

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Atlantica Diversified Transportation Systems Inc. (Re)*, 2018 NSSC 77

**Date:** 2018-04-04

**Docket:** Hfx No. 470769

**Registry:** Halifax

In the matter of: A Plan of Compromise or Arrangement of Atlantica Diversified Transportation Systems, Inc.

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Peter P. Rosinski

**Heard:** March 23, 2018, in Halifax, Nova Scotia

**Subject:** *Companies Creditors Arrangement Act*; allocation of the Administrative Charge expenses on premature termination of proceedings as between secured creditors

**Summary:** ADTS was a large trucking company. It leased its trucks and trailers from CW. By August 2017, ADTS was not paying its lease payments. On November 24, 2017, ADTS made an application in chambers for a CCA A plan of compromise or arrangement. An initial order was granted December 7, and a second order issued December 22, 2017. By February 20, 2018 the restructuring was abandoned, and the stay of proceedings lifted. BDO, as court appointed Monitor, recommended that the maximum permitted \$75,000, Administrative Charge (ADTS legal counsel and advisor; BDO and legal counsel), be allocated between the secured creditors on the basis of debt payable to them as a percentage of the total debt payable to the secured creditors. The monitor recommended that CW pay 73% of the Administrative Charge. CW objected, claiming it most it should be responsible for 18% based on the 9% non-lease obligations amounts owed to it. CW argued that the 91% of ADTS's obligation to pay it arose from their lessor – lessee relationship, and therefore they were not secured creditors,

consequently no amount should be allocated to them beyond the 9% of non-lease obligations.

**Issues:**

- (1) Is the relationship between ADTS and CW one of true lessor and lessee?
- (2) If it is a circumstance of “true leases”, what allocation (if any) should be made against CW for payment of the Administrative Charge?

**Result:**

- (1) The relationship is one of true lessor and lessee. CW is not a secured creditor of ADTS in relation to any of the lease payments and charges arising there from that are outstanding.
- (2) A just and equitable allocation of the Administrative Charge amount to CW is 20% or \$15,000, based on ADTS’s non-lease obligations to CW and the potential general benefits arising from the CCAA proceeding.

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