

BIA, SECTION 50.4 PROPOSALS AND CCAA INSOLVENCY LEGISLATION

November 24, 2022

The logo of the Law Society of Saskatchewan, featuring a stylized tree with a white trunk and branches, and a gold and white leaf-like shape at the base.

Law Society
of Saskatchewan



Restructuring Platforms

To Restructure Insolvent Companies

1. **CCAA**: *The Companies' Creditors Arrangement Act*
2. **NOI Proceedings**: Notice of Intention to Make a Proposal Under Division I of Part III of the *Bankruptcy and Insolvency Act* (the "**BIA**")
3. **Receiverships**: Receivership remedy under section 243 of the BIA and/or *The Queen's Bench Act*



Similarities b/w Platforms

These Platforms Share Similarities...

- Stay of Proceedings to Preserve Status Quo
- Court Supervision
- Transparent Flow of Information From Reports of Court Officer
- Financing to Fund Proceedings Secured by Court-Ordered First Priority Charge



Similarities b/w Platforms

These Platforms Share Similarities...

- Administration Charge to Secure Fees of Restructuring Professionals
- Supervising Court Can Approve Sale of Debtor Company Assets Outside of Ordinary Course of Business
- Template Orders (approved by Sask. Insolvency Bench & Bar) – Serve to streamline proceedings



Differences b/w Platforms

Key Differences b/w Platforms...

- CCAA & NOI Proceedings = “Debtor in Possession” Proceedings (Existing Management in Control)
- Receivership = Directors Ousted; (Change of Control of Debtor Corp.)
- NOI Proceedings commenced w/o court appearance
- NOI Proceedings: Maximum Length of 30 Days plus 6 Months



Differences b/w Platforms

Key Differences b/w Platforms...

- Unsuccessful NOI Proceedings = Deemed Assignment in Bankruptcy
- NOI Proceedings Generally Less Costly
- CCAA Proceedings allow greater flexibility and more creative exercise of Court's jurisdiction



Factors Determining Platform

Timely Access to Professional Advice

- Early access to advice from legal counsel/insolvency advisors = More & better restructuring options
- Lenders enjoy timely access to professional advice (often equals better planning & greater control over outcome)
- Debtors who obtain timely professional advice can act quickly to retain control over outcome



Factors Determining Platform

Access to Funding


- Lenders typically enjoy superior access to funding – resulting in enhanced ability to initiate legal proceedings to gain control
- Debtors obtaining timely advice can attract unlock liquidity in assets (e.g. – interim financing)
- Debtors obtaining timely advice can explore options to attract support from key customer relationships



Goal: Preserving Value

Preserving Value is Common Goal


- Regardless of platform chosen, all participants share the goal of preserving & enhancing value
- Common strategies:
 - ✓ Interim financing to fund operations & facilitate continuation of business;
 - ✓ Sales & Investment Solicitation Process to attract potential equity investment &/or potential acquisitions
 - ✓ Compromise unsecured debt (to clean up balance sheet & restore stability)



Negotiation > Litigation

The Hard Work Occurs Before Court...

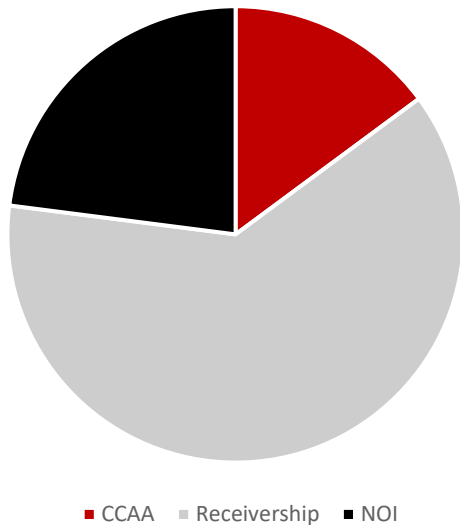
- Successful restructuring outcomes are achieved through negotiation more often than through litigation
- Collaboration among stakeholders drives consensual outcomes that preserve value & enhance certainty of outcome
- Successful insolvency practitioners communicate effectively and cultivate trust & credibility



Negotiation > Litigation

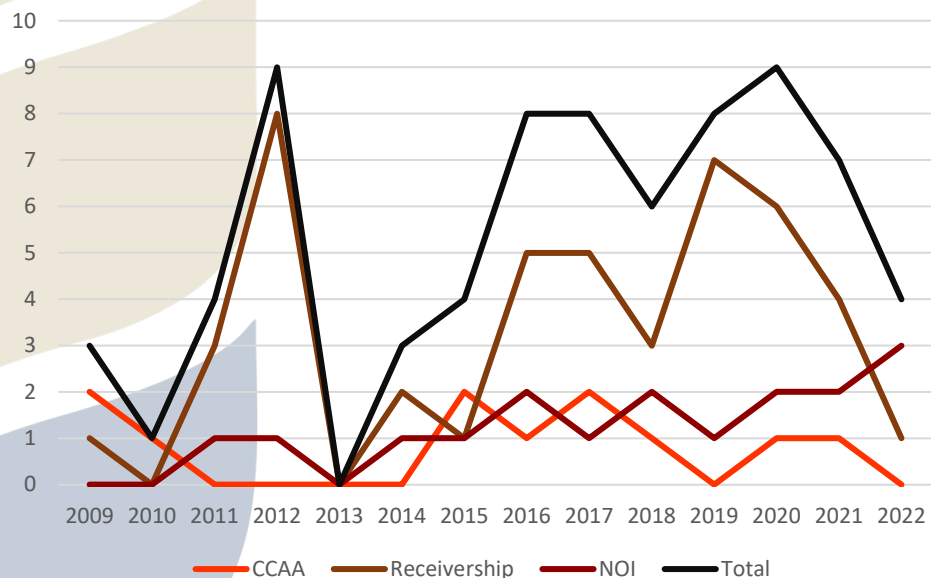
- The Hard Work Occurs Before Court...
 - Involvement of respected insolvency practitioners can increase comfort level among opposing parties and facilitate compromise
 - Objective is to resolve as many differences as possible before Court
 - Generally speaking, failure to achieve consensus & leaving key issues to be decided by Court = failure as insolvency practitioner

SK Restructurings: 2009 - 2022



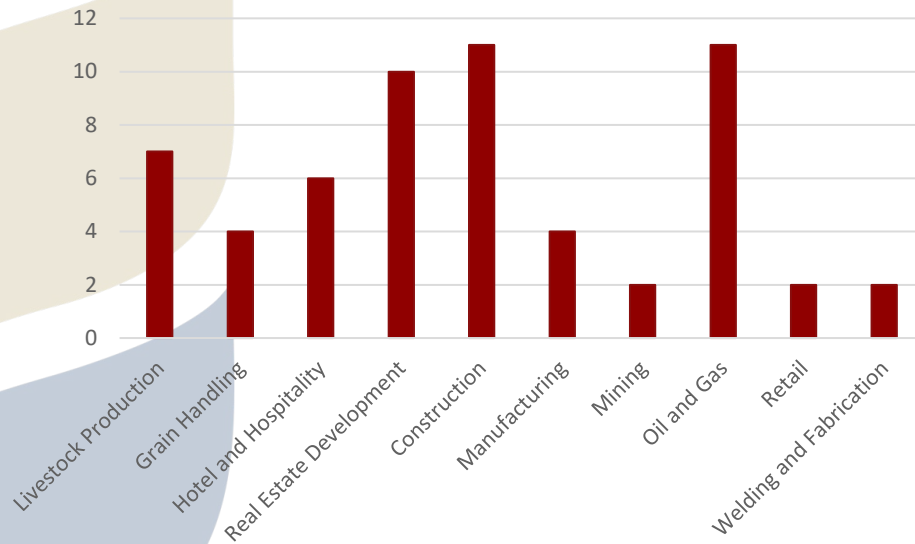
- 74 SK. Restructurings
- Sale of Assets as a Going Concern: By far and away the most common restructuring outcome
- Most common platform: **Receiverships** (46)
- 2nd: **NOI Proceedings** (17)
- 3rd: **CCAA** (11) (8 in SK Courts; 3 in AB/Ont Courts)

SK Restructurings: 2009 - 2022



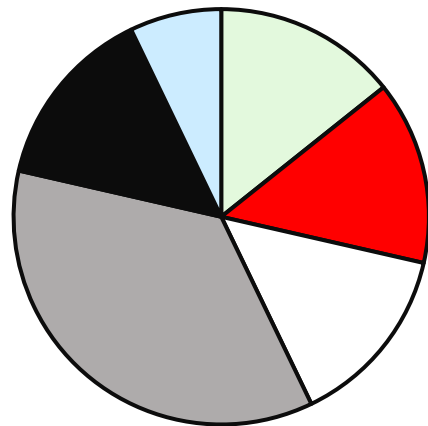
- Average of ~ 5 insolvencies a year over past 14 years
- Decline in insolvencies since 2020
- Identifiable Peaks
 - 3 hog production insolvencies 2012
 - 4 oil and gas insolvencies 2017

SK Restructurings: 2009 - 2022



- Oil & Gas: 11 insolvencies
- Construction: 11 insolvencies
- Real Estate Development: 10 insolvencies
- Livestock Production: 7 insolvencies
- Hotel & Hospitality: 6 insolvencies
- Grain Handling: 4 insolvencies
- Manufacturing: 4 insolvencies

SK Restructurings: 2020-2022 Snapshot



■ Livestock Production ■ Hotel and Hospitality ■ Real Estate Development
■ Construction ■ Manufacturing ■ Oil and Gas

- Receiverships: 9
- NOI: 7
- CCAA + Receivership: 2
 - Construction: 5
 - Manufacturing: 2
 - Hotel & Hospitality: 2
 - Real Estate Development: 2
 - Livestock Production: 2
 - Oil and Gas: 1
 - Other (Fitness Centre, Software Developer, Crop Insurance, Cannabis): 4



Sask CCAA Filings 2009-2022

Eight CCAA Filings in SK QB

1. **Clayton Construction Co Ltd.** (Paradise Hill, SK) (June, 2009) (Construction)
 - ✓ Secured Debt: \$9.8 M
 - ✓ Unsecured Debt: \$2.6 M
2. **Big Sky Farms Inc.** (Humboldt, SK) (November, 2009) (Hog Production)
 - ✓ Secured Debt: \$82.3 M
 - ✓ Unsecured Debt: \$35.2 M



Sask CCAA Filings 2009-2020

Eight CCAA Filings in SK QB

3. **Advance Engineered Products Ltd.** (Regina, SK) (Manufacturing) (April, 2015)
 - ✓ Secured Debt: 31.5 M
 - ✓ Unsecured Debt: 87.7 M
4. **101133330 Sask. Ltd. (O/A Orr Centre)** (Regina, SK) (May, 2016) (Real Estate Development)
 - ✓ Secured Debt: \$17.1 M
 - ✓ Unsecured Debt: \$4.2 M



Sask CCAA Filings 2009-2020

Eight CCAA Filings in SK QB

5. **Copper Sands Land Corp.** (Regina, SK) (Mobile Home Park & Water Treatment Utility) (December, 2017)
 - ✓ Secured Debt: 10.7 M
 - ✓ Unsecured Debt: 1.8 M
6. **Kolsy Homes Ltd.** (AB & SK) (July, 2018) (Real Estate Development)
 - ✓ Secured Debt: \$13.6 M
 - ✓ Unsecured Debt: \$5.1 M



Sask CCAA Filings 2009-2020

Eight CCAA Filings in SK QB

7. **Morris Industries Ltd.** (Saskatoon, SK) (Manufacturing) (January, 2020)
 - ✓ Secured Debt: 42.0 M
 - ✓ Unsecured Debt: 13.2 M
8. **Abbey Resources Corporation** (SK) (Oil & Gas) (August, 2021)
 - ✓ Total Liabilities (Including Decommissioning): 44.0 M
 - ✓ Total Debt: 16.0 M



Special Thanks

To Shay Brehm, ASSOCIATE LAWYER, MLT Aikins LLP, for assistance in completing the research regarding the Saskatchewan CCAA, NOI Proceedings and Receiverships described herein

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