Court File No. CL-26-00000042-0000

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 TOYS "R" US (CANADA) LTD. / TOYS "R" US (CANADA) LTEE (the "Applicant")

AIDE-MEMOIRE OF 1001485743 ONTARIO INC.

(case conference returnable July 8, 2026)

July 5, 2026

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Background

1. This aide-memoire is filed by 1001485743 Ontario Inc. ("**1001Co**"), pursuant to the endorsement of the Honourable Justice J. Dietrich issued on June 22, 2026, in support of an order to distribute the IP Proceeds (*as defined below*) to 1001Co in accordance with its senior-ranking IP Security (*as defined below*).

2. On June 22, 2026, Toys "R" Us (Canada) Ltd. / Toys "R" Us (Canada) Ltee (the "**Applicant**") made a motion to Court seeking various relief, including:

   (a) an approval and vesting order in respect of the transaction (the "**AP Transaction**") for the sale of the Applicant's intellectual property assets (the "**IP Assets**"); and

   (b) an order approving a distribution of the proceeds of the AP Transaction (the "**IP Proceeds**") to 1001Co, based its registered security (the "**IP Security**").

3. The Court approved the AP Transaction but adjourned the distribution of the IP Proceeds, based on the objection of Allied World Specialty Insurance Company ("**AWAC**") – an unsecured creditor of the Applicant.

4. There is no issue with the IP Security, it is not being challenged, and it has been validated by an independent review by the Monitor and its legal counsel.[1]

The Issue

5. The only issue is whether AWAC's objection should be sustained and the distribution of the IP Proceeds be denied or delayed on the basis that 1001Co ***may*** be named in ***possible*** litigation of transfers at undervalue or preferences that ***may*** be commenced in the future (the "**TUV Litigation**")?

6. The answer is – *no*. A distribution to 1001Co is consistent with statutory priorities and established insolvency practice, whereas denying such distribution would unfairly prejudice 1001Co.

[1] Endorsement of Justice Dietrich, dated June 22, 2026, at para. 34; and, Third Report of the Monitor, dated June 12, 2026 ("**Third Report**"), at paras. 7.4, 7.5 and 7.11

The IP Security & Insolvency Practice Supports the Distribution

7. It is trite law to say that the distribution of sale proceeds in CCAA proceedings are commonplace[2] and that such distributions are subject to the statutory priority scheme.[3]

8. The IP Security is the senior ranking security interest against the IP Assets. The IP Security and underlying debt obligations were originally held by Fairfax Financial Holdings Limited and were acquired by 1001Co on February 2, 2026, immediately prior the CCAA filing[4]. As represented in Court, 1001Co was incorporated on January 27, 2026, for the sole purpose of acquiring the IP Security.[5] The distribution of the IP Proceeds is recommended by the Monitor.[6] 1001Co is the only party with an economic interest in the IP Proceeds.

9. Further, AWAC has not identified any specific claim against the IP Proceeds.

10. These CCAA proceedings are at a functional end, and the Court is being asked to deal with the residual assets of the Applicant. In such case, the distribution order is appropriate as it serves the remedial objective of providing for a timely, efficient and impartial resolution of the debtor's insolvency and ensuring fair and equitable treatment of the claims against a debtor.[7]

11. Additionally, 1001Co submitted the highest offer for the IP Assets in the Court-approved "**SISP**"[8], but 1001Co chose not to utilize the IP Security to credit bid – which option was part of the SISP – and, instead, supported the AP Transaction with full expectation that it would receive the IP Proceeds[9]. In support of the SISP approval, the Monitor highlighted "*any transaction under the SISP that includes the Intellectual Property would need to address 1001 Ontario's security interest*"[10]. 1001Co, acting in good faith, also supported the CCAA proceedings by deferring all

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[2] *GE Canada Real Estate Financing Business Property Co v 1262354 Ontario Inc,* 2014 ONSC 1173 **[*GE Canada*]** at para 53; *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461, at para 71.
[3] *GE Canada,* para 53; *Ted Leroy Trucking Ltd. [Century Services], (Re),* 2010 SCC 60, paras. 77-28.
[4] Contingent Additional Consideration Right and IP Security Purchase Agreement, dated February 2, 2026, Application Record of the Applicants, dated February 2, 2026, TAB I .
[5] See Certificate of Incorporation of 1001485743 Ontario Inc., Appendix "A".
[6] *Supra*, note 1.
[7] *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 40, 49-50; *GE Canada,* para 53.
[8] Summary of Phase 1 and Phase 2 Bids, Confidential Appendix "B" to the Third Report.
[9] Sale and Investment Solicitation Process Approval Order, dated April 1, 2026 - Schedule "A", para 25(c).
[10] Second Report of Monitor, dated March 27, 2026, para 5.7.

post-filing royalty payments. Currently, 1001Co is owed $2.8 million in pre-filing royalties and $315,000 in post-filing royalties and will lose future royalties[11].

12. The distribution of the IP Proceeds to 1001Co is appropriate and denying the same would unfairly prejudice 1001Co as a secured creditor who has acted in good faith in these CCAA proceedings and has relied on the Court-approved SISP.

1001Co is NOT connected to the TUV Litigation

13. The TUV Litigation amounts to potential claims that a future trustee in bankruptcy (the "**Trustee**") may initiate. There is no funding to continue these proceedings for any such litigation.

14. Assuming the Trustee elects to prosecute the TUV Litigation at all, to succeed against 1001 Co, it would need to specifically implicate 1001Co. This is akin to Justice Dietrich's stated expectation that, at the within case conference, "(…) *the involvement of 1001Co in the TUV Litigation, if any, be made clear*". No such involvement exists.

15. In its Report on Related Party Transactions in the year preceding the CCAA filing, the Monitor did not identify any transactions to which 1001Co was a party.[12] Accordingly, 1001Co did not receive any payment, property, services, security, etc. from the Applicant as required by s. 95 and s. 96 of the BIA[13], and could not be subject to a *direct* claim in TUV Litigation.

16. In an attempt to minimize this fact, AWAC has argued that 1001Co may be subject to an *indirect* claim in any transfer at undervalue (a "**TUV**") simply because it is related to the Applicant and is, therefore, a "*person who is privy*" to any such transfer under s. 96 of the BIA. This position is misleading or, at best, incomplete. The relevant subsection actually reads as follows:

> **(3)** In this section, a ***person who is privy*** means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.[14]

It is a two part-test:

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[11] Third Report of the Monitor dated June 12, 2026 at para. 8.5 ; Second Report of the Monitor dated March 27, 2026, para 5.13 .
[12] Report of Monitor on Related Party Transactions, dated June 12, 2026.
[13] BIA, s. 95 and s. 96.
[14] BIA, s. 96(3).

(a) first, a related party is deemed not to be acting an arm's length in a claim under s. 96; however, that presumption is rebuttable[15]; and

(b) second, the related party must have received a direct or indirect benefit from the impugned transaction, and have knowledge of the same.[16]

17. While it is true 1001Co is related to the Applicant – which connection was disclosed at the outset of these proceedings – there is no extant claim against 1001Co and, in any event, whether 1001Co was, or was not, dealing at arm's length is a question of fact that has not been tested.

18. More importantly, 1001Co did not exist prior to January 27, 2026, immediately after which it acquired the existing IP Security from an arm's length party for value. It concluded no other transaction, has no employees and conducts no other business. The Monitor's review focussed on transactions that occurred *prior* to the incorporation of 1001Co. These facts not only serve to rebut the assertion that 1001Co was not dealing at arm's length, but also illustrate that it did not receive any benefit from any transaction.

19. 1001Co and the IP Proceeds are not connected to the potential TUV Litigation.

Denying the Distribution Prejudices 1001Co and does NOT prejudice any other Party

20. If the Court were to deny the distribution of the IP Proceeds, it would be extremely prejudicial to 1001Co. As above, there is no connection with the TUV Litigation.

21. However, even if such a connection existed (*which is denied*), there would still no basis to deny the distribution in the context of an uncertain future claim. Denying the distribution would, in effect, be a form of "security for judgement" or a pre-emptive order to "pierce the corporate veil" – both of which are extraordinary remedies and for which the applicable tests cannot be met.

22. The Ontario Court of Appeal has held that security for judgement is an extraordinary remedy that should only be granted in exceptional cases, much like a *Mareva* injunction. [17] Such

[15] BIA, s. 4(5). See, *Urbancorp Toronto Management Inc. (Re)*, 2019 ONCA 757 (CanLII), at paras 12 and 24.
[16] *Peoples Department Stores Inc. (Trustee of) v. Wise*, 2004 SCC 68, at para 91. The SCC was considering the predecessor section of the BIA, but the analysis is applicable and should be considered under s. 96(3).
[17] *Wiseau Studio, LLC v. Harper*, 2021 ONCA 31 (CanLII) at para 24.

an order would require the applicant to show that it was is in the interest of justice, that without the order the applicant would be prejudiced and when considering the "interest of justice", the Court should assess the merits of the case and whether there are assets to against which any judgement can be enforced.[18]

23. Similarly, piercing the corporate veil is an extraordinary remedy that will be used where a corporate entity is completely dominated and controlled and used for "*conduct akin to fraud that would otherwise unjustly deprive claimants of their rights*".[19]

24. Here, AWAC has not even attempted to meet anything approaching the tests for what is, in effect, the request for extraordinary relief. Moreover, such tests cannot be satisfied as:

(a) no merits of any claim can be considered as no claim has been articulated;

(b) no allegations of fraud against 1001Co are sustained;

(c) no party's rights would be deprived by the distribution; and

(d) crucially, there will be ample assets to satisfy any judgement in the future (however unlikely), in the form of the IP Proceeds – including a one (1) year term note.[20]

25. To deny to the distribution would unfairly prejudice 1001Co in circumstances where no party would suffer prejudice in the event the distribution is approved.

Conclusion

26. For the reasons above, the Court should approve the distribution of the IP Proceeds to 1001Co pursuant to the IP Security, as recommended by the Monitor. Doing so is consistent with insolvency law and practice. Doing the opposite would prejudice 1001Co. Denying or delaying the distribution would not simply amount to "execution before judgement" it would be much worse, as there is no juridical reason to deny or delay the distribution at all.

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[18] Ibid., at paras 27 -28.

[19] *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.,* 1996 CanLII 7979 (ON CTGD); cited for approval by the OCA in 642947 Ontario Ltd. v. Fleischer, 2001 ONCA 8623; and, recently confirmed by OCA in *Chanderpaul v. Caesars Convention Centre Ltd*., 2026 ONCA 332 (CanLII).

[20] Unredacted "AP Agreement", Confidential Appendix "C" to the Third Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of July 2026.

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Lawyers for the 1001485743 Ontario Inc

<u>APPENDIX "A"</u>
Certificate of Incorporation

Ontario

Ministry of Public and
Business Service Delivery
Ministère des Services au public et
aux entreprises

Certificate of Incorporation

Business Corporations Act

Certificat de constitution

Loi sur les sociétés par actions

1001485743 ONTARIO INC.

Corporation Name / Dénomination sociale

1001485743

Ontario Corporation Number / Numéro de société de l'Ontario

This is to certify that these articles are effective on

La présente vise à attester que ces statuts entreront en vigueur le

January 27, 2026 / 27 janvier 2026

V. Quintanilla W.

Director / Directeur
Business Corporations Act / Loi sur les sociétés par actions

The Certificate of Incorporation is not complete without the Articles of Incorporation.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

Le certificat de constitution n'est pas complet s'il ne contient pas les statuts constitutifs.

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

V. Quintanilla W.

Directeur ou registrateur

APPENDIX "B"
RELEVANT STAUTES

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Interpretation

2. In this Act,

[…]

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

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Definition of Related Person

4(2) For the purposes of this Act, persons are related to each other and are related persons if they are:

(c) two entities

(i) both controlled by the same person or group of persons,

[…]

Relationships

(3) For the purposes of this section,

(a) if two entities are related to the same entity within the meaning of subsection (2), they are deemed to be related to each other;

[…]

Question of fact

(4) It is a question of fact whether persons not related to one another were at a particular time dealing with each other at arm's length.

Presumptions

(5) Persons who are related to each other are deemed not to deal with each other at arm's length while so related. For the purpose of paragraph 95(1)(b) or 96(1)(b), the persons are, in the absence of evidence to the contrary, deemed not to deal with each other at arm's length.

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Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

(a) in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and

(b) in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.

Preference presumed

(2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.

[…]

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Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

(a) the party was dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,

(ii) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and

(iii) the debtor intended to defraud, defeat or delay a creditor; or

(b) the party was not dealing at arm's length with the debtor and

(i) the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or

(ii) the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and

(A) the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or

(B) the debtor intended to defraud, defeat or delay a creditor.

Establishing values

(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

Meaning of person who is privy

(3) In this section, a person who is privy means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

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PROCEEDING COMMENCED AT TORONTO

AIDE-MEMOIRE OF 1001485743 ONTARIO INC
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