated and estimated by the officer)	ASSETS (as stated and estimated by the officer)
1. Unsecured creditors as per list "A"	1. Inventory
2,142,728.96	1.00
Balance of secured claims as per list "B"	2. Trade fixtures, etc.
7,281,669.15	1.00
Total unsecured creditors	3. Accounts receivable and other receivables, as per list "E"
9,424,398.11	Good
2. Secured creditors as per list "B"	1.00
2,538,263.85	Doubtful
3. Preferred creditors as per list "C"	236,097.72
0.00	Bad
4. Contingent, trust claims or other liabilities as per list "D" estimated to be reclaimable for	0.00
0.00	Estimated to produce
Total liabilities	1.00
11,962,661.96	4. Bills of exchange, promissory note, etc., as per list "F" ...
Surplus	0.00
NIL	5. Deposits in financial institutions
	0.00
	6. Cash
	2,538,266.85
	7. Livestock
	0.00
	8. Machinery, equipment and plant
	1.00
	9. Real property or immovable as per list "G"
	0.00
	10. Furniture
	1.00
	11. RRSPs, RRIIFs, life insurance, etc.
	0.00
	12. Securities (shares, bonds, debentures, etc.)
	0.00
	13. Interests under wills
	0.00
	14. Vehicles
	0.00
	15. Other property, as per list "H"
	2.00
	If bankrupt is a corporation, add:
	Amount of subscribed capital
	0.00
	Amount paid on capital
	-0.00
	Balance subscribed and unpaid
	0.00
	Estimated to produce
	0.00
	Total assets
	2,538,263.85
	Deficiency
	9,424,398.11

I, Deloitte Restructuring Inc. as Receiver of 2Source Manufacturing Inc., of the City of Toronto in the Province of Ontario, do swear (or solemnly declare) that this statement and the attached lists are to the best of my knowledge, a full, true and complete statement of my affairs on the 20th day of July 2017 and fully disclose all property of every description that is in my possession or that may devolve on me in accordance with the Act.

SWORN (or SOLEMNLY DECLARED)
 before me at the City of Toronto in the Province of Ontario, on this 20th day of July 2017.



 Anna Koroneos, Commissioner of Oaths
 For the Province of Ontario
 Expires June 3, 2019


 PER: _____
 Deloitte Restructuring Inc. as Receiver of
 2Source Manufacturing Inc.
 Paul M. Carter
 Senior Vice-President

Anna Koroneos, a Commissioner, etc.,
 Province of Ontario
 for Deloitte Restructuring Inc.,
 Licensed Insolvency Trustee,
 Expires June 3, 2019.

District of:
Division No.
Court No.
Estate No.

FORM 78 - Continued

List "A"
Unsecured Creditors
2Source Manufacturing Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
1	2006905 Ontario Inc.	c/o Robert Glegg 62 Bel Air Dr. Oakville ON L6J 7H1	0.00	4,136,000.00	4,136,000.00
2	ADF Canada	130 Eileen Stubbs Ave. Suite 22 Dartmouth NS B3B 2C4	1.00	0.00	1.00
3	Aerocom NDT Inspection	2222 South Sheridan Way Mississauga ON L5J 2M4 CA	2,613.70	0.00	2,613.70
4	Aerospace Metal Finishing Inc.	71 Proctor Road Schomberg ON L0G 1T0 CA	8,906.31	0.00	8,906.31
5	Aerotek Manufacturing Ltd.	1449 Hopkins Street Whitby ON L1N 2C2 CA	147,137.14	0.00	147,137.14
6	Afive ProStudios	126 Upper Post Road Vaughan ON L5A 4J9 CA	204.53	0.00	204.53
7	All Waste Removal Inc	139 Arrow Road Toronto ON M9M 2M1 CA	245.00	0.00	245.00
8	Allstream Business Inc.	Account Receivable 200 Wellington St W Toronto ON M5W 3G2 CA	911.12	0.00	911.12
9	Anavels Magazine	C/O Anavels Martello Unit 377, 317 Gore Road Kingston ON K7L 5H6 CA	446.35	0.00	446.35
10	Applus RTD	5261 Erardo Blvd Mississauga ON L4W 2A6 CA	7,789.19	0.00	7,789.19
11	Applus RTD Canada LP	4325 Harvester Road Burlington ON L7L 6N4 CA	167,467.86	0.00	167,467.86
12	ASA ALLOYS INC.	81 Stairway Blvd Elmhurst ON M9W 6R6 CA	598.90	0.00	598.90
13	Aventec	Attn: Lisa Simard 327 Renfrew Dr #301 Markham ON L3R 9S8 CA	4,511.70	0.00	4,511.70
14	Aviell Inc.	PO Box 5634 Toronto ON M5W 2K3 CA	132.54	0.00	132.54
15	Beil Mobility	PO Box 5102 Burlington ON L7R 4R7 CA	3,084.55	0.00	3,084.55
16	Blue and White Taxi Ltd	7070 Pacific Circle Mississauga ON L5T 2K7 CA	489.25	0.00	489.25
17	Bohler Liddeholm	2585 Meadowdale Blvd Mississauga ON L5N 7Y3 CA	37,514.80	0.00	37,514.80
18	BRAMPTON PROCESSING	171 ADVANCE BLVD BRAMPTON ON L6T 4Z6 CA	19,179.67	0.00	19,179.67
19	BSI Group Canada Inc.	c/o TH1086 62089 Airport Rd, Suite 414 Toronto ON M9W 5W6 CA	8,666.74	0.00	8,666.74
20	Busby Metals	65 Daniels Drive Hauppauge NY 11786 US	64,914.19	0.00	64,914.19
21	CALIBER AERO	12103 Clark Street Santa Fe Springs CA 90570 US	27,144.17	0.00	27,144.17
22	Caliber Industrial Supply	5500 Tomken Road Mississauga ON L4W 2Z4 CA	277.98	0.00	277.98

20-Jul-2017

Date

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

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District of:
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FORM 78 - Continued

List "A"
Unsecured Creditors
2Source Manufacturing Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
23	Cem-Solutions Inc.	184 Flain Road East Burlington ON L7T 2E1 CA	1,695.00	0.00	1,695.00
24	Canada Revenue Agency	1050 Notre Dame Avenue Sudbury ON P3A 5C1 CA	1.00	0.00	1.00
25	Canadian Hazmat and Decon Services Inc	1153 Pioneer Road, Unit G Burlington ON L7M 1K5	15,962.67	0.00	15,962.67
26	CAPITAL TRAFFIC SYSTEMS INC.	269 Trillium Dr. Kitchener ON N2E 1W9 CA	22,183.25	0.00	22,183.25
27	Cintas Uniforms	3370 Dundas Street West Toronto ON M6S 2S2 CA	2,986.89	0.00	2,986.89
28	Cisco Systems Capital Canada Co.	5937 Dixie Road Mississauga ON L4W 1E8	0.00	1.00	1.00
29	Concast Metal Products Company	131 Myrna Road Mars PA 16046-0816 US	45,976.95	0.00	45,976.95
30	CSM Driver Services Inc.	2355 Derry Rd. E., Unit 437 Mississauga ON L5S 1V6 CA	225.44	0.00	225.44
31	Dial One Comfort Plus	3 Stelton Street Hillsburgh ON N0B1Z0 CA	640.00	0.00	640.00
32	Diamant Inc.	4355 Kennedy Road Mississauga ON L5T 2L5 CA	983.33	0.00	983.33
33	Diamond Chrome Plating	604 South Michigan Avenue Howell MI 48843 US	44,681.10	0.00	44,681.10
34	Dimensional Laser Metrology	13255 Harrington Fleetside QC H8Z 1G3 CA	200.00	0.00	200.00
35	Diversi-Tech Inc.	2500 Alphonse Gendry Lachine QC H8T 3M2 CA	1,972.38	0.00	1,972.38
36	Duramill Industrial Supplies	21 Bradwick Drive #2-3 Concord ON L4K 7K5 CA	6,161.37	0.00	6,161.37
37	Dymar Chemicals Ltd	5266 General Road, Unit 7 Mississauga ON L4W 4Z7 CA	1,076.89	0.00	1,076.89
38	Earle M. Jorgensen Company	305 Pendant Drive Mississauga ON L5T 2W9 CA	316.40	0.00	316.40
39	Elliott Malsaura Canada Inc.	2120 Buckingham Road Oakville ON L6H 5Z2	0.00	1.00	1.00
40	Employee(s)	6261 Bardoo Blvd Mississauga ON L4W 2A6	877,376.58	0.00	877,376.58
41	Enbridge	P.O. Box 614 Scarborough ON M1K 5H1 CA	6,848.31	0.00	6,848.31
42	Enersource	2185 Derry Rd. West Mississauga ON L5M 7A8 CA	13,393.08	0.00	13,393.08
43	Enviroaire Mechanical & Electrical	755 Thornton Road South Oshawa ON L1J 8A8 CA	9,018.21	0.00	9,018.21
44	Eric Dean	79 Wensline Terrace Cambridge ON N3C 4G8 CA	2,332.57	0.00	2,332.57
45	ETR-407 Express Toll Route	P.O. Box 407 Scarborough ON M1R 5J6 CA	665.90	0.00	665.90
46	Exactathem Limited	2381 Anson Drive Mississauga ON L5S 1G1 CA	7,963.53	0.00	7,963.53

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Date

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

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District of:
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FORM 78 - Continued

List "A"
Unsecured Creditors

2Source Manufacturing Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
47	FARMERS COPPER	202 37th Street GALVESTON TX 77553 US	29,559.35	0.00	29,559.35
48	Federal Express Canada Ltd	PO Box 4626 Toronto ON M5W 5B4 CA	8,146.03	0.00	8,146.03
49	FedEx Trade Networks Transport & Brokerage Inc.	PO Box 842205 Boston MA 02284 US	1.00	0.00	1.00
50	Frid & Russell Business Products	1605 Jonstun Drive Burlington ON L7L 5T8 CA	4,112.04	0.00	4,112.04
51	GPM Real Property (10) Ltd. & GPM (10) GP Inc	c/o African Young, Simpson Tower 401 Bay St., Suite 1100, Mail Box # 11 Toronto ON M5H 2Y4 CA	28,820.37	0.00	28,820.37
52	GT Global Services	110 Cochran Drive Markham ON L3R9S1 CA	33,698.49	0.00	33,698.49
53	Homewood health inc	150 Delhi Street Guelph ON N1E 6K9 CA	1,512.08	0.00	1,512.08
54	Honda Canada Finance Inc.	180 Honda Blvd, Suite 200 Markham ON L6C 0H9	0.00	1.00	1.00
55	HSBC Bank Canada	70 York Street, 6th Floor Toronto ON M5J 1S9	0.00	1,561,736.15	1,561,736.15
56	Imperial Coffee and Services	12 Kodak Crescent Toronto ON M3J 3G5 CA	623.32	0.00	623.32
57	Iron Mountain Canada Corp.	PO Box 3527 Toronto ON M5W 3G4 CA	797.81	0.00	797.81
58	J.H. Ryder Machinery Limited	210 Amnagen Boulevard Mississauga ON L5T 2V5 CA	306.91	0.00	306.91
59	Javelin Technologies	3457 Superior Court, Unit 1 Oakville ON L6L 0C4 CA	8,971.07	0.00	8,971.07
60	KTS Tooling Supply Inc.	317 Awell Drive Rexdale ON M9W 5C1 CA	1.00	0.00	1.00
61	Livingston International	PO Box 5640 Toronto ON M5W 1P1 CA	183.50	0.00	183.50
62	LIVINGSTON INTERNATIONAL	6725 Airport Road, Suite 500 Mississauga ON L4V 1V2 CA	4,937.62	0.00	4,937.62
63	Lone Star Casing & Machine	3102 Haverick Drive Kilgore TX 75662 US	23,070.40	0.00	23,070.40
64	MetaTek International Corp.	905 E ST Pauls Ave. Waukesha WI 53188 US	2,585.60	0.00	2,585.60
65	National Bronze & Metals, Inc.	5311 West River Rd. N Lorain OH 44055 US	127,312.58	0.00	127,312.58
66	National Calibration Inc.	2380 Wyeand Road Delhi ON L6L 6W1 CA	446.35	0.00	446.35
67	National Leasing Group Inc.	1525 Buffalo Place Winnipeg MB R3T 1L9	0.00	1.00	1.00
68	NELSON NUMERIC, INC.	11201 Hampshire Avenue South Bloomington MN 55438 US	18,563.52	0.00	18,563.52
69	Office Team	PO Box 57349/C.P. 57349 File T57349C Toronto ON M5W 5M5 CA	7,007.42	0.00	7,007.42
70	Ontario Development Corporation	900 Bay St., 6th Fl. Hearst Block Toronto ON M7A 2E1	0.00	1,583,928.00	1,583,928.00

20-Jul-2017

Date

PL

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

District of:
Division No.
Court No.
Estate No.

FORM 78 - Continued

List "A"
Unsecured Creditors

2Source Manufacturing Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
71	Ontario Ministry of Finance	33 King Street West Oshawa ON L1H 8L5 CA	1.00	0.00	1.00
72	PAS TECHNOLOGIES INC	1021 North 22nd Ave. Phoenix AZ 85009 US	804.00	0.00	804.00
73	Pinney Bowes Leasing	PO Box 276 Orangeville ON L5W 2Z7 CA	149.35	0.00	149.35
74	Prazair Distribution	PO Box 400, Station D Scarborough ON M1R 5M1 CA	159.92	0.00	159.92
75	Print Three	201 City Centre Drive Mississauga ON L5B 2Y4 CA	169.50	0.00	169.50
76	Progressive Waste Solutions Inc.	650 Creditstone Road Concord ON L4K 5C8 CA	755.70	0.00	755.70
77	Ricoch	5520 Explorer Drive Mississauga ON L4W 5L1 CA	2,432.02	0.00	2,432.02
78	Robert Glegg	62 Bel Air Drive Oakville ON L6J 7N1 CA	15,000.00	0.00	15,000.00
79	Roynat Inc.	700 2nd Street SW, Suite 4000 Calgary AB T2P 2N2	0.00	1.00	1.00
80	Select Services	6436 Dale Road, Unit # 10A Mississauga ON L5T 1X4 CA	904.00	0.00	904.00
81	Service Star Freightways Inc (Paint Law-suit)	1-185 Atkinson Industrial Parkway Bradford ON L3Z 3S4 CA	60,165.35	0.00	60,165.35
82	Shred-It Canada	PO Box 15617, STN A Toronto ON M5W 1C1 CA	259.04	0.00	259.04
83	Simplex Grinnel	2400 Skyway Avenue Mississauga ON L4W 5K5 CA	397.50	0.00	397.50
84	SOUTHWEST UNITED INDUSTRIES	422 South St. Lucas Ave. Tulsa OK 74120 US	1,575.00	0.00	1,575.00
85	Stille Precision Machining Ltd.	288 Shepherd Avenue Cambridge ON N3C 1V1 CA	3,762.90	0.00	3,762.90
86	Suncor Energy Products Inc. - Canada Attric Bill Senra	2488 North Sheildan Way Mississauga ON L5K 1A8	615.74	0.00	615.74
87	SunLife Financial	225 King Street West Toronto ON M5V 3C5 CA	83,852.91	0.00	83,852.91
88	Tamera Wallace	60 Nth River-Way Ayr ON N0B 1E9 CA	2,260.02	0.00	2,260.02
89	TECHNI-CAST CORPORATION	11220 South Garfield Ave. South Gate CA 90280 US	21,075.50	0.00	21,075.50
90	Tecnickron e Aeroaoutique Inc.	12254 Avni Montreal QC H1B 5N5 CA	210.00	0.00	210.00
91	Telus	PO Box 5300 Burlington ON L7R 4S8 CA	40.36	0.00	40.36
92	Thyssenkrupp NA	2821 Langstaff Rd Concord ON L4K 5C5 CA	7,417.04	0.00	7,417.04
93	Timax Messenger Inc.	2823 Bristol Circle, Unit #1 Oakville ON L6K 6X5 CA	2,930.09	0.00	2,930.09
94	Toronto Lube Service	3175 14th Avenue Markham ON L3R 0H1 CA	2,455.82	0.00	2,455.82

20-Jul-2017

Date

PL

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

District of:
Division No.
Court No.
Estate No.

FORM 78 - Continued

List "A"
Unsecured Creditors
ZSource Manufacturing Inc.

No.	Name of creditor	Address	Unsecured claim	Balance of claim	Total claim
95	Toshiba Tungaloy	432 Elgin Street Brantford ON N3S 7P7 CA	334.93	0.00	334.93
96	Triumph Tools	180 Trowers Road Woodbridge ON L4L 8A6 CA	908.19	0.00	908.19
97	Tryhard Industrial Supply Co.	1471 Courtenypark Drive Mississauga ON L5T 2E3 CA	366.12	0.00	366.12
98	Tyco Integrated Security Canada, Inc	40 Sheppard Avenue West Toronto ON M2N 6K9 CA	1.00	0.00	1.00
99	UCIT Online	6441 Northern Drive Mississauga ON L4V 1J2 CA	9,256.96	0.00	9,256.96
100	ULINE Shipping Supply Specialties	PO Box 3550 Mississauga ON L5M 0S8 CA	3,421.04	0.00	3,421.04
101	UPS Canada	PO Box 4900 Toronto ON M5W 0A7 CA	331.42	0.00	331.42
102	Vibra Finish	5329 Mahlgate Drive Mississauga ON L4W 1G6 CA	6,464.73	0.00	6,464.73
103	W.S WILSON CORP	24 Harbor Park Drive Port Washington NY 11050 US	21,635.00	0.00	21,635.00
104	WebWEST Limited	657 Hemlock Drive, Upper Tantallon NS B3Z 0G3 CA	3,836.35	0.00	3,836.35
105	Workplace Safety & Insurance Board	PO Box 4115 Toronto ON M5W 2V3 CA	15,115.61	0.00	15,115.61
106	Wysdom Consulting Group Inc	4841 Yonge Street Unit # B6 Toronto ON M2N 6N1 CA	5,932.50	0.00	5,932.50
107	XPO Global Forwarding, Inc	27638 Newark Pl Chicago IL 60673 US	1,636.00	0.00	1,636.00
108	XPO Logistics Freight Canada, Inc	5425 Dixie Road, Suite 202 Mississauga ON L4W 1E6 CA	522.15	0.00	522.15
Total:			2,142,728.96	7,281,669.15	9,424,398.11

20-Jul-2017

Date

Deloitte Restructuring Inc. as Receiver of ZSource
Manufacturing Inc.

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FORM 78 - Continued

List "B"
Secured Creditors

ZSource Manufacturing Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
1	ZSource Ontario Inc.	c/o Robert Glegg 62 Bel Air Dr. Oakville ON L6L 7N1	4,136,000.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Business Assets - Stock In Trade - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Business Assets - Trade Fixtures - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Debts Due - Business - Various - Trade Furniture - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Other - Legal Proceedings - Messier-Dewy Inc. Other - Legal Proceedings - United Technologies Corp.		0.00		4,136,000.00
2	Cisco Systems Capital Canada Co.	5937 Dixie Road Mississauga ON L4W 1E6	1.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1.00
3	Eliott Matsura Canada Inc.	2120 Buckingham Road Oakville ON L6H 5X2	1.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1.00
4	Honda Canada Finance Inc.	180 Honda Blvd, Suite 200 Markham ON L3C 0H9	1.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1.00

20-Jul-2017

Date

Deloitte Restructuring Inc. as Receiver of ZSource
Manufacturing Inc.

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FORM 78 - Continued

List "B"
Secured Creditors

2Source Manufacturing Inc.

No.	Name of creditor	Address	Amount of claim	Particulars of security	When given	Estimated value of security	Estimated surplus from security	Balance of claim
5	HSC Bank Canada	70 York Street, 6th Floor Toronto ON M5J 1S5	4,100,000.00	Cash on Hand - Cash in bank - Funds held in receivership Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Business Assets - Stock In Trade - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Business Assets - Trade Fixtures - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Debt Due - Business - Various - Trade Furniture - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017 Other - Legal Proceedings - Messier-Dowty Inc. Other - Legal Proceedings - United Technologies Corp.		2,538,256.85		1,561,738.15
3	National Leasing Group Inc.	1525 Buffalo Place Winnipeg MB R3T 1L9	1.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1.00
	Ontario Development Corporation	800 Bay St., 8th Flr, Hearst Block Toronto ON M7A 2E1	1,583,928.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1,583,928.00
	Rovnat Inc.	700 2nd Street SW, Suite 4000 Calgary AB T2P 2W2	1.00	Business Assets - Machinery - Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017		0.00		1.00
Total:			9,849,933.00			2,538,256.85	0.00	7,281,639.15

20-Jul-2017
Date

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

District of:
Division No. - -
Court No.
Estate No.

FORM 78 - Continued

List "C"
Preferred Creditors for Wages, Rent, etc.

2Source Manufacturing Inc.

No.	Name of creditor	Address and occupation	Nature of claim	Period during which claim accrued	Amount of claim	Amount payable in full	Difference ranking for dividend
Total:					0.00	0.00	0.00

20-Jul-2017
Date

Deloitte Restructuring Inc. as Receiver of 2Source
Manufacturing Inc.

District of:
 Division No.
 Court No.
 Estate No.

FORM 78 - Continued

List "D"
 Contingent or Other Liabilities

ZSource Manufacturing Inc.

No.	Name of creditor or claimant	Address and occupation	Amount of liability or claim	Amount expected to rank for dividend	Date when liability incurred	Nature of liability
			0.00	0.00		
Total:			0.00	0.00		

District of:
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FORM 78 - Continued

List "E"
 Debts Due to the Bankrupt
 ZSource Manufacturing Inc.

No.	Name of debtor	Address and occupation	Nature of debt	Amount of debt (good, doubtful, bad)	Folio of ledgers or other book where particulars to be found	When contracted	Estimated to produce	Particulars of any securities held for debt
1	Various - Trade	22 Adelaide St. W., Ste 210 Toronto ON M5H 0A9	Trade	1.00 236,087.72 0.00		20-Jul-2017	1.00	NA
Total:				1.00 236,087.72 0.00			1.00	

20-11-2017
 Date

Deloitte Restructuring Inc. as Receiver of ZSource
 Manufacturing Inc.

20-Jul-2017
 Date

Deloitte Restructuring Inc. as Receiver of ZSource
 Manufacturing Inc.

District of:
 Division No.
 Court No.
 Estate No.

FORM 78 - Continued

List "F"

Bills of Exchange, Promissory Notes, Lien Notes, Chattel
 Mortgages, etc., Available as Assets

2Source Manufacturing Inc.

No.	Name of all promissory, acceptors, endorsers, mortgagors, and guarantors	Address	Occupation	Amount of bill or note, etc.	Date when due	Estimated to produce	Particulars of any property held as security for payment of bill or note, etc.
Total:				0.00		0.00	

District of:
 Division No.
 Court No.
 Estate No.

FORM 78 - Continued

List "G"

Real Property or Intangibles Owned by Bankrupt

2Source Manufacturing Inc.

Description of property	Nature of bankrupt interest	In whose name does title stand	Total value	Particulars of mortgages, hypothecs, or other encumbrances (name, address, amount)	Equity or surplus
Total:			0.00		0.00

20-Jul-2017

Date

Deloitte Restructuring Inc. as Receiver of 2Source
 Manufacturing Inc.

20-Jul-2017

Date

Deloitte Restructuring Inc. as Receiver of 2Source
 Manufacturing Inc.

District of:
 Division No.
 Court No.
 Estate No.

FORM 78 - Concluded

List "H"
 Property

2Source Manufacturing Inc.
 FULL STATEMENT OF PROPERTY

Nature of property	Location	Details of property	Original cost	Estimated to produce
(a) Stock-in-trade		Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017	0.00	1.00
(b) Trade fixtures, etc.		Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017	0.00	1.00
(c) Cash in financial institutions			0.00	0.00
(d) Cash on hand		Cash on hand	2,538,256.85	2,538,256.85
(e) Livestock			0.00	0.00
(f) Machinery, equipment and plant		Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017	0.00	1.00
(g) Furniture		Sold en bloc to Allied One Industrial by the Receiver on March 31, 2017	0.00	1.00
(h) Life insurance policies, RRSPs, etc.			0.00	0.00
(i) Securities			0.00	0.00
(j) Interests under wills, etc.			0.00	0.00
(k) Vehicles			0.00	0.00
(l) Taxes			0.00	0.00
(m) Other		Legal Proceedings - Messier-Dowty Inc. Legal Proceedings - United Technologies Corp.	0.00 0.00	1.00 1.00
Total:				2,538,262.85

Court No.

File No.

In the matter of the bankruptcy of
 2Source Manufacturing Inc.
 of the City of Mississauga, in the Province of Ontario


Form 78 (Bill C-12)
 Statement of affairs (Business bankruptcy)

Deloitte Restructuring Inc. - Licensed Insolvency
 Trustee

Bay Adelaide Centre, East Tower
 22 Adelaide Street West, Suite 200
 Toronto ON M5H 0A9
 Phone: (416) 601-6072 Fax: (416) 601-6690

20-Jul-2017

Date


 Deloitte Restructuring Inc. as Receiver of 2Source
 Manufacturing Inc.

TAB I

This is **Exhibit "I"** referred to in the
Affidavit of Robert Glegg
Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

Raj S. Sahni
Partner
Direct Line: 416.777.4804
e-mail: sahnir@bennettjones.com
Our File No.: 77395.1

July 28, 2017

Via E-Mail

Deloitte Restructuring Inc.
22 Adelaide Street West
Suite 200
Toronto, ON M5H 0A9

Attention: Hartley Bricks

Thornton Grout Finnigan LLP

Suite 3200, 100 Wellington Street West
P. O. Box 329, Toronto-Dominion Centre
Toronto, ON, M5K 1K7

Attention: Leanne Williams

Dear Sirs/Mesdames:

Re: 2Source – Litigation against United Technologies *et al.*

As you are aware, pursuant to arrangements agreed upon by Deloitte Restructuring Inc. ("**Deloitte**") as court-appointed Receiver of 2Source Manufacturing Inc. ("**2Source**"), we have been acting as counsel for 2Source in respect of its litigation against United Technologies *et al.* ("**UTAS**"), Ontario court File No. CV-17-567429 (the "**UTAS Litigation**"). We understand that 2Source was assigned into bankruptcy on July 21, 2017 and that Deloitte was appointed as trustee in bankruptcy, in addition to its existing role as Receiver of 2Source.

Pursuant to existing arrangements with the Receiver, Robert Glegg and his holding company, 2006905 Ontario Inc. ("**2006905**") have spent considerable time, effort and money assisting 2Source in pursuing the UTAS Litigation. As we have noted in our prior discussions with you, it is very important that continuity of the UTAS Litigation proceedings be maintained without any potential disruption resulting from the bankruptcy of 2Source. Accordingly, we are writing on behalf of Mr. Glegg and 2006905, both of whom are significant creditors of 2Source, to request that Deloitte continue the UTAS Litigation on behalf of 2Source for the benefit of the estate of 2Source and its creditors. In the event that Deloitte does not intend to continue with the UTAS Litigation on behalf of 2Source, we

July 28, 2017

Page 2

request that you inform us forthwith so that 2006905 may bring a motion or application to seek an order authorizing it to continue the proceeding in its own name and at its own expense and risk pursuant to section 38 of the *Bankruptcy and Insolvency Act* (the "**Section 38 Motion**").

As discussed in our telephone conversation of July 27, 2017 (between Raj Sahni and Ruth Promislow of Bennett Jones LLP and Leanne Williams of Thornton Grout Finnigan LLP), given the endorsement of Justice Monahan made on July 19, 2017, ordering a stay of proceedings in Ontario of the UTAS Litigation pursuant to section 106 of the Courts of Justice Act, continuation of the UTAS Litigation will entail bringing the action in New York (or, alternatively, appealing Justice Monahan's July 19 decision). We understand, based on our discussions, that Deloitte is not likely to continue the UTAS Litigation on behalf of the 2Source bankruptcy estate as it does not have the funding to do so. In order to enable 2006905 to make the necessary arrangements and proceed without delay, we would appreciate receiving confirmation from Deloitte as soon as possible as to whether or not it intends to continue the UTAS Litigation on behalf of 2Source.

We understand that Deloitte has scheduled time before the Ontario Superior Court of Justice on August 29, 2017 for a motion to address various matters in the 2Source receivership and/or bankruptcy proceedings. As we discussed on our July 27 call, if Deloitte does not intend to continue the UTAS Litigation, our client intends to bring the Section 38 Motion, also returnable on August 29, 2017. In that scenario, our client requests that Deloitte consent to an order authorizing 2006905 to continue carriage of the UTAS litigation in its own name and expense pursuant to section 38 of the *Bankruptcy and Insolvency Act* and transferring all right, title and interest in the UTAS Litigation to 2006905, such that 2006905 shall have sole authority to instruct counsel and make all decisions with respect to the UTAS Litigation. In order to ensure that other creditors who may wish to participate in the UTAS Litigation (subject to their agreement to share in funding the costs of the litigation and satisfaction of our client's priority claims) have notice of the requested order as contemplated under section 38(1) of the BIA, our client would be amenable to Deloitte providing notice of the requested order to all creditors of 2Source, including at the creditors' meeting, which we understand has been scheduled for August 10, 2017.

Our client is very appreciative of your assistance and cooperation to date and we look forward to working with you to help ensure that the UTAS Litigation is carried forward without delay.

Thank you

Yours truly,



Raj S. Sahni

RSS:mv

TAB J

This is **Exhibit "J"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017

A handwritten signature in cursive script, appearing to read "D. M. ...", is written above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS

August 1, 2017

Eli S. Lederman
Direct line: 416-865-3555
Direct fax: 416-865-2872
Email: elederman@litigate.com

VIA EMAIL

Mr. Hartley Bricks
Deloitte Restructuring Inc.
22 Adelaide St West, Suite 200
Toronto, Ontario, M5H0A9

Ms. Leanne Williams
Thornton Grout Finnigan LLP
Suite 3200, 100 Wellington Street West
P. O. Box 329, Toronto-Dominion Centre
Toronto, ON, M5K 1K7
Canada

Dear Mr. Bricks and Ms. Williams:

**RE: 2Source Manufacturing Inc. v. Messier-Dowty Inc. et al,
Court File No.: CV-15-537943**

As you know, we had been acting as counsel for 2Source Manufacturing Inc. (“2Source”) in respect of its litigation against Messier-Dowty Inc. et al (“Messier”), Ontario Court File No.: CV-15-537943 (the “Messier Litigation”).

We have been advised that 2Source was assigned into bankruptcy on July 21, 2017 and that Deloitte has been appointed as the Trustee in Bankruptcy.

We have had some discussions with Mr. Robert Glegg regarding the progress of the Messier Litigation and he has advised us that he wishes for the Messier Litigation to be continued on behalf of 2Source for the benefit of the Estate of 2Source and its creditors.

As you know, Mr. Glegg and his holding company, 2006905 Ontario Inc. (“2006905”) are significant creditors of 2Source. As a result, we are writing on behalf of both Mr. Glegg and 2006905 to request that Deloitte continue the Messier Litigation.

In the event that Deloitte does not intend to continue the Messier Litigation on behalf of 2Source, we would ask that you advise us as soon as possible so that 2006905 may bring a motion to seek an Order permitting it to continue the proceeding in its own name and at its own expense and risk pursuant to section 38 of the *Bankruptcy and Insolvency Act* (the “BIA”).

We have been in touch with Raj Sahni and Ruth Promislow of Bennett Jones LLP and they have advised us that Deloitte has scheduled an attendance before the Court on

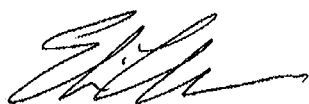
August 29, 2017 for a motion to address various matters in relation to the receivership and/or bankruptcy proceedings of 2Source.

If Deloitte does not intend to continue the Messier Litigation, we would ask that it consent to an Order authorizing 2006905 to continue carriage of the Messier Litigation in its own name and expense and transferring all right, title and interest in the Messier Litigation to 2006905, such that 2006905 shall have sole authority to instruct counsel and make all decisions with respect to the Messier Litigation. It is our intention to obtain an Order from the Court pursuant to section 38 of the *BIA* at the attendance scheduled for August 29, 2017.

We are also content if Deloitte determines that notice of the requested Order ought to be provided to all other creditors of 2Source, including at the creditors' meeting, which we understand has been scheduled for August 10, 2017.

I look forward to hearing from you.

Yours very truly,

A handwritten signature in black ink, appearing to read 'E. Lederman', with a long horizontal flourish extending to the right.

Eli S. Lederman

ESL/id

TAB K

This is **Exhibit "K"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22nd day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

August 2, 2017

VIA EMAIL

Bennett Jones LLP
One First Canadian Place
Suite 3400
Toronto ON M5X 1A4

Attention: Raj S. Sahni

Dear Sir:

Re: HSBC Bank Canada v. 2Source Manufacturing Inc. ("2Source")


We refer to your letter dated July 28, 2017. Unless otherwise defined herein, capitalized terms used in this letter are as defined in your letter dated July 28, 2017.

On behalf of Deloitte, in its capacity as trustee in bankruptcy of 2Source (the "**Trustee**"), we acknowledge your request that the Trustee continue the UTAS Litigation. We further acknowledge that, in the event that the Trustee does not continue the UTAS Litigation, 2006905 intends to bring a Section 38 Motion on August 29, 2017.

Please be advised that, at this time, the Trustee has no funds to continue the UTAS Litigation and thus, does not intend to continue same. As you may be aware, the first meeting of creditors in the bankruptcy of 2Source is scheduled for August 10, 2017. It is the Trustee's intention to present your letter at the meeting and confirm with the creditors of 2Source that no one intends to fund the Trustee to continue the UTAS Litigation. Once those instructions are obtained, the Trustee shall advise you accordingly.

Yours very truly,

Thornton Grout Finnigan LLP



Leanne M. Williams
LMW/mm

TAB L

This is **Exhibit "L"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS

Amanda C. McLachlan

2017

August 2, 2017

VIA EMAIL

Lenzner Slaght
130 Adelaide Street West
Suite 2600
Toronto ON M5H 3P5

Attention: Eli S. Lederman

Dear Sir:

Re: HSBC Bank Canada v. 2Source Manufacturing Inc. ("2Source")


We refer to your letter dated August 1, 2017. Unless otherwise defined herein, capitalized terms used in this letter are as defined in your letter dated August 1, 2017.

On behalf of Deloitte Restructuring Inc., in its capacity as trustee in bankruptcy of 2Source (the "**Trustee**"), we acknowledge your request that the Trustee continue the Messier Litigation. We further acknowledge that, in the event that the Trustee does not continue the Messier Litigation, 2006905 intends to bring a Section 38 Motion on August 29, 2017.

Please be advised that, at this time, the Trustee has no funds to continue the Messier Litigation and thus, does not intend to continue same. As you may be aware, the first meeting of creditors in the bankruptcy of 2Source is scheduled for August 10, 2017. It is the Trustee's intention to present your letter at the meeting and confirm with the creditors of 2Source that no one intends to fund the Trustee to continue the Messier Litigation. Once those instructions are obtained, the Trustee shall advise you accordingly.

Yours very truly,

Thornton Grout Finnigan LLP


Leanne M. Williams
LMW/mm

TAB M

This is **Exhibit "M"** referred to in the

Affidavit of Robert Glegg

Sworn before me, this 22th day of August, 2017



A COMMISSIONER FOR TAKING AFFIDAVITS
Amanda C. McLachlan



Deloitte Restructuring Inc.
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West, Suite 200
 Toronto ON M5H 0A9

Tel: (416) 874-4461
 Fax: (416) 601-6151
www.deloitte.ca

C A N A D A
 DISTRICT OF ONTARIO
 DIVISION No.: 09- Toronto
 COURT No.: 32-2274852
 ESTATE No.: 32-2274852

IN THE MATTER OF THE BANKRUPTCY OF: 2Source Manufacturing Inc. ("2Source" or the "Bankrupt"),
 formed under the laws of Ontario, formerly having its head
 office at 5261 Bradco Blvd. Mississauga, ON, L4W 2A6

Bankrupt

TRUSTEE'S REPORT TO CREDITORS ON PRELIMINARY ADMINISTRATION

The *Bankruptcy and Insolvency Act* (the "BIA") provides for a first meeting of creditors. The purpose of this Report is to provide information to the creditors of the Bankrupt for consideration at the first meeting of creditors.

SECTION A – BACKGROUND

Deloitte Restructuring Inc. was appointed as Receiver (the "Receiver") of 2Source by Order of the Superior Court of Justice (the "Court") on January 23, 2017. For a copy of the appointment order, subsequent Court orders, Report of the Receiver and further information on the activities of the Receiver, please refer to the Receivership website at:

<http://www.insolvencies.deloitte.ca/en-ca/Pages/2SourceManufacturingInc.aspx?searchpage=Search-Insolvencies.aspx>

2Source was incorporated on October 17, 2002 under the name Wolverhampton Inc., which was subsequently changed to Trilete Corp. on January 12, 2004 and then changed to 2Source on March 11, 2004.

The Trustee understands that 2Source operated profitably for a number of years. However, since the fall of 2015, 2Source lost two of its largest customers which, taken together, represented approximately 80% of its revenue base. 2Source was unable to replace the lost revenue leading to cash flow problems and defaults on its loans provided by the senior secured lender which resulted in the eventual appointment of the Receiver.

In the period immediately prior to the receivership, 2Source employed 71 non-union, full-time and part-time employees. The operations of 2Source in the ordinary course ceased prior to the appointment of the Receiver on January 23, 2017.

On July 20, 2017, by virtue of the authority provided to it by the Court in the Administrative Order on March 31, 2017, the Receiver filed an assignment in bankruptcy on behalf of 2Source. The Office of the Superintendent of Bankruptcy Canada issued the Certificate of Appointment on July 21, 2017 (the "Date of Bankruptcy").

SECTION B – PRELIMINARY EVALUATION OF ASSETS AND DETAILS OF SECURITY INTERESTS

A preliminary evaluation of the assets and liabilities of 2Source as at the Date of Bankruptcy is as follows:

2Source Manufacturing Inc. Summary Financial Position as at July 20, 2017 (in 000's)		
Assets		
Cash in Receiver's Account		\$2,538
Accounts Receivable		\$1
Total Receivership Assets		\$2,539
Liabilities		
Secured claims:		
HSBC Bank Canada		\$2,538
Other (See List "B" in Form 78)		\$1
Total Secured claims		\$2,539
Unsecured claims		\$9,424
Total Liabilities		\$11,963
Deficit		(\$9,424)

The business and operating assets of 2Source were sold in March 2017 to a company incorporated as AlliedOne Industrial Inc. (the "Purchaser"). The only remaining assets in the receivership estate are funds held by the Receiver, certain choses in action (as described below) and accounts receivable totaling approximately \$2.5 million. Since the secured claims against the estate exceed the immediate realizable value of the remaining assets, there will be a significant shortfall on the repayment of the secured claims against the estate with the result that there will be no funds available for distribution to the unsecured creditors of the estate.

SECTION C – BOOKS AND RECORDS

The Trustee, via the Receiver, has access to available books and records of 2Source.

SECTION D – CONSERVATORY AND PROTECTIVE MEASURES

Upon appointment, the Receiver took possession of all of the assets and undertaking of 2Source and remains in possession of the residual assets noted above. Accordingly, there are no assets in the possession and control of the Trustee.

SECTION E – PROVABLE CLAIMS AND DESCRIPTION OF CREDITORS

Based on the books and records of the Company, there are approximately 108 unsecured creditors owed approximately \$9.4 million. In addition to the security granted by the Company in favour of HSBC Bank Canada, other parties have registered security interests against 2Source as evidenced by the *Personal Property Security Act* search results provided by the Receiver's independent legal counsel. Leased assets have either been purchased by the Purchaser or returned to lessors.

The proofs of claim filed against this Estate are as follows:

	As per Statement of Affairs	Filed to August 10, 2017 at 9:00 a.m.
Secured	\$ 2,538,263.85	\$ 3,456,455.00
Preferred	\$ -	\$ -
Unsecured	\$ 9,424,469.11	\$ 2,825,953.45
\$	11,962,732.96	6,282,408.45

These claims are summarized in the table above. The Trustee will update the creditors in respect of the proofs of claim received at the first meeting.

SECTION F – LEGAL PROCEEDINGS, REVIEWABLE TRANSACTIONS AND PREFERENCE PAYMENTS

On October 7, 2015, 2Source issued a Statement of Claim under Court File No. CV-15-537943 against Messier-Dowty Inc., et al (“Messier”), claiming damages for breach of contract and misrepresentation in the sum of USD 4,030,000 and punitive damages in the sum of \$500,000 (the “Messier Claim”). On November 20, 2015, Messier filed a Statement of Defence and Counterclaim denying it had breached any contractual obligations and counterclaimed for liquidated damages in the amount of \$96,000 for 2Source’s failure to deliver products in accordance with their agreement and damages in the amount of \$1,500,000 for breach of contract. After consultation with the secured creditors of 2Source, the Receiver has decided not to continue the Messier Claim on behalf of 2Source.

By letter dated August 1, 2017, counsel for Robert Glegg and his holding company, 2006905 Ontario Inc. (“2006905”), wrote to the trustee requesting that it continue the Messier Claim and that, in the event that the Trustee does not intend to continue the Messier Claim, 2006905 intends to seek an order authorizing it to continue the proceeding Messier Claim in its own name and its own expense and risk pursuant to section 38 of the BIA.

On January 10, 2017, 2Source issued a Statement of Claim under Court File No. CV-17-567429 against United Technologies Corporation, et al (“UTAS”), claiming damages of at least \$25,000,000 for breach of the Competition Act, RSC 1985 c C-34, fraudulent misrepresentation, deceit, conspiracy and unlawful interference with economic interests and punitive damages in the amount of \$5,000,000 (the “UTAS Claim”). Based on an agreement between the Receiver and Robert Glegg, the UTAS Claim has continued in the ordinary course. As a result of the motion brought by UTAS on July 19, 2017, Justice Monahan ordered a stay of proceedings of the UTAS Claim in Ontario. Any further pursuit of the UTAS Claim would require that this decision be successfully appealed or that the action be brought in the State of New York. After consultation with the secured creditors of 2Source, the Receiver has decided not to continue to pursue the UTAS Claim on behalf of 2Source.

By letter dated July 28, 2017, counsel for Robert Glegg and 2006905, advised the Trustee that in the event that the Trustee does not intend to continue with the UTAS Claim on behalf of 2Source, 2006905 intends to seek an order authorizing it to continue the UTAS Claim in its own name and its own expense and risk pursuant to section 38 of the BIA.

On April 5, 2016, 2Source issued a Statement of Claim under Court File No. CV-16-550279 against Service Star Freightways Inc., Y7E Transport Inc., Royal & Sun Alliance Insurance Company of Canada and Hub International HKMB Limited claiming damages in the amount of \$300,000 resulting from costs incurred to remediate a paint/chemical spill at 2Source’s premises caused by Service Star and/or Y7E (the “Service Star Claim”). After Consultation with secured creditors of 2Source, the Receiver has continued to pursue the Service Star Claim for the benefit of the creditors of 2Source.

The Trustee will perform an assessment of preferences and transactions at undervalue and will report any findings at the first meeting of creditors.

SECTION G – DETAILS OF THIRD PARTY DEPOSITS OR GUARANTEES

As there are no assets in the bankruptcy estate to fund any claims, fees and costs of administration, the Trustee has requested that HSBC Bank Canada indemnify the Trustee and fund the fees and disbursements, including legal fees, by way of advances to the bankrupt estate from Court-approved distributions from 2Source’s receivership estate.

SECTION H – TRUSTEE’S INTENTION TO ACT FOR SECURED CREDITORS

As noted above, Deloitte Restructuring Inc. acts as the Court-appointed Receiver of 2Source and will continue to do so for the purpose of realizing on the remaining assets of 2Source, making Court-approved distributions to creditors. As Court-appointed Receiver, Deloitte Restructuring Inc. acts as an officer of the Court and does not act as agent for any secured creditor.

SECTION I – PROJECTED DISTRIBUTION AND TRUSTEE COMMENTS ON ANTICIPATED ASSET REALIZATIONS

As noted above, the Trustee advises that after the claims of the secured creditors there will be no assets available for distribution to unsecured creditors.

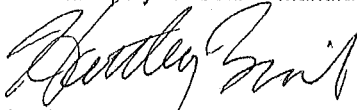
Dated at Toronto, Ontario this 10th day of August, 2017.

DELOITTE RESTRUCTURING INC.

In its capacity as

Trustee in bankruptcy of 2Source Manufacturing Inc.

Per:



Hartley Bricks, MBA, CPA, CA, CIRP, LIT
Senior Vice-President

IN THE MATTER OF THE BANKRUPTCY OF 2SOURCE MANUFACTURING INC.
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED
BETWEEN: HSBC BANK CANADA –AND- 2SOURCE MANUFACTURING INC.

Court File No. 32-2274852
Court File No.: CV-17-11672-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF ROBERT GLEGG
(Sworn August 22, 2017)**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Raj Sahni (LSUC#42942U)

Email: sahnir@bennettjones.com

Ruth Promislow (LSUC #42922J)

Email: promislowr@bennettjones.com

Telephone: (416) 777-4804/4688

Facsimile: (416) 863-1716

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

130 Adelaide Street W.
Suite 2600
Toronto, ON M5H 3P5

Eli S. Lederman (LSUC #47189L)

Email: elederman@litigate.com

Telephone: (416) 865-3555

Facsimile: (416) 865-9010

Co-counsel for the Moving Party

TAB 3

Court File No. 32-2274852

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)	TUESDAY, THE 29TH DAY
)	
JUSTICE)	OF AUGUST, 2017

IN THE MATTER OF THE BANKRUPTCY OF
2SOURCE MANUFACTURING INC.

ORDER

THIS MOTION made by 2006905 Ontario Inc. ("**2006905**"), a creditor of 2Source Manufacturing Inc. ("**2Source**" or the "**Bankrupt**"), and upon reading the affidavit of Robert Glegg sworn August 22, 2017, and the affidavit of service of Amanda McLachlan sworn August 22, 2017, and on the consent of Deloitte Restructuring Inc., as Trustee in bankruptcy (the "**Trustee**"), and it appearing that, upon inquiry of 2006905, the Trustee has indicated that it will not commence or continue proceedings on behalf of the Bankrupt against United Technologies Corporation, Goodrich Aerospace Canada Ltd., Goodrich Corporation and Dino Soave (collectively, the "**UTAS Defendants**"), which are defendants in the litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court File No. CV-17-567429-00) (the "**UTAS Ontario Proceeding**"), or against Messier-Dowty Inc., Messier-Bugatti-Dowty SA, Messier-Dowty Ltd., Messier-Dowty Mexico SA de CV and Messier-Dowty Suzhou Co. Ltd. (collectively, the "**Messier Defendants**"), which are defendants in litigation proceedings commenced by 2Source in the Ontario Superior Court of Justice (Court

File No. CV-15-537943) (the "**Messier Ontario Proceeding**"), was heard this day at 330 University Avenue, Toronto, Ontario.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and is hereby abridged and that this motion is properly returnable today and further service thereof upon any other parties is hereby dispensed with.

2. **THIS COURT ORDERS** that 2006905 may and is hereby authorized, pursuant to Section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the "**BIA**"), to continue or commence and prosecute proceedings in its own name at its own expense and risk against any one or more of the UTAS Defendants in respect of any and all claims, rights or causes of action that the Bankrupt may have against any of the UTAS Defendants, including without limitation, the claims and causes of action plead by 2Source in the UTAS Ontario Proceeding (the "**UTAS Claims**").

3. **THIS COURT ORDERS** that 2006905 may and is hereby authorized, pursuant to Section 38 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B3 (the "**BIA**"), to continue or commence and prosecute proceedings in its own name at its own expense and risk against any one or more of the Messier Defendants in respect of any and all claims, rights or causes of action that the Bankrupt may have against any of the Messier Defendants, including without limitation, the claims and causes of action plead by 2Source in the Messier Ontario Proceeding (the "**Messier Claims**").

4. **THIS COURT ORDERS AND DIRECTS** the Trustee to:

- (a) execute an assignment immediately following the granting of this Order in the form and substance agreed upon between the Trustee and 2006905 (the "**Assignment**") assigning all of its right, title and interest in the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims to 2006905, for the benefit of 2006905 and any Participating Creditors (as defined below) in accordance with this Order, and such Assignment will vest in 2006905 all of the right, title and interest that the Bankrupt and/or Trustee have, had or shall have in the subject matter of the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims and any other claims or rights relating thereto; and
- (b) forthwith transfer to 2006905 and make available to 2006905 and any Participating Creditors as may join in the Proceedings pursuant to this Order all books and documents in support of or relevant to the UTAS Ontario Proceeding and the Messier Ontario Proceeding and the UTAS Claims and the Messier Claims.

5. **THIS COURT ORDERS** that notice of this order (the "**Notice**"), in form and substance acceptable to the Trustee and 2006905, along with a copy of the Order shall be served upon the other known creditors of the Bankrupt by the Trustee, as set out in the Bankrupt's statement of affairs filed in its bankruptcy proceeding on July 20, 2017 (the "**Known Creditors**"), by mailing the Notice by prepaid ordinary mail to each of the said Known Creditor(s) who have provable claims against the Bankrupt at their place of business or address as shown in the

Bankrupt's records. The Notice and a copy of this Order shall also be posted on the Trustee's website for the 2Source receivership and bankruptcy proceedings, together with a copy of 2006905's Motion Record for this Motion.

6. **THIS COURT ORDERS** that the service of the Notice shall be deemed effective on the fifth day following the date on which the Notice is mailed in accordance with paragraph 5.

7. **THIS COURT ORDERS** that 2006905 may commence and/or continue any proceedings in respect of the UTAS Claims (the "**UTAS Proceedings**") and/or the Messier Claims (the "**Messier Proceedings**") and, collectively with the UTAS Proceedings, the "**Proceedings**") immediately after the granting of this Order and prior to service of the Notice.

8. **THIS COURT ORDERS** that, subject to paragraphs 11 and 14 hereof, all benefits to be derived from the UTAS Claims, the Messier Claims and the Proceedings, together with any costs of same (collectively, the "**Benefits of the Proceedings**"), shall vest exclusively in 2006905 and such other Known Creditors who, within ten (10) days after the effective date of service of the Notice pursuant to paragraph 6 hereof, provide written notice to the Trustee that such Known Creditor agrees to contribute to the costs and expenses in the manner set out in paragraph 10 below and share in the risks of the Proceedings *pro rata* according to the amount of their respective proven claims (each Known Creditor so delivering a written statement and contributing to the costs and expenses, a "**Participating Creditor**"). Within five (5) days of the receipt of any such notice from a Participating Creditor, the Trustee will provide a copy of such notice to 2006905, who will provide it to the litigation counsel that it has appointed or will appoint with respect to each of the Proceedings in any jurisdictions where the Proceedings are

to be commenced or continued (collectively, "**Litigation Counsel**", which term shall include any new or replacement litigation counsel appointed by 2006905 in respect of the Proceedings).

9. **THIS COURT ORDERS AND DECLARES** that the vesting of the Benefits of the Proceedings in and to 2006905 and any Participating Creditors pursuant to this Order shall be free and clear of any and all rights, titles, interests, claims, liens, hypothecs, security interests, trusts or deemed trusts (whether statutory or otherwise), assignments, executions, judgments, agreements, rights of distress, legal, equitable or contractual set-offs, options, adverse claims, levies, taxes, disputes, debts, charges, mortgages, encumbrances, claims provable or any other rights or claims howsoever arising, whether contractual, statutory, by operation of law or otherwise, whether or not they have attached or been perfected, registered or filed, whether secured or unsecured or otherwise, by or of any and all other persons or entities of any kind whatsoever, including, without limitation, all individuals, firms, corporations, partnerships, joint ventures, trusts, unincorporated organizations, governmental and administrative bodies, agencies, authorities and tribunals and all other natural persons or corporations, whether acting in their capacity as principals or as agents, trustees, executors, administrators or other legal representatives.

10. **THIS COURT ORDERS** that Litigation Counsel shall invoice the Participating Creditors their Pro Rata Share (as defined below) of the costs and expenses of the Proceedings on a regular basis (each an "**Invoice**"), and a Participating Creditor shall fund its pro rata share (based on the aggregate amount of the proven claims of 2006905 and the Participating Creditors (the "**Pro Rata Share**")) of the fees, costs and expenses of the Proceedings by paying each

Invoice delivered to such Participating Creditor within thirty (30) days of the date of such invoice.

11. **THIS COURT ORDERS AND DIRECTS** that the Benefits of the Proceedings shall be distributed by Litigation Counsel in the following manner:

- (a) first, to 2006905 and any Participating Creditor, to reimburse each of them for their Pro Rata Share of the costs and expenses incurred in bringing or continuing and prosecuting the Proceedings from and after the date of this Order;
- (b) second, to 2006905 and Robert Glegg in payment of their legal fees and costs incurred prior to the date of this Order in assisting 2Source to pursue the UTAS Claims and the Messier Claims and bringing this Motion;
- (c) third, to each of 2006905 and any Participating Creditor, their Pro Rata Share up to the amount of each of their net proven claim amounts, which constitutes the net amount of their respective proven claim after deducting the amount of any dividend distributed to them by the Trustee from the Bankrupt's estate; and
- (d) fourth, any surplus after paying the net proven claim amounts of 2006905 and the Participating Creditors in accordance with clause (c) above shall be paid to the Trustee, first , for payment of any unpaid fees and costs of the Trustee in administration of the Bankrupt's estate, next for the benefit of the estate of the Bankrupt (for greater certainty, including the Bankrupt's creditors), with proven claims who were not Participating Creditors and thereafter, if there are funds remaining, the Bankrupt's shareholders.

12. **THIS COURT ORDERS AND DECLARES** that Litigation Counsel and the Trustee shall incur no liability or obligation in carrying out the provisions of this Order and making the distributions Litigation Counsel is directed to make in accordance with this Order and Litigation Counsel shall be released from any and all liability in making each such distribution as directed hereunder, and no action or other proceedings shall be commenced against Litigation Counsel as a result of or relating in any way to their making distributions in accordance with this Order.

13. **THIS COURT ORDERS** that if any creditor or creditors fail to participate in the Proceedings as provided for in paragraph 8 within ten (10) days of the effective date of service of the Notice pursuant to paragraph 6 hereof, they shall thereafter be excluded from participating in the Benefits of the Proceedings, subject to paragraph 11(d).

14. **THIS COURT ORDERS** that if a Participating Creditor at any time fails to pay its Pro Rata Share of the costs and expenses in accordance with paragraph 10 of this Order, Litigation Counsel shall send a notice of default to such Participating Creditor (a "**Notice of Default**"). Notwithstanding any other provision of this Order, if a Participating Creditor fails at any time to pay the amount outstanding set out in a Notice of Default within ten (10) days after receiving a Notice of Default, such Participating Creditor shall be and shall be deemed to be a non-participating creditor and shall not be entitled to any Benefits of the Proceedings, including, without limitation, any reimbursement of costs and expenses paid prior to a Notice of Default.

15. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, 2006905 shall have the sole right to control the conduct of the Proceedings in all jurisdictions, including the sole right to instruct counsel and make all decisions with respect to the Proceedings and the UTAS Claims and Messier Claims.

16. **THIS COURT ORDERS** that nothing in this Order shall override or vary the stay of the UTAS Ontario Proceeding pursuant to Section 106 of the *Courts of Justice Act*, ordered by Justice Monahan on July 19, 2017.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist 2006905, the Trustee, Litigation Counsel and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to 2006905, the Trustee and Litigation Counsel as may be necessary or desirable to give effect to this Order.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER

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**IN THE MATTER OF THE BANKRUPTCY OF 2SOURCE MANUFACTURING INC.
IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C-43, AS AMENDED
BETWEEN: HSBC BANK CANADA –AND- 2SOURCE MANUFACTURING INC.**

Court File No. 32-2274852
Court File No.: CV-17-11672-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**RESPONDING MOTION RECORD
OF 2006905 ONTARIO INC.**

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