

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT
ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC.,
HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS
ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC
HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598
ONTARIO INC.**

Applicants

**AIDE MEMOIRE OF RESTORE CAPITAL, LLC
(Approval of Restructuring Framework Agreement)**

March 26, 2025

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Linc Rogers, LSO #43562N
Tel: 416-863-4168
Email: linc.rogers@blakes.com

Caitlin McIntyre, LSO #72306R
Tel: 416-863-4174
Email: caitlin.mcintyre@blakes.com

Lawyers for Restore Capital, L

AIDE MEMOIRE OF RESTORE CAPITAL, LLC

A. Overview

1. This Aide Memoire is filed by Restore Capital, LLC (the “**FILO Agent**”) in support of Court approval of the Restructuring Framework Agreement (“**RFA**”).¹ The FILO Agent is the agent on behalf of a syndicate of lenders (the “**FILO Lenders**”) that comprise the “First in Last Out” tranche of the pre-filing asset-based-lending facility of Hudson’s Bay Company ULC and certain of its affiliated entities (collectively, “**HBC**”). A subset of the FILO Lenders (the “**DIP Lenders**”) provided critical debtor-in-possession financing to HBC following commencement of these proceedings under the *Companies’ Creditors Arrangement Act (Canada)* (“**CCAA**”) on March 7, 2025.
2. The RFA represents a consensual agreement, which resolves divergent views and provides a stable, structured and orderly framework for the Hudson’s Bay Company ULC and its debtor affiliates (collectively, “**HBC**”) to pursue a going concern opportunity while it liquidates its retail inventory, under supervision of this Court. It evidences a balance between the legitimate interests of potentially impaired secured lenders and HBC’s desire to preserve reasonable optionality, in light of that potential impairment.
3. At its core the RFA requires HBC to comply with an agreed upon budget (the “**Budget**”) subject to a “Permitted Variance”. If circumstances change, there is an opportunity for HBC to submit an “Updated Budget” for review and consideration by the Agents. There is also a mechanism that provides that HBC will pay “Excess Cash” to the Monitor, being cash receipts that it does not require for its working capital needs (i.e. cash receipts above \$15 million). Subject to the Monitor’s right to advance funds back to HBC in the unlikely event that its existing cash needs are insufficient, such funds can be paid to the pre-filing secured creditors, in accordance with an agreed upon “Priority Waterfall”. Any such distribution is subject to Court approval.
4. The RFA also contemplates that no more than 6 of HBC’s retail stores will be excluded from an orderly liquidation process, which has already commenced. The Agents do not hold a consent right for the removal of additional stores, however, as discussed below, the further removal of stores is subject to applicable restrictions in the Budget.
5. The RFA also contains representations and warranties, affirmative covenants and negative covenants, milestones and certain oversight and consent rights, generally in line with a standard DIP financing arrangement (with certain important distinctions set out below). The pre-filing agents for certain secured lenders, that are a party to the RFA (collectively, the “**Agents**”) must first seek leave of the Court before exercising any remedies.
6. As previously submitted to this Court, the same principled basis for having the protections and safeguards in a DIP term sheet exist in the context of a framework agreement, such as the one being submitted for approval. This is because the debtor company is using cash

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Affidavit of Jennifer Bewley sworn March 21, 2025.

receipts and other collateral subject to the Agents' security interest (the "**Collateral**") which would otherwise be available to repay HBC's outstanding obligations to the Agents.

7. Consensually agreeing to the use of post-filing cash collateral, in accordance with an agreed upon framework, accomplishes the same goal as a creeping roll-up DIP because it finances the post-filing obligations of the debtor company. However, unlike the RFA, in a creeping roll-up DIP, the debtors' post-filing cash receipts are stripped out of the debtor company, applied against pre-filing secured debt and new advances are made to the debtor company at an increased cost to the estate as result of cost of borrowing, including associated fees. Lenders should not be penalized for facilitating more economically advantageous financing; the same protections that would be afforded under a creeping roll-up DIP should be available to the Agents.
8. The FILO Agent submits that the Framework Agreement is reasonable and appropriate in the circumstances.

B. Prejudice

9. Despite the fact the parties with financial interest in the Collateral (i.e. the Agents and the lenders they represent), HBC itself and the Court-appointed Monitor, in its independent view, support approval of the RFA, approval of the RFA is nonetheless opposed by RioCan Real Estate Investment Trust ("**RioCan**"). RioCan is supported by other landlords of HBC (together with RioCan, the "**Landlords**"). In its factum, RioCan states:

There is no evidence before the Court that the pre-filing secured creditors of HBC are to suffer any material prejudice at this time. If HBC's pre-filing secured creditors are of the view that they are suffering any prejudice as HBC advances its CCAA proceedings, such parties can immediately come back to the Court to seek appropriate relief.

10. Contrary to this statement, the prejudice faced by the secured creditors of HBC, is manifest and demonstrated. HBC's 13-week cashflow forecast appended to the Supplement to the Monitor's First Report dated March 21, 2025, shows that, even in a full liquidation, the FILO Lenders will experience a shortfall on repayment of their pre-filing secured claims of approximately \$9 million at the end of the Cash Flow Period.² This is prior to the satisfaction of additional post-filing payment obligations following the end of the Cash Flow Period such as payroll obligations, vacation pay obligations and significant sale tax obligations. Those post-filing payments will erode the FILO Lenders position further.
11. As stated in the affidavit of Jennifer Bewley sworn March 14, 2025: "Without an immediate liquidation across retail stores, it is not expected that the Applicants would be

² [Supplement to the First Report of the Monitor](#), dated March 21, 2025, Appendix E (Second Updated Cash Flow Forecast).

able to repay the DIP Lenders' pre-filing secured debt and their obligations under the DIP financing."³

12. The Landlords insist that HBC be given greater flexibility to pursue a going concern than is contemplated by the RFA. At the same time, the Landlords offer no financial assistance to HBC; they simply suggest that those that have given financial assistance have not given enough.
13. It is self-evident that if additional retail stores are excluded from a liquidation, cash receipts will decrease and related costs will increase, making the FILO Lenders' impairment all the more acute.
14. With every dollar of the cash collateral that is spent by HBC to finance their pursuit of a going-concern solution, the FILO Lenders' prospect of recovery worsens, if such goal is not accomplished. That does not mean that this going concern objective cannot be pursued. Indeed, the Agents believe that one can be. However, appropriate, reasonable guardrails have been agreed upon by the Agents and HBC to ensure that funds are spent in a responsible manner, cognizant of all the circumstances of the case.
15. There is nothing in the CCAA or any jurisprudence promulgated pursuant to it, that proscribes a debtor from agreeing to such reasonable guardrails and avoiding the uncertainty, instability, cost and value destruction inherent in a contested CCAA process. Indeed, the CCAA, at its core, encourages consensual resolution and seeks to facilitate constructive compromise.

C. Agreement is Better than Conflict

16. In RioCan's view, establishing an agreed upon framework and set of established ground rules is the source of the problem. It submits that the Agents should return to Court to seek appropriate relief when and if such circumstances warrant. In the absence of a consensual RFA, the FILO Agent is of the view such circumstances are necessary now.
17. Without a consensual arrangement in place, with an agreed upon budget and reasonable oversight by the Agents, the FILO Agent is of the view the Collateral would be in peril. The circumstances would necessitate seeking to lift the stay, seeking to appoint a receiver and seeking the imposition of constraints in the receivership context, to prevent the erosion of its collateral position. In the context of non-consensual receivership, the FILO Agent would not be in a position to support a SISP, the exclusion of stores from the liquidation, the length of time afforded for this process and the totality of the expenditures contemplated by the Budget, including on corporate overhead.
18. The FILO Agent does not wish to pursue such course of action. The FILO Agent wishes to proceed on a consensual basis with an agreed upon Framework, with recourse being subject to the leave of this Court. The FILO Agent is willing to consent to the SISP and exclusion of stores from the liquidation, the length of time afforded for this process and the

³ [Affidavit of Jennifer Bewley](#), sworn March 14, 2025 at para 8.

totality of expenditures contemplated by the Budget in the context of a consensual arrangement, which benefits HBC and limits the potential prejudices to the FILO Agent and the other Agents. Being tethered to the sidelines, with only the ability to react after harm has already fallen upon it, would place the FILO Agent in an untenable position. It would be required to take proactive steps to protect its economic interests.

19. The Agents have negotiated a consensual resolution with HBC, with the input of the Monitor that (i) provides the Agents with oversight in respect of the use of the Collateral to fund the Applicants' CCAA proceeding, and (ii) provides the Applicants with the ability to pursue a going-concern solution and monetize their assets, without facing the threat and instability of a potential receivership application. Such compromises may not be supported by unsecured creditors, but, unsecured creditors such as the Landlords, being paid rent (in full or as agreed upon) during the pendency of the CCAA proceeding, do not hold a veto over such compromise.

D. Use of Cash Collateral

20. RioCan asserts that, "Debtors in CCAA proceedings are not restricted from using their cash or other property in circumstances where such assets form part of a pre-filing security package."
21. This is incorrect. This Court has concluded that, "the fact that the Applicants may have available cash does not mean that the Applicants can use the cash as they see fit. The asset is to be used in accordance with credit agreements and court authorized purposes."⁴
22. Likewise, this Court has found that it is essential in the context of a CCAA proceeding to give due consideration to the priority rights of secured creditors.⁵ This is self-evident. The rights and interests of the secured creditors that have supported HBC and facilitated HBC's ability to meet payroll, pay rent and satisfy its various working capital obligations, matter.

E. This relief is not unprecedented

23. Contrary to RioCan's assertions, the relief requested by HBC is not unprecedented. In the CCAA proceedings of Canwest Global Communications Corp. ("**Canwest**"), a "Use of Cash Collateral and Consent Agreement" (the "**Canwest Cash Collateral Agreement**") was approved by Justice Pepall (as she was then) without accompanying new financing.⁶
24. Like the RFA, the Canwest Cash Collateral Agreement provided the pre-filing lenders of Canwest with a number of supervisory rights and protections in exchange for allowing the debtors to undertake certain transactions that would allow them to take certain steps in their restructuring. The Court then proceeded to grant the Initial Order, which provided that the

⁴ *Windsor Machine & Stamping Limited (Re)*, [2009 CanLII 39771](#) (ON SC) at para 46.

⁵ *Windsor Machine & Stamping Limited (Re)*, [2009 CanLII 39771](#) (ON SC) at para 43.

⁶ *Canwest Global Communications Corp., Re*, [2009 CarswellOnt 6184](#), [59 C.B.R. \(5th\) 72](#) (Ont SCJ) ("**Canwest**"); [Affidavit of John E. Maguire sworn October 5, 2009, Appendix J](#) (Use of Cash Collateral and Consent Agreement).

rights of the debtors to restructure were expressly subject to the Canwest Cash Collateral Agreement.⁷

25. What the Agents seek is akin to what was provided to pre-filing lenders in Canwest not, as RioCan suggest, to the American notion of “adequate protection”. The Agents do not seek an adequate protection charge to compensate them for any deterioration of their pre-filing position.
26. The concept of weighing competing prejudice, particularly prejudice that could be suffered by a secured creditor and facilitating a balance of those prejudice in order to avoid conflict and turmoil, is not a concept foreign to this Court. Indeed, it is distinctly Canadian.
27. Simply stated, there would be prejudice to the FILO Lenders if HBC could spend money in pursuit of a going concern opportunity without reasonable constraint and input from the Agents. The RFA mitigates that prejudice without, in the view of the Monitor and HBC, unfairly restraining HBC in pursuit of its realistic going concern opportunities.

F. RioCan Critiques of the RFA are unfounded

28. The RFA does not conflict with the SISP and Lease Monetization Process, contrary to the assertions of RioCan. The definition of “Permitted Restructuring Transaction” in the RFA is the same as the SISP, and provides that HBC is able to enter into a transaction that provides either full recovery for the Agents, or is otherwise satisfactory to the Agents. The Agents’ consent is not required to remove stores from the liquidation in the event that a going-concern solution is identified.
29. The information that HBC is required to provide to the Agents under the RFA in respect of the SISP and the Lease Monetization Process is the same information that must be provided under each process and is in each case subject to the terms of the relevant process and any restrictions therein.
30. To the extent that HBC is constrained in taking a particular course of action, it is a product of the financial reality HBC faces – it is indebted to its senior secured lenders and does not have sufficient funds to repay them. The RFA does not constrain the ability of HBC to pursue a restructuring solution, it constrains the ability of HBC to take steps that are not supported by the agreed upon Budget.
31. The Agents do not seek to constrain HBC’s ability to pursue a going-concern solution; the Agents have identified a way to support HBC pursuing a going-concern solution in a manner that does not unfairly erode the recovery of pre-filing secured creditors or unduly expose them to risk. This benefits all stakeholders of HBC.

⁷ [Canwest Initial Order](#) dated October 6, 2009 at para 12.

G. The Agents have made a number of concessions

32. The RFA is different from the Amended and Restated DIP Term Sheet dated March 17, 2025 (the “**A&R Term Sheet**”) previously submitted to this Court for approval and does not provide the Agents with the same degree of control in respect of HBC’s restructuring. Importantly:
- a. Removal of Stores from Liquidation. In the A&R Term Sheet, the Agents’ consent was required to remove a store from the liquidation. In the RFA such consent is not required, although Budget compliance is, for the reasons set out above.
 - b. Not a full liquidation. The A&R Term Sheet required the full liquidation of all stores. The initial exclusion of six stores from the liquidation is expressly contemplated by the RFA.
 - c. Excess Cash. In the A&R Term Sheet, “Excess Cash” – being cash above a threshold of \$15 million, was to be paid to the Monitor by HBC and not be made available to HBC at any future date. In the unlikely event such Excess Cash is needed, it may now be used by HBC to satisfy post-filing payment obligations, to the extent that HBC has insufficient cash on hand to satisfy such obligations;
 - d. Indemnity and Release. Under the A&R Term Sheet the DIP Agent and DIP Lenders were being indemnified. No indemnity or release is provided to the Agents.
 - e. Inventory Purchases. The budgetary constraints in the A&R Term Sheet did not allow HBC to purchase new inventory. The FILO Agent is prepared to consent to such purchases in the context of the RFA, subject to the Budget, which will support HBC’s ability to pursue a going-concern solution.
 - f. Landlord Comments. A number of comments proposed by Landlords to the RFA were taken and incorporated on the consent of the Agents, and reflected in the current version of the RFA submitted for approval by the Court.
33. Critically, all remedies are subject to leave of the Court. In the event an Event of Default occurs, the Agents must return to Court and seek the Court’s blessing for appropriate relief. The Agents have every confidence in this Court’s authority and ability to consider relative rights and interests of the parties at the appropriate time, weigh and consider competing prejudice, and fashion an appropriate remedy in light of those considerations. Even though this Court is the ultimate arbiter of these matters, the Landlords still object to the consensual arrangement.
34. Notably, the Agents also have guardrails placed around them. There are clear and defined rules for when the Court’s intervention can be sought to give remedial relief. The Agents cannot simply seek remedial relief whenever they consider that circumstances warrant. This creates certainty. Certainty creates stability.

F. The Landlords have presented no alternative

35. Each and every one of the Landlords have been approached by the Monitor and HBC's financial advisor to determine whether it will consent to rent concessions to improve the going-concern prospects of the HBC. Each and every landlord has said no.
36. Each and every landlord was given the opportunity to provide interim financing to the Applicants. Each and every landlord said no.
37. The only party that has come before the Court, offering to provide HBC with additional financing and access to capital are the DIP Lenders and the Agents with respect to the use of the Collateral. The very parties that have denied HBC much needed financial assistance and accommodation now criticize the Agents for attempting to do so, because it is being done in a manner that they do not approve. They insist that the risk being undertaken by the Agents is not great enough and demand that the secured lenders take on even more. They, meanwhile, are not offering to mitigate that risk.
38. It would set a dangerous precedent if this Court compelled the Agents to provide additional financial accommodation to HBC without protection or assurance that its interests will not be further compromised.
39. The inevitable byproduct of such decision would be to induce lenders to exercise complete cash dominion and trickle out any needed financing through a revolving lender facility. It would be reckless for a lender to agree to a financing arrangement where the debtor was allowed to use cash collateral following a filing, knowing it could be depleted. This would significantly increase the cost of capital.

G. Conclusion

40. The Applicants, in their business judgment, have negotiated an agreement that, in their view, and in the view of the Monitor, is in their best interest – it provides order and stability and avoids chaos and instability. The business judgment of both the Applicants and the Monitor should not be substituted for that of an unsecured creditor who has presented no superior solution – or any solution at all - for HBC and their stakeholders. The Landlords have not articulated any prejudice to them resulting from the RFA.
41. The FILO Agent submits that, in the circumstances, the RFA should be approved.

Court File No.: CV-25-738613-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at Toronto

AIDE MEMOIRE OF RESTORE CAPITAL, LLC
(Approval of Restructuring Framework Agreement)
Returnable March 26, 2025

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

Linc Rogers, LSO #43562N

Tel: 416-863-4168

Email: linc.rogers@blakes.com

Caitlin McIntyre, LSO #72306R

Tel: 416-863-4174

Email: caitlin.mcintyre@blakes.com

Lawyers for Restore Capital, LLC