

COURT FILE NUMBER 1801-16809  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*

AND IN THE MATTER OF THE PROPOSAL OF COMMERX CORPORATION

DOCUMENT **THIRD REPORT OF THE PROPOSAL TRUSTEE, HARDIE & KELLY INC. JUNE 18, 2019**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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**THIRD REPORT OF THE PROPOSAL TRUSTEE  
HARDIE & KELLY INC.  
JUNE 18, 2019**

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## **INTRODUCTION**

1. On March 7, 2019, Commerx Corporation (“Commerx” or the “Company”) filed a Notice of Intention to Make a Proposal pursuant to the *Bankruptcy & Insolvency Act* (the “BIA”). Hardie & Kelly Inc. consented to act as trustee (the “Proposal Trustee”) in the proceedings.
2. On March 29, 2019, the Proposal Trustee prepared a report (the “First Report”) to the Court of Queen’s Bench of Alberta (the “Court”) in advance of the Company’s April 2, 2019 application (the “April Application”) for an extension of the time in which Commerx was required to file a proposal to its creditors (“Proposal”).
3. On April 2, 2019, the Court granted an Order extending the time in which the Company must file a Proposal to May 20, 2019 (the “Initial Extension”) along with an extension of the Stay of Proceedings (the “Stay”) afforded the Company pursuant to Section 69 of the BIA.
4. On May 16, 2019, the Proposal Trustee prepared a report (the “Second Report”) to the Court in advance of the Company’s application (the “May Application”) for a further extension of the time in which Commerx was required to file a Proposal.
5. On May 16, 2019, the Court granted an Order further extending the time in which the Company must file a Proposal to July 4, 2019 (the “Second Extension”) along with an extension of the Stay.
6. The purpose of this report (the “Third Report”) is to provide an update to the Court with respect to the following:
  - a. The Company’s operations and financial performance since the date of the Second Report;
  - b. The status of the Company’s restructuring activities;
  - c. The Company’s request for a further extension of the time required to file the Proposal and a corresponding extension of the Stay through to August 18, 2019 and the Proposal Trustee’s recommendation with respect thereto; and

- d. The Company's request for an Order declaring, *inter alia*, that Lotus Innovations LLC ("Lotus") is in default of certain obligations under a prior agreement to purchase shares of the Company, and directing Lotus to transfer all of the shares transferred pursuant to the agreement back to the Company.

### **TERMS OF REFERENCE**

7. In preparing this Third Report, the Proposal Trustee has been provided with, and has relied upon unaudited financial information, certain books and records of the Commerx and discussions with management ("Management") (collectively the "Information"). Except as described in the First Report, the Second Report, or this Third Report, the Proposal Trustee has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards ("GAAS") pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Proposal Trustee expresses no opinion or other form of assurance contemplated under GAAS in respect of such information.
8. Some of the Information referred to in this Third Report consists of forecasts and projections. An examination or review of any financial forecast and projections, as outlined in the Chartered Professional Accountants Canada Handbook, has not been performed.
9. All monetary amounts noted herein are expressed in Canadian dollars.

### **ONGOING OPERATIONS**

10. Management represents that the day-to-day activities of the Company are being carried on in the ordinary course with no significant operational issues.
11. The Proposal Trustee is not aware of any suppliers having any issues in respect of the ongoing payment of post-filing obligations.

## FINANCIAL PERFORMANCE

12. The Proposal Trustee has reviewed the Company's actual receipts and disbursements from May 13, 2019 through to June 16, 2019 in comparison to the corresponding period in the revised forecast (the "Second Revised Forecast") which was filed in connection with the May Application
13. A variance analysis is set out in the following table:

	<u>Actual</u>	<u>Forecast</u>	<u>Variance</u>
<b><u>RECEIPTS</u></b>			
Revenue / Collection of accounts receivable	119,963	277,707	(-157,744)
Additional DIP Financing	0	0	0
Advances from/(to) US subsidiary	172,094	60,000	112,094
Foreign exchange gain/(loss)	(-3,057)	0	(-3,057)
	<u>289,000</u>	<u>337,707</u>	<u>(48,707)</u>
<b><u>DISBURSEMENTS</u></b>			
General and administrative	(31,027)	(35,775)	4,748
Wages and benefits	(167,285)	(176,981)	9,696
Direct costs re subcontractors	(26,269)	(12,802)	(13,467)
GST remittances	(8,604)	(33,637)	25,033
Interest on DIP financing	(7,500)	(7,500)	0
Restructuring costs - Professional fees	(21,793)	(25,000)	3,207
	<u>(262,478)</u>	<u>(291,695)</u>	<u>29,217</u>
Net cash flow	26,522	46,012	(19,490)
Opening cash	<u>146,919</u>	<u>146,919</u>	
Closing cash	<u><u>173,441</u></u>	<u><u>192,931</u></u>	

14. Commerx experienced positive cash flow of approximately \$26,500 over the period May 13 to June 16, 2019, which was approximately \$19,500 less than was estimated in the Revised Forecast.
15. The Company maintained a cash balance of approximately \$173,000 as at June 16, 2019.

16. The Proposal Trustee notes that the negative variance in the cash balance is a result of a combination of a number of variances in individual categories as set out in the table above. Overall, the Proposal Trustee has the following comments:
- a. The Company's accounts receivable collection efforts were less successful than anticipated, as it collected approximately \$158,000 less than it had forecast during the period. Management advises that this is mainly due to a delay in receipt of certain accounts receivable from one of its largest customers, who has provided assurance that the funds will be paid over the next three weeks;
  - b. To offset the negative variance in accounts receivable collections, the Company borrowed approximately \$112,000 more than it had forecast from its U.S. subsidiary. Management advises that these funds do not need to be re-paid as it intends to record management fees and/or cost recoveries owing from the U.S. Subsidiary to offset the amount borrowed, given that Commerx funds certain administrative costs on behalf of the U.S. Subsidiary; and
  - c. The Company has experienced variances in payment of certain of its expenses, although these are largely the result of timing differences which will reverse in future weeks. Notably, the Company has delayed payment of certain pre-filing GST which it had agreed to pay to Canada Revenue Agency ("CRA"), as the Company has not yet received certain requested statements from CRA to confirm the validity of the balance.
17. The Company continues to reflect \$135,000 in funds (the "Nortel Funds") which the Company received from the Nortel Networks Inc. insolvency proceedings as a separate line item in its reporting pending confirmation of its entitlement to the funds. Without the Nortel Funds, the Company's cash balance as at June 16, 2019 would have been approximately \$38,000.

## **CASH FLOW FORECAST**

18. Management, with the assistance of the Proposal Trustee, has prepared an updated 13 week cash flow forecast for the period June 17, 2019 through to September 15, 2019 (the “Third Revised Forecast”) which is attached hereto as Appendix “A”.
19. A summary of the Third Revised Forecast is set out in the table below:

<b>Commerx Corporation</b>	
<b>Cash flow forecast</b>	
<b>For the period June 17 - September 15, 2019</b>	
	<b>Forecast</b>
<b>RECEIPTS</b>	
Revenues / accounts receivable collection	918,733
Advances from subsidiaries	95,000
	<u>1,013,733</u>
<b>DISBURSEMENTS</b>	
General and administrative (inc. rent and insurance)	(109,322)
Wages and benefits	(578,219)
Pre-NOI GST	(23,637)
Post-NOI GST	(30,000)
Direct costs re: subcontractors	(42,100)
Interest on DIP #1	(45,000)
Restructuring fees	(91,208)
	<u>(919,486)</u>
Net Cash Flow	94,247
Opening cash	173,441
Closing cash	<u>267,688</u>
Nortel Funds	<u>(135,000)</u>

20. The Third Revised Forecast reflects positive cash flow of approximately \$94,000 over the forecast period, leaving a forecasted cash balance of approximately \$268,000 at September 15, 2019. Given the ongoing uncertainty regarding the entitlement to the Nortel Funds as discussed in the Second Report, the Nortel Funds continue to be identified separately for illustrative purposes. The forecasted cash balance as at September 15, 2019, exclusive of the Nortel Funds is approximately \$133,000.
21. The Proposal Trustee offers the following additional comments in respect of the Third Revised Forecast:

- a. The cash generated from collection of past and future sales revenues has been forecast based on amounts already billed and future revenues based on existing secured work, with timing based on either confirmed payment schedules or average timelines. The Proposal Trustee notes that the amount forecast to be received appears to be consistent with the post-filing results to date;
- b. Commerx is forecasting that it will receive funds from its U.S. Subsidiary and a Mexico Subsidiary throughout the forecast period to support the Company's cash requirements. Management advises that both of these subsidiaries receive administrative support and funding from Commerx, and therefore profits earned in the subsidiaries are expected to be transferred to Commerx in the form of management fees and/or cost recoveries, which are not re-payable. Management has advised that it is confident that not only will the subsidiaries have sufficient excess cash to fund the forecasted payments to Commerx, there will be further cash available in the subsidiaries in the event that timing issues in collecting accounts receivable necessitate additional transfers during the forecast period;
- c. The Company is no longer forecasting the receipt of Additional DIP Financing given it no longer requires the funding, due in part to a third party agreeing to fund a portion of the Company's restructuring costs. With the support of funds from the Company's U.S. and Mexico Subsidiaries, it appears that, without the Additional DIP Financing, the Company will generate sufficient cash to fund its operating and restructuring costs during the forecast period, even without use of the Nortel Funds;
- d. Management had previously anticipated replacing the initial DIP funding it received from Balinhard Capital with new funding. However, Management advises that it has determined it will be more time and cost effective to extend the maturity date of the Balinhard Capital loan despite an increase



in interest costs commencing June 1, 2019 pursuant to the terms of the existing financing;

- e. General administrative and operating expenses have been forecast based on planned workloads and historical results. The Proposal Trustee notes that these expenses appear to be in line with post-filing results to date; and
- f. Restructuring costs have been forecast by Management based on discussions with the Company's counsel and the Proposal Trustee. The forecast payments do not include \$50,000 in legal fees that are being funded by a third party.

22. Overall, while the Company's operations appear to be self-sustaining, the Third Revised Forecast demonstrates that Commerx's ability to meet its obligations relating to restructuring costs, including professional fees and DIP financing interest, is dependent on the Company's ability to obtain funds from its U.S. and Mexico Subsidiaries. However, should it be determined that the Nortel Funds are available to be utilized by the Company, those funds would be available to support the expenditures.
23. Subject to the comments above, the Proposal Trustee is satisfied that the Revised Forecast is reasonable in the circumstances.

### **RESTRUCTURING EFFORTS**

24. In the Second Report, the Proposal Trustee advised that Management had successfully obtained a discharge of a registration by Super G Capital, LLC at the Alberta Personal Property Registry which had encumbered all present and after-acquired property of the Company.
25. Also in the Second Report, the Proposal Trustee advised that Management continued to work towards securing Additional DIP Financing. As mentioned above, the Company has determined that it does not require the Additional DIP Financing and therefore no longer intends to seek such financing.
26. In an affidavit filed in connection with the May Application, the Company advised

that it had been working to resolve an issue (the “Lotus Share Issue”) with Lotus regarding the proposed return of shares of Commerx which were previously transferred to Lotus under an agreement whereby Lotus acquired 51% of the Class A shares of Commerx (the “Purchase Agreement”) in exchange for certain consideration which was never fully received. The Company advised that the return of the shares needs to be resolved, either through out-of-court discussions or through a summary claims process, prior to the Company being able to make a viable proposal.

27. The Proposal Trustee has since been advised by Management that it has been unable to resolve the Lotus Share Issue on a consensual basis, and therefore the Company has determined that it requires the Court’s assistance in this regard. As such, the Company has made an application for an order declaring that Lotus is in default of its purchase obligations under the Purchase Agreement, and directing Lotus to transfer all of the shares transferred to it under the Purchase Agreement back to the Company.
28. As the Proposal Trustee understands that the Company views the speedy resolution of the Lotus Share Issue as critical to determining the terms of any Proposal, the Proposal Trustee is supportive of the application being heard expeditiously.

### **RECOMMENDATIONS**

29. The Proposal Trustee is satisfied that:
  - a. Management continues to act in good faith and with due diligence with a view towards ultimately preparing a Proposal for presentation to its creditors; and
  - b. No creditor would be materially prejudiced if a further extension is granted.
30. In light of the above, the Proposal Trustee is of the view that a further extension of the time to file a proposal and corresponding extension of the Stay through to August 18, 2019 is warranted.

31. The Proposal Trustee is also supportive of the Company making an application to the Court in relation to resolution of the Lotus Share Issue, as Management believes this matter is important to the formulation of the Company's Proposal.

All of which is respectfully submitted this 18<sup>th</sup> day of June 2019.

Hardie & Kelly Inc.  
in its capacity as the Proposal Trustee of Commerx Corporation  
and not in its personal capacity

A handwritten signature in cursive script, appearing to read "Charla Smith", with a long horizontal flourish extending to the right.

Per: Charla Smith  
Vice President

# APPENDIX 'A'

**Commerx Corporation**  
**Weekly Report of 13 Week Cash Flow Forecast**  
**for the period June 17, 2019 to September 15, 2019 (13 Weeks)**  
**(unaudited)**

	<b>Week 1</b>	<b>Week 2</b>	<b>Week 3</b>	<b>Week 4</b>	<b>Week 5</b>	<b>Week 6</b>	<b>Week 7</b>	<b>Week 8</b>	<b>Week 9</b>	<b>Week 10</b>	<b>Week 11</b>	<b>Week 12</b>	<b>Week 13</b>	
	<b>June 17</b>	<b>June 24</b>	<b>July 01</b>	<b>July 08</b>	<b>July 15</b>	<b>July 22</b>	<b>July 29</b>	<b>Aug 5</b>	<b>Aug 12</b>	<b>Aug 19</b>	<b>Aug 26</b>	<b>Sept 2</b>	<b>Sept 9</b>	
	<b>June 23</b>	<b>June 30</b>	<b>July 07</b>	<b>July 14</b>	<b>July 21</b>	<b>July 28</b>	<b>Aug 04</b>	<b>Aug 11</b>	<b>Aug 18</b>	<b>Aug 25</b>	<b>Sept 1</b>	<b>Sept 8</b>	<b>Sept 15</b>	<b>Total</b>
<b>RECEIPTS</b>														
Projected receipts from trade accounts receivable	\$110,493	\$81,464	\$73,267	\$57,063	\$63,088	\$12,511	\$20,717	\$6,384	\$0	\$17,669	\$8,475	\$12,138	\$0	\$463,268
Received from trade accounts receivable	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0
Principal source of revenue - WIP	0	5,000	5,000	5,000	15,000	15,000	15,000	15,000	115,000	15,000	41,184	127,177	82,104	\$455,465
Management Fees from Mexcio Subsidiary	30,000	0	0	0	0	0	0	0	0	0	0	0	0	\$30,000
Advances / Repayments from Subsidiary entity	0	0	0	0	0	0	35,000	0	0	0	30,000	0	0	\$65,000
Fx gain (loss)	0	0	0	0	0	0	0	0	0	0	0	0	0	\$0
<b>Total receipts</b>	<b>140,493</b>	<b>86,464</b>	<b>78,267</b>	<b>62,063</b>	<b>78,088</b>	<b>27,511</b>	<b>70,717</b>	<b>21,384</b>	<b>115,000</b>	<b>32,669</b>	<b>79,659</b>	<b>139,315</b>	<b>82,104</b>	<b>1,013,734</b>
<b>DISBURSEMENTS</b>														
General and administrative	12,132	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	60,132
Wages and health benefits	74,219	0	80,000	6,000	80,000	0	80,000	6,000	80,000	6,000	80,000	6,000	80,000	578,219
Corporate Insurance	0	0	5,094	0	0	0	5,094	0	0	0	5,094	0	0	15,281
Rent	0	0	11,303	0	0	0	11,303	0	0	0	0	11,303	0	33,909
Due to CRA - pre-NOI GST	23,637	0	0	0	0	0	0	0	0	0	0	0	0	23,637
Monthly GST	0	10,000	0	0	0	0	10,000	0	0	0	10,000	0	0	30,000
Other - direct costs (revenue producing subcontractors & costs)	3,694	0	7,612	5,190	0	0	7,612	5,190	0	0	7,612	5,190	0	42,100
Interest on DIP funding #1	0	0	15,000	0	0	0	15,000	0	0	0	15,000	0	0	45,000
Restructuring costs	21,208	0	20,000	50,000	0	0	0	0	0	0	0	0	0	91,208
Advances / Repayments to Subsidiary entity	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total disbursements</b>	<b>134,890</b>	<b>14,000</b>	<b>143,009</b>	<b>65,190</b>	<b>84,000</b>	<b>4,000</b>	<b>133,009</b>	<b>15,190</b>	<b>84,000</b>	<b>10,000</b>	<b>121,706</b>	<b>26,493</b>	<b>84,000</b>	<b>919,487</b>
Net cash flow	5,603	72,464	(64,742)	(3,127)	(5,912)	23,511	(62,292)	6,194	31,000	22,669	(42,047)	112,822	(1,896)	94,247
Opening bank balance	173,441	179,044	251,507	186,766	183,639	177,726	201,237	138,946	145,140	176,140	198,809	156,762	269,584	173,441
<b>Closing bank balance</b>	<b>\$179,044</b>	<b>\$251,507</b>	<b>\$186,766</b>	<b>\$183,639</b>	<b>\$177,726</b>	<b>\$201,237</b>	<b>\$138,946</b>	<b>\$145,140</b>	<b>\$176,140</b>	<b>\$198,809</b>	<b>\$156,762</b>	<b>\$269,584</b>	<b>\$267,688</b>	<b>\$267,688</b>
Restricted Nortel Funds - See assumptions	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)	(\$135,000)
<b>Net Cash Available</b>	<b>44,044</b>	<b>116,507</b>	<b>51,766</b>	<b>48,639</b>	<b>42,726</b>	<b>66,237</b>	<b>3,946</b>	<b>10,140</b>	<b>41,140</b>	<b>63,809</b>	<b>21,762</b>	<b>134,584</b>	<b>132,688</b>	<b>132,688</b>

**Commerx Corporation**  
**Assumptions for Cash Flow Forecast**  
**for the period May 13, 2019 to September 15, 2019**  
**(unaudited)**

**Receipts of Cash**

- Projected receipts from trade accounts receivable are based on actual billings that have already been generated in the billing cycle.
- Projected principal source of revenue - work in process is based on work that has been secured and is in process and to be billed during respective bill cycle based on existing contracts and average collection timelines.
- Timing of cash receipts from major customers are based on a payment schedule received from those customers. The schedule is typically received 4 weeks prior to payment.

**DIP Funding**

- \$500,000 was received prior to the forecast period.
- In accordance with the loan agreement, the original maturity date of June 1, 2019 has been extended into the future.
- The company anticipated paying out the loan on June 1, 2019 and securing alternative financing. In the interest of time and ease, it was decided to extend the maturity date of the original loan. The extension calls for interest at \$15,000 per month.

**Administrative Expenses**

- The estimated costs for administrative expenses are derived from analysis of previous monthly income statements and adjusted based on revised financial forecasts.
- See attached schedule for breakdown of month costs.

**Past GST - Pre NOI**

Nov 2018 - \$7,093.36

Dec 2018 - \$9,576.38

Jan 2019 - \$6,967.94

Scheduled payment date has been extended to June 21, 2019 pending receipt of statement from CRA expected June 20, 2019.

**Direct Costs (revenue producing resources)**

- Two contracted staff working in Indonesia and three contracted staff working in India

**Advances and repayments - U.S. and Mexican subsidiary**

- From time to time, funds are transferred from Commerx US Inc and Commerx Mexico in order to balance cash requirements.
- Amounts and timing of advances are based on cash requirements and available cash of the U.S. subsidiary based on projected operating results.
- Going forward, any funds received from both subsidiaries will not be repaid. They will be treated as management fees.
- Such fees are for payment of services provided by the company for corporate management, sales & marketing, IT, HR and Finance & Administration.

**Restructuring Costs**

\$25,000 has been disbursed to trustee pre-NOI.-PAID

\$21,793 has been disbursed to trustee pre-NOI.-PAID week of June 8, 2019

\$21,208 is scheduled to be disbursed to trustee the week of June 17 -23, 2019.

\$20,000 is scheduled to be disbursed to trustee the week of July 1 -7, 2019.

\$50,000 for legal and trustee fees for restructuring expected to be disbursed in Week 8.- PAID directly to attorneys in May 2019

\$50,000 for legal and trustee fees for restructuring expected to be disbursed in Week 10.- will be paid in July, 2019

**Interest on DIP advance**

- DIP #1 interest was calculated, forecasted and payable to Balinhard Capital. Principal amount borrowed was \$500,000 and funds were received prior to the forecast period.
- Calculation and payment schedule is based on the contractual agreement.

**Nortel Funds**

- Approximately \$135,000 CAD has been received from the Nortel Networks Inc. restructuring. These funds are the subject of an agreement with former owners of an amalgamation predecessor of the company.

- The Company is of the view that these funds are a receipt to the general revenue of the company, as such, they have no preference over other unsecured creditors and that the amount will be added to the companies unsecured creditor list and will be subject to paid out over a period of time as per any proposed plan of arrangement.

However, these funds have been reflected separately until such time as a full legal review has been conducted

**Commerx Corporation**  
**Schedule for SG&A Expenses for Cash Flow Forecast**  
**for the period May 13, 2019 to September 15, 2019**  
**(unaudited)**

**Monthly Costs**

	\$CAD
Bank Service Fees	1,000
Insurance - Corporate	5,100
Telephone, Cellular and Internet	2,000
Office Supplies and Costs	600
Meal and Entertainment (Sales Department)	1,300
Travel (Sales Department)	2,500
IT Support Costs	2,000
Memberships, Dues and Subscriptions	1,000
Miscellaneous	500
<b>Total Monthly Costs</b>	<b>16,000</b>