CITATION: Hudson's Bay Company, Re, 2025 ONSC 1897
COURT FILE NO.: CV-25-00738613-00CL
DATE: 20250326

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

BEFORE: Peter J. Osborne J.

COUNSEL: *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Britnney Ketwaroo, Philip Yang and Nick Avis*, for the Applicants
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Chad Kopach, for EY in the Receivership of Woodbine Mall Holdings Inc.
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Haddon Murray, for Cominar Real Estate Investment Trust & Chanel ULC
Matthew Gottlieb, Andrew Winton and Annecy Pang, for KingSett Capital Inc.
Sean Zweig, Michael Shakra and Thomas Gray, for the Court-appointed Monitor
Trevor Courtis and Heather Meredith, for Bank of Montreal and Desjardins Financial Security Life Assurance Company
Gilles Benchaya and Mandy Wu, for Restore Capital LLC and Bank of America
James D. Bunting, for Ivanhoe Cambridge Inc.
Robert J. Chadwick, Joseph Pasquariello and Andrew Harmes, for RioCan Real Estate Investment Trust
Tushara Weerasooriya, Jeffrey Levine and Guneev Bhinder, for B.H. Multi Com Corporation, B.H. Multi Color Corporation & Richline Group Canada Inc.
Gregg Galardi, US Counsel for File Agent (Restore Capital LLC) as DIP Lender
Isaac Belland, for LVMH Moet Hennessy Louis Vuitton SA
Jake Harris, for the DIP Lenders
Matthew Cressatti, for the Trustees of the Congregation of Knox's Church, Toronto

D.J. Miller and Andrew Nesbitt, for Oxford Properties Group, OMERS Realty Management Corporation, Yorkdale Shopping Centre Holdings Inc., Scarborough Town Centre Holdings Inc., Montez Hillcrest Inc., Hillcrest Holdings Inc., Kingsway Garden Holdings Inc. Oxford Properties Retail Holdings Inc., Oxford Properties Retail Holdings II Inc., OMERS Realty Corporation, Oxford Properties Retail Limited Partnership, CPPIB Upper Canada Mall Inc., CPP Investment Board Read Estate Holdings Inc.
Calvin Horsten, for Toronto-Dominion Bank
Stuart Brotman and Jennifer L. Caruso, for Royal Bank of Canada
George Benchetrit, for Nike Retail Services Inc. and PVH Canada Inc.
Linda Galessiere, for Ivanhoe Cambridge II Inc./Jones Lang LaSalle Incorporation, Morguard Investments Limited and Salthill Property Managements Inc.
Steven Weisz and Dilina Lallani, for Ferragamo Canada Inc.
David Ullman and Brendan Jones, for Bentall Green Oak, Primaris REIT, Quadreal Property Group
David Preger and Stephen Posen, for 100 Metropolitan Portfolio, Mantella & Sons
Shayne Kukulowicz and Monique Sassi, for the Proposed Liquidator
Andrew J. Hatnay, Robert Drake and Abir Shamim, for certain HBC Employees and Retirees
Ken Rosenberg, Max Starnino, Emily Lawrence and Evan Snyder, for The Financial Services Regulatory Authority of Ontario
Sam Rogers, for Investment Management Corporation of Ontario
Kelly Smith Wayland, for the Department of Justice (Canada)
Blake Scott, for UNIFOR Local 240 & 40
Howard Manis for Villeroy & Boch Tableware Ltd.
Mitch Koczerginski for Cherry Lane Shopping Centre Holdings Inc. and TBC Nominee Inc.
Lindsay Miller, for West Edmonton Mall Property
Yiwei Jin, for United Food & Commercial Workers, Int'l Union Local 1006A
David Rosenblat, for Pathlight
Pavle Masic, for Samsonite Canada
Sarah Pinsonnault, for Québec Revenue Agency

HEARD: March 21, 2025

ENDORSEMENT

OSBORNE J.

1. Last Friday, March 21, 2025, I granted certain relief at the conclusion of the hearing in this matter with reasons to follow. These are those reasons.

2. On March 7, 2025, I granted an Initial Order in this Application with Reasons released on March 10, 2025. At the comeback hearing on March 17, 2025, I extended the stay of proceedings (and granted other interim relief) in effect until March 19, 2025 and adjourned the motion for the balance of the relief sought by the Applicants. The adjournment was to afford the parties, with the assistance and facilitation of the Court-appointed Monitor, an opportunity to continue discussions that were ongoing prior to and indeed during the comeback hearing, with a view to narrowing or resolving certain contested issues.

3. On March 19, 2025, and for the reasons set out in the Endorsement of that date, I approved the engagement of a financial advisor for the Applicants, increased the quantum of the Directors' Charge, and granted other interim relief. I adjourned the motion for the balance of the relief sought by the Applicants until March 21 at their request, with the recommendation of the Monitor, and without opposition.

4. Upon resumption of the comeback hearing on March 21, the parties advised that many of the issues that were contested on March 17 had been resolved as among them. As such, much of the relief sought by the Applicants is now proceeding on a consent or unopposed basis. As further described below, certain relief is opposed.

5. In addition, circumstances continue to evolve quite literally by the hour. The reality is that since this insolvency proceeding and the challenges facing Hudson's Bay have received significant media attention, sales of merchandise, and particularly Hudson's Bay branded merchandise, have been robust over the last number of days.

6. The result is that the Company has earned significant revenue and has cash on hand that has exceeded forecasts, such that it no longer has the immediate need for liquidity during the next few weeks that had been projected in the cash flow forecast appended to the First Report of the Monitor. That forecast anticipated the surge in sales that is now being realized, although anticipated that such an increase in revenue would not be so immediate.

7. It was for that reason that the Applicants sought, and the Monitor supported, approval of a Debtor in Possession ("DIP") Facility to provide liquidity that was urgently needed at the time. As reflected in the forecast, once sales increased in the expectation of a liquidation, revenues were projected to be sufficient to fund wind down operations in these proceedings through the proposed stay extension period.

8. As a result of all of the above, the proposed DIP Facility is no longer required and the Company seeks, among other things, authority to repay to the DIP Lender the outstanding balance on the DIP Facility of approximately $16 million that has been drawn down since the date of the Initial Order.

9. It further follows that a number of the highly contested issues related to the DIP Facility, about which submissions were made on March 17, have now been resolved or eliminated since they were related to terms and conditions of the proposed continued DIP Facility that is no longer necessary.

10. It is important to note that while an increase in retail sales revenues is of assistance, it should not be misinterpreted as an indication that the business is viable as a going concern. On the contrary, the only reason that there is net cash on hand is that the Company is not purchasing new inventory such as would be necessary to sustain retail operations in the usual course of business.

11. Moreover, the previously approved DIP Facility available for the initial stay period provided for access to borrowed funds up to a maximum of $16 million. As noted, $11 million has already been drawn down to fund operations during the initial stay period. The previously proposed DIP Facility to continue thereafter was in a maximum amount of $23 million, inclusive of the original $16 million, for a net increase of only $7 million in available borrowed funds.

12. That amount fell dramatically short of any realistic estimate of the funds needed to ensure a going-concern outcome for the Company. Put simply, the Company has not yet been able to identify any lender or investor prepared to advance anywhere near the amount required to put the Company on a solid footing to provide the basis for a going-concern restructuring. While the Company advises that it is still hopeful that a source of funds can be identified, none has emerged at this time.

13. As a further result of all of the above, the Company now seeks to proceed with a proposed liquidation sale as rapidly as possible since its liquidity challenges require immediate liquidation of inventory.

14. The Service List has been served and the materials are available on the website of the Court-appointed Monitor.

15. Defined terms in this Endorsement have the meaning given to them in my earlier Endorsements made in this proceeding, the Application materials, and/or the Reports of the Monitor, unless otherwise stated.

16. Today, the Applicants seek four Orders:

i. a further Amended and Restated Initial Order ("ARIO"):

1. extending the stay of proceedings to and including May, 15, 2025;
2. continuing the stay of proceedings of rights of third-party tenants of commercial shopping centres or other properties where premises operated by Hudson's Bay are located;
3. authorizing the Company to repay the DIP Financing Obligations upon fulfilment of certain conditions, together with related relief;
4. approving the Restructuring Support Agreement;
5. amending the stay of the payment of rent from Hudson's Bay to the HB-RioCan Joint Venture Entities (collectively, the "JV Entities") and granting a priority charge in favour of the JV Entities to secure any rent not paid after March 7, 2025;

6. approving a Key Employee Retention Plan ("KERP") and related charge; and

7. authorizing Hudson's Bay to enter into a Financing Agreement with Imperial PFS Payments Canada, ULC to provide financing to the Company to purchase property insurance policies;

ii. a Liquidation Sale Approval Order approving the amended agreement between Hudson's Bay and the Liquidation Consultant to provide for the Liquidation Sale of the Company's inventory, fixtures and equipment; approving the Sale Guidelines; and authorizing the Company to undertake the Liquidation Sale;

iii. a Lease Monetization Order approving the Lease Monetization Process and authorizing the Applicants to undertake the monetization of their leases, including through the approval of a consulting agreement between Hudson's Bay and Oberfeld Snowcap Inc. to assist in the marketing of the Company's Leases; and

iv. a Sales and Investment Solicitation Process ("SISP") Order approving the proposed SISP and authorizing the Applicants to commence that Process immediately.

The Stay of Proceedings should be Extended

17. Sections 11.02(2) and 11.02(3) of the *CCAA* provide that the Court may order a stay of proceedings for any period that the Court considers necessary, if the Court is satisfied that circumstances exist that make the order appropriate and the applicant has acted, and is acting, in good faith and with due diligence. I am so satisfied.

18. The activities of the Applicant, supported by the Monitor, are set out in the Second Bewley Affidavit, the Third Bewley Affidavit sworn March 21, 2025, the First Report of the Monitor and the Supplement to the First Report dated March 21, 2025.

19. A continued stay of proceedings is clearly necessary here to stabilize the activities and operations of the Applicants while the SISP, Lease Monetization and proposed Liquidation processes are underway. Such stabilization is necessary in order to maximize the chances of recovery for stakeholders.

20. The revised cash flow forecasts prepared by the Applicants in consultation with the Monitor reflect that the Applicants should have sufficient liquidity to fund operations and these proceedings through the proposed stay extension period.

21. The Monitor fully supports the proposed stay extension, and no party opposes the extension today.

22. Accordingly, the stay of proceedings is extended to and including May, 15, 2025.

JV Entity Rent Payments

23. As reflected in the Updated Cash Flow Forecast, the Company is expected to have sufficient liquidity to pay a monthly aggregate amount of $7 million plus applicable taxes to the JV Entities. Accordingly, the Applicants seek, with the consent and agreement of the JV Entities and the JV counterparty, RioCan, to modify the stay of proceedings with respect to the payment of rent owing to the JV Entities to permit the partial payments. They also seek approval of a corresponding JV Rent Charge to secure post-filing rent not paid by the Company to the JV Entities.

24. As described in my Initial Order Endorsement dated March 10, 2025, I extended the stay of proceedings for the 10-day period pending the comeback hearing to the defined Non-Applicant Stay Parties, including the RioCan-Hudson's Bay JV, in part. The proportion of rent payable by the Applicants to the JV Entities that was payable to landlords under the Head Leases would continue to be paid. This relief was reviewable at the comeback hearing, at which time I would determine, with the benefit of submissions (if any) from RioCan, whether the stay of proceedings, even if continued generally, should continue to apply to the JV Entities.

25. At the commencement of the comeback hearing, the Applicants submitted that the partial stay of proceedings should continue to apply to the JV Entities, pursuant to the exercise of my discretion authorized in section 11 of the *CCAA*. The Applicants relied on the decision of this Court in *Xplore, Inc. (Re),* 2024 ONSC 4593, at paras. 55-56, as a relevant example of circumstances in which the Court required certain suppliers to the debtor (in that case satellite providers) to continue supplying services to the debtor without being paid post-filing payments to which they were contractually entitled.

26. In that case, Kimmel, J. noted that section 11.01 of the *CCAA* does not specify that suppliers must be paid at the contractual rates post-filing. While the relief granted in that case applied to suppliers of satellite services, the Applicants here submitted that the rationale applies equally to landlords such as the JV Entities. They further submitted that even if the relief sought here was novel, it was, as observed by the Court in *Xplore*, at paras. 61-63, available "in appropriate circumstances within the framework and spirit of the applicable legislation."

27. The Applicants further submitted that in *Nordstrom Canada Retail Inc. (Re)*, this Court stayed and suspended the payment of certain post-filing amounts in respect of construction, fixturing and furnishing premises, which amounts would otherwise be due and payable under the sublease between the debtor as sublessee and the non-applicant stay parties as sublessor.

28. The Monitor supported the continuation of the stay of proceedings to the JV Entities, observing that "the stay would still require rent to be paid in full to third-party landlords, while staying "rent payments" that the Monitor believes can be fairly characterized as financing arrangements" (First Report, para. 8.15).

29. Also, at the commencement of the comeback hearing, RioCan opposed the continuation of the partial stay to the JV Entities, and requested that the Court amend the Initial Order to require

Hudson's Bay to pay all post-filing occupancy rent to the JV Entities for use in occupation of leased or subleased premises on the same basis as all landlords providing space to Hudson's Bay.

30. RioCan submitted that there was long-standing precedent for the proposition that post-filing rent should be paid to landlords providing leased premises to a debtor company. It further submitted that there was no reason for this Court to exercise its discretion to continue the partial stay on the basis that the counterparty to the Hudson's Bay leases, in this case, the relevant JV Entities, were partially owned (in most cases, majority-owned) by Hudson's Bay or related entities.

31. The structure of the joint venture is summarized in the Application materials, the First Report, and briefly in my Endorsement dated March 10 in respect of the Initial Order (para. 45). As described above, the stay of proceedings did not apply to that portion of the payments made by Hudson's Bay to the JV Entities which was payable by the JV Entities to the relevant landlords. It applied only to that portion of the payments made by Hudson's Bay to the JV Entities, which was retained by them and not paid over to the relevant landlords.

32. In any event, I need not determine the issue since the Applicants and RioCan have now reached an agreement, which is not opposed by any other party (including, for greater certainty, the JV Entities), and which is recommended by the Monitor.

33. Accordingly, it is not necessary for me to make a finding today as to whether the payments by Hudson's Bay to the JV Entities are wholly in the nature of "rent" payable to a landlord or whether they include a "financing" component. I do observe that while the JV Entities (sub-landlords) are not wholly owned by the Company, neither are they complete strangers in the sense of being third party landlords. The JV is majority-owned by Hudson's Bay to the extent of approximately 78%. The nature of the relationship between the parties and the precise terms of the contractual and other arrangements may be relevant to the analysis of whether and to what extent such payments are in the nature of rent for premises or not.

34. The agreement now reached by the parties contemplates that Hudson's Bay will pay the monthly aggregate amount of $7 million plus applicable taxes in respect of the JV Rent. The Company has sufficient liquidity to do so. This amount is intended to approximate the rent payable under the head leases (already being paid even under the partial stay), together with monthly debt servicing requirements and administrative expenses incurred in the ordinary course and payable under the applicable Leases to which Hudson's Bay is a party.

35. This monthly amount will be payable on the same terms as those applicable to all other Leases provided for in the ARIO, except that to the extent that any JV Lease is disclaimed or terminated, the JV monthly amount shall automatically be reduced by an amount equal to the *pro rata* amount attributable to such JV Lease relative to all other JV Leases, and there will be an adjustment for the period March 1, 2025 to and including March 7, 2025, the date of the Initial Order.

36. In addition, the agreement provides that any post-filing rent not paid by the Company to the JV Entities would be secured by a new JV Rent Charge in favour of the JV Entities. That JV

Rent Charge would rank fourth in the waterfall that applies to Property other than the Loan Parties' Property behind the Administration Charge in first position, the KERP Charge in second position, and the Directors' Charge to the maximum amount of $13,500,000, with the balance of the quantum of the Directors' Charge in the amount of $35,700,000 ranking behind the JV Rent Charge. The JV Rent Charge would rank fifth in the waterfall that applies to the Loan Parties' Property, all as set out in the materials.

37. I am satisfied that this consensual resolution of the issue by the Applicants and the JV Entities, which is not opposed by the JV Lenders and is recommended by the Monitor, is appropriate in the circumstances of this case. The JV Rent Charge is limited to that which is necessary to cover unpaid amounts that would otherwise have been payable to the JV Entities in the ordinary course.

Co-Tenancy Stay

38. The Applicants also request an order that the extended stay of proceedings would continue to apply to third party "co-tenants". At the initial *ex parte* hearing of this Application on March 7, 2025, I was prepared to grant the co-tenancy stay for the initial 10-day period to maintain the status quo and stability for that short period of time. However, I specifically noted in my reasons for the Initial Order that I had concerns about the evidence in the record supporting such a stay, and that it would be addressed further at the comeback hearing. I stated in those reasons the following:

> 62. The proposed stay would also apply to co-tenants. Many retail leases provide that tenants have certain rights against their landlords which rights are triggered upon the insolvency of an anchor tenant or an anchor tenant ceasing operations at the location of the co-tenancy.
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> 63. The Applicants are requesting that the stay here apply to any rights that tenants or occupants may have against the owners, operators, managers and landlords of the commercial properties where Hudson's Bay stores are located that arise as a result of the insolvency by Hudson's Bay Canada, the granting of the proposed Initial Order, or any actions taken by the Applicants pursuant thereto. This is supported by the Proposed Monitor.
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> 64. I recognize that such relief has been granted by other Courts in retail insolvencies pursuant to the broad discretion given to the court under sections 11 and 11.02(1) of the *CCAA* to make an initial order on "any terms that it may impose". See, for example, *Re T. Eaton Co.*, 1997 CarswellOnt 1914 (Gen. Div.), *Target Canada Co. (Re),* 2015 ONSC 303 at paras. 44 - 48, and *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422 at paras 33 - 35.
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> 65. The rationale is that extending the stay of proceedings in such a manner prevents a so-called "run on the bank" in the sense that many other co-tenants might seek, as a result of this proceeding, to terminate their own leases with landlord locations where Hudson's Bay currently operates. As observed by the Court in *Target* at para. 44, if tenants were permitted to exercise these co-tenancy rights during the stay, the claims of the landlord

against the debtor company could greatly increase, with the potentially detrimental impact on the restructuring efforts of the debtor company.

66. In the particular and unique circumstances of this case, and given the prominent nature of the business of Hudson's Bay, both generally in the retail landscape across Canada and specifically at various shopping mall locations, I am prepared to grant that relief today for the initial stay period to ensure stability of operations.

67. However, and consistent with the approach adopted by the Court in *Target*, to the extent that the affected parties wish to challenge the broad nature of this stay, such can be addressed at the comeback hearing: *Target*, at para. 48.

68. I would add that, in my view, such co-tenancy stays are representative of relief that lies towards the limit of the judicial discretion permitted by ss. 11 and 11.02 of the *CCAA* and should generally be granted only in relatively unique circumstances and where justified on the evidence before the Court.

69. Such stays suspend the enforcement of contractual rights of parties that are quite remote to the present proceeding and the insolvency of the debtor on which it is based. Such co-tenancy stays operate, in practical terms, to protect and stabilize the operations not of the debtor, but of landlords who are contractual counterparties to the debtor (i.e., through retail leases). Those landlords are not insolvent. While I appreciate that the object of such stays is to minimize the risk of that very event occurring, such stays represent a significant compromise of rights of third parties.

70. There are many examples of stays that compromise or suspend the rights of third parties. Usually, however, those third parties are counterparties in contracts or have some other relationship with the debtor. Here, such co-tenancy stays suspend the rights of parties one step even further removed from the insolvency of the debtor - other retail tenants who have their own leases with the landlords. The only factor joining those parties to the debtor is that they have a common landlord at a common retail location.

71. The exercise of termination rights by those other retail tenants sought to be suspended must depend on those termination rights existing in the first place according to the terms of the leases in place between those other tenants and the landlord. If a co-tenant bargained for the right to terminate its own lease in the event that an anchor tenant at the same location ceased operations or became insolvent, and its landlord agreed to give that co-tenant such a right (presumably for economic consideration), the landlord made the business decision to take risks in respect of other retail tenancies based on its own assessment of the risk of insolvency of the anchor tenant.

72. Finally in this regard, it does not automatically follow that even if a co-tenant terminated its lease, the landlord would have a valid claim against the debtor in the insolvency proceeding.

> 73. Accordingly, in my view, an analysis of whether the rights of co-tenants should be suspended pursuant to a stay of proceedings will be fact-specific in each case, and if granted at the initial order hearing of an application, will be subject to review at the comeback hearing as noted by the Chief Justice in *Target*.
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> 74. I would add that it will also be subject to review at any time throughout the proceeding by a co-tenant pursuant to the seven day comeback clause in the Commercial List Model Order pursuant to which any affected party may request that the Court review, amend or vacate an initial order at any time.

39. As noted above, the Applicants now seek the extension of this co-tenancy stay through to and including May 15, 2025.

40. The challenge today is that there is no evidence in the record to support such a co-tenancy stay from the Applicants or from any landlords, owners or managers at locations where Hudson's Bay stores operate.

41. In particular, there is no evidence of any of the following:

a. whether any co-tenants of Hudson's Bay in fact have contractual rights in their own leases to terminate (or abate their rent or take other action as a result of this insolvency);

b. whether any co-tenants have sought to trigger such rights;

c. what effect such actions, even if taken, would have on the relevant landlord, owner or manager;

d. whether any such landlord, owner or manager would seek to assert any claim over against Hudson's Bay as part of a future claims process (since the stay of proceedings against the Company is in effect); or

e. what effect any of this might have on the Applicants.

42. Any such claim over would likely be an unsecured contingent claim by that landlord, owner or manager in any event.

43. Accordingly, and given the absence of evidence in the record to justify a co-tenancy stay continuing, it is not granted. To be clear, this is without prejudice to the right of the Applicants to seek such a stay in the future.

Proposed Path Forward: Three Concurrent Processes

44. The Applicants seek the approval of three distinct processes to canvass the market for potential restructuring, refinancing or going-concern sale opportunities, each with a view to maximizing recovery for stakeholders in respect of available assets:

a. a Liquidation Sale for the liquidation of the Inventory and Furniture, Fixtures and Equipment ("FF&E");

b. a Lease Monetization Process for the sale, transfer or assignment of Leases to third parties; and;

c. a Sale and Investment Solicitation Process ("SISP") to identify opportunities:

i. to sell all, substantially all, or certain portions of the property or business of the Non-Applicants State Parties or their Business; and/or

ii. for investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Applicants and the Non-Applicant Stay Parties or their business.

45. The Applicants propose to commence the Liquidation Sale immediately at all retail stores while concurrently implementing the Lease Monetization Process and the SISP.

46. I will address each of these in turn.

The Liquidation Sale and Related Issues

47. The Court has jurisdiction to approve a sales process authorizing the sale of assets of a debtor pursuant to section 36 of the *CCAA*. Courts have previously exercised this jurisdiction, and done so particularly in the context of retail insolvencies.[1]

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[1] See, for example, *Danier Leather Inc (Re)*, 2016 ONSC 1044 at paras. 10, 27 [*Danier*]; *Payless ShoeSource Canada Inc and Payless ShoeSource Canada GP Inc,* 2019 ONSC 1305 at para. 9; *Comark Holdings Inc (Re)*, (January 21, 2025), Ont SCJ [Commercial List], Court File No CV-25-00734339-00CL (Endorsement of Justice Cavanagh) at para. 7 [*Comark Endorsement*], endorsing *Comark Holdings Inc (Re)*, (January 17, 2025), Ont SCJ [Commercial List], Court File No CV-25-00734339-00CL (Realization Process Approval Order) [*Comark Order*]; *Ted Baker Canada Inc et al v Yorkdale Shopping Centre Holdings Inc,* (May 3, 2024), Ont SCJ [Commercial List], Court File No CV-24-00718993-00CL (Endorsement of Justice Black) at paras. 13−17 [*Ted Baker Endorsement*], endorsing *Ted Baker Canada Inc et al v Yorkdale Shopping Centre Holdings Inc (Re),* (May 3, 2024), Ont SCJ [Commercial List], Court File No CV-24-00718993-00CL (Realization Process Approval Order) [*Ted Baker Order*]; *Mastermind GP Inc (Re)*, (November 30 2023), Ont SCJ [Commercial List], Court File No CV-23-00710259-00CL (Endorsement of Justice Steele) at paras. 10−18 [*Mastermind Toys Endorsement*], endorsing *Mastermind GP Inc (Re)*, (November 30 2023), Ont SCJ [Commercial List], Court File No CV-23-00710259-00CL (Realization Sale Approval Order) [*Mastermind Order*]; *Nordstrom Canada Retail Inc (Re),* 2023 ONSC 1814 at paras. 6−13 [*Nordstrom Endorsement*], endorsing *Nordstrom Canada Retail Inc (Re),* (March 20, 2023), Ont SCJ [Commercial List], Court File No CV-23-0069561900CL (Liquidation Sale Approval Order) [*Nordstrom Order*]; *Bed Bath & Beyond Canada Ltd (Re),* 2023

48. When considering whether to approve a proposed sales process, the Court will consider the criteria set out in *Nortel*[2]:

a. is a sale transaction warranted at this time?

b. will the sale benefit the whole economic community?

c. do any of the creditors of the debtor have a bona fide reason to object to a sale? and

d. is there a better viable alternative?

49. Courts have also evaluated proposed retail realization processes in light of the criteria set out in section 36(3) of the *CCAA*[3], namely:

a. whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

b. whether the Monitor approved the process leading to the proposed sale or disposition;

c. whether the Monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a bankruptcy;

d. the extent to which creditors were consulted;

e. the effects of the proposed sale or disposition on creditors and stakeholders; and

f. whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.

50. I am satisfied that all of these factors are met here. The proposed Liquidation Consulting Agreement, when taken together with the Sale Guidelines, provides the framework for the Liquidation Sale to be conducted by the Liquidation Consultant.

51. The proposed Sale Commencement Date is immediate: Monday, March 24, 2025. In addition, six stores would be removed from the Liquidation Sale: 176 Yonge Street, Toronto, Ontario; Yorkdale Shopping Centre, Toronto, Ontario; Hillcrest Mall, Richmond Hill, Ontario; downtown Montréal, Québec; Carrefour Laval, Québec; and Pointe-Claire, Québec.

ONSC 1230 at paras. 7−9 [*BBB Endorsement*], endorsing *Bed Bath & Beyond Canada Ltd (Re),* (February 21, 2023), Ont SCJ [Commercial List], Court File No CV-23-00694493-00CL (Sale Approval Order) [*BBB Order*]; *Sears Canda Inc (Re)*, (July 18, 2017), Ont SCJ [Commercial List], Court File No CV-17-11846-00CL (Liquidation Sale Approval Order); *Target Canada Co (Re)*, 2015 ONSC 846 at paras. 2−5 [*Target Endorsement*], endorsing *Target Canada Co (Re)*, (February 4, 2015), Ont SCJ [Commercial List], Court File No CV-15-10832-00CL (Approval Order – Agency Agreement).

[2] See *Danier,* at para. 23, citing *Nortel Networks Corp (Re)*, 2009 CanLII 39492 (ONSC) at para. 49 [*Nortel*].

[3] *Comark Endorsement,* at para. 6; *Ted Baker Endorsement,* at para. 14.

52. While the Company currently proposes to conduct the Liquidation Sale at all remaining retail stores, it retains the ability to amend the list of liquidating stores on certain terms and conditions (such as, for example, if a going-concern transaction materializes). In addition, inventory at the Distribution Centres will be available for liquidation as part of the Sale, with inventory in the Scarborough Distribution Centre being utilized for e-commerce sales.

53. I am satisfied, given the limited liquidity available to the Company, that the orderly realization of its inventory and FF&E (furniture, fixtures and equipment) as soon as possible is necessary to maximize recoveries and limit operating costs. The proposed Liquidation Consulting Agreement will implement the Liquidation Sale immediately to attempt to achieve that.

54. I am also satisfied that the process to select the Liquidation Consultant was reasonable. The mandate is significant: as at January 31, 2025, the Company had approximately $415 million of inventory reflected on its balance sheet. The Liquidation Sale will be conducted concurrently at 90 stores across seven provinces, three distribution centres in two provinces, and in respect of e-commerce sales from the fourth distribution Centre in Ontario. Approximately 9400 employees must be coordinated. All of this must occur over an extremely expedited Sale Term commencing March 24, 2025 and continuing only until June 15, 2025.

55. The Initial Order authorizes the Applicants, in consultation with the Monitor, to solicit proposals from third parties in respect of the liquidation. The proposal from the Hilco JV was provided to the Applicants and the Monitor as a joint venture among four leading liquidators. The Monitor and Reflect identified and inquired of other potential liquidators who had the resources and experience necessary to conduct a sale of this magnitude, and none was prepared to submit a proposal.

56. The Applicants believe that the Liquidation Consultant has the expertise and knowledge of their business, merchandise and store locations that is necessary to conduct the Liquidation Sale. It has the resources to commence the proposed sale process immediately.

57. The Monitor was consulted and directly involved throughout the process. It recommends the engagement of the Liquidation Consultant and also the terms of the proposed Liquidation Consulting Agreement which it submits are reasonable in the circumstances.

58. The fee structure outlined in the Liquidation Consulting Agreement is designed to attempt to align the compensation to be paid to the Liquidation Consultant with stakeholder outcomes: fees are based on a percentage of proceeds, meaning that the Liquidation Consultant is incentivized to maximize the value of inventory and FF&E.

59. The unredacted Liquidation Consulting Agreement, including the fee structure, is in the record and available to stakeholders. It is fully discussed in the First Report of the Monitor. I am satisfied that it is appropriate, and it is approved.

60. The proposed Sales Guidelines set out the mechanics pursuant to which the Liquidation Sale is to be conducted. They were designed by the Applicants and the Liquidation Consultant in consultation with the Monitor with a view to maximizing recovery for the benefit of creditors while

ensuring that the Liquidation Sale takes place in an orderly manner. They are fully described in the Second Bewley Affidavit beginning at para. 107 and in the First Report of the Monitor. They are also substantially similar to guidelines for inventory realization sales approved by this Court in other retail insolvencies, including *Nordstrom* and *Bed Bath & Beyond Canada*.

61. In my view, the proposed Sales Guidelines are appropriate, and they are approved, with certain amendments as I directed at the conclusion of the hearing of these motions. Those related to various technical elements of the Guidelines.

The Lease Monetization Process and Retainer of the Broker

62. The proposed Lease Monetization Process is intended to enable the Applicants to pursue all avenues and possible offers for the sale, transfer or assignment to third parties of the Leases of the Applicants and the Non-Applicants Stay Parties. The Applicants may withdraw any Lease from the Process in consultation with the Lease Monetization Consultant, the Monitor and the Agents.

63. The Lease Monetization Process contemplates two phases:

a. Phase 1: a solicitation of interest by Interested Bidders so that they may be considered for qualification as a Qualified LOI Bidder and invited to participate in Phase 2; and

b. Phase 2: the submission of Qualified Bids by Qualified LOI Bidders, accompanied by a deposit equal to 10% of the purchase price.

64. Successful Bidders must complete all agreements no later than May 15, 2025, and a transaction approval motion is contemplated to be heard no later than June 17, 2025. Accordingly, the timeline is short.

65. The Lease Monetization Process provides for the marketing and potential sale of the lease interests of the Applicants and the Non-Applicants Stay Parties. To state the obvious, an Applicant (or any other party) cannot sell an asset it does not own. As described in the Application materials, the interest of the Applicants in some leases is less than 100%.

66. Accordingly, nothing in the Lease Monetization Process or the approval thereof permits or requires any amendments to the terms of any Lease without the consent of the applicable landlord; obligates any landlord to negotiate with any bidder regarding any such amendment; or determines that the interests in the Leases being marketed are capable of being transferred by the Applicants or the Non-Applicants Stay Parties.

67. In simple terms, the objective of the process is to identify any manner of possible transactions for the monetization of Leases whether or not they are wholly owned by the Applicants, pursuant to a process that is fair and transparent to all participants and affected parties. Bidders know at the outset that if they submit an offer, for example, for a Lease in which the Applicants own only a proportionate interest, such an offer may very well require the consent of the counterparty landlord before it is capable of acceptance. There is no representation or guarantee

that such a consent may be forthcoming. No party opposes approval of either the Lease Monetization Process or the retainer of Oberfeld.[4]

68. In the circumstances, and given the conditions described above, I am satisfied that the proposed Lease Monetization Process is appropriate.

69. The Lease Monetization Process will be conducted by Oberfeld in the capacity of Lease Monetization Consultant under the supervision of the Monitor. At the time this motion was originally brought, a different broker had been identified by the Company and the Monitor to fulfil that role. However, that broker withdrew as a result of a conflict of interest with certain landlords who are counterparties to Company leases.

70. As a result, the Company, with the support of the Monitor, seeks approval today of the Lease Monetization Process and the retainer of Oberfeld according to the terms of an agreement that would be materially consistent with the originally proposed Lease Monetization Consulting Agreement fully disclosed in the Application materials and discussed in the First Report of the Monitor.

71. The key terms, including fees, of the proposed Lease Monetization Consulting Agreement are described in the materials. They include a work fee payable on a monthly basis of $80,000 up to a maximum aggregate amount of $240,000 fully creditable against payment of any success fee. A one-time gross success fee per Lease would be payable conditional upon the successful closing of a sale, transfer or assignment of any Lease equal to 10% of the net proceeds payable to Hudson's Bay up to a maximum aggregate amount of $175,000.

72. The Monitor was involved in the negotiation of the compensation and considers such compensation to be appropriate and reasonable in the circumstances.

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[4] I observed above that no party opposed the Lease Monetization Process. The Landlords, acting cooperatively and generally in unison (as is expected on the Commercial List, absent good reason not to), do not oppose the Process, but requested that this Endorsement reflect that "nothing contained in any of the Orders issued today as it relates to any of the Leases involving the JVs purports to determine the issue of the Applicants' rights to do anything other than conduct the liquidation sale on the premises in accordance with the liquidation sale guidelines and corresponding Order (which is not opposed by the relevant landlords for that narrow purpose only). The marketing of the Leases pursuant to the Lease Monetization Process will be without prejudice to the complete reservation of rights to all parties on the issue of the ability of the Applicants to transact in respect of leases to which the Applicants are not parties." As I advised the parties at the conclusion of the hearing of these motions, this language is agreeable, save for the last sentence. To be clear, the reservation of rights about the ultimate sale of Leases is clear, but it is equally clear that the marketing process will commence immediately as described above.

73. In the circumstances, and given the imperative nature of commencing the Lease Monetization Process immediately to maximize potential recoveries for stakeholders, I am prepared to approve the Lease Monetization Process on this basis.

74. In my view, the *Nortel* criteria set out above and the relevant factors set out in section 36(3) of the *CCAA* support the approval of the proposed Lease Monetization Process. The terms, timelines and mechanics are reasonable and appropriate in the circumstances.

75. Any successful bids will be subject to approval of the Court, at which time the Court will have an opportunity to review the performance of the Lease Monetization Process and ensure that all relevant factors have been complied with.

76. I am also satisfied that the retainer of Oberfeld is appropriate and should be approved. That firm is experienced, is not subject to any conflicts, and its retainer is supported by the Landlords. The Monitor submits that the proposed terms of the engagement are reasonable and represent market rates. I am satisfied that the retainer will be accretive to maximizing recoveries in the circumstances of this case with respect to the marketing of Leases. It is approved.

The SISP

77. The proposed SISP is intended to solicit interest in, and opportunities for: a) one or more sales or partial sales of all, substantially all, or certain portions of the Property or the Business; and/or b) an investment in, restructuring, recapitalization, refinancing or other form of reorganization of the Applicants and the Non-Applicant Stay Parties or their business.

78. The SISP contemplates the solicitation of bids for both standalone assets such as intellectual property and/or portions of the business that can be carried on as a going concern, following a sale or restructuring. It will be conducted by Reflect, in its capacity as the Financial Advisor, under the supervision of the Monitor.

79. The proposed SISP is similar Court, customized so as to maximize chances of success in the particular circumstances of this case.

80. The proposed timelines are compact but reasonable. Qualified Bidders must submit final binding proposals by April 30, 2025. An auction may be held, if needed, by May 16 2025. The particulars of the SISP and related procedures and protocols are fully set out in the materials.

81. I am satisfied that the proposed SISP should be approved. It satisfies the *Nortel* criteria and the relevant factors set out in section 36(3) of the *CCAA*. Any successful bids will be subject to court approval at which time the Court can review the execution and implementation of the SISP and ensure that these factors have been satisfied.

Financing Agreement – Property Insurance

82. Hudson's Bay owes approximately $5,400,000 under its property insurance policy which was recently renewed, but in respect of which the premium is due in full the week of March 24, 2025. I am satisfied that it is important for the preservation of Property and the management of

liability risks related to that Property, that the insurance coverage be maintained. No party opposes the continuation of that coverage.

83. It follows that the applicable premium, which the Applicants submit and the Monitor agrees, represents market rates, must be paid. The options are to either pay it in full, now, or to finance it over time, thereby relieving immediate pressure on cash flows and liquidity.

84. For this reason, the Applicant seeks approval of the Financing Agreement to provide the additional liquidity by allowing Hudson's Bay to pay the amount of $1,600,000 now, followed by monthly instalments of $431,000 until the balance is paid.

85. The Monitor recommends, no party opposes, and I agree that the relief sought is reasonable and appropriate in the circumstances since the additional liquidity. It will be of significant assistance for the Applicants and the stakeholders.

The KERP and Continued Sealing Order

86. KERPs have also been recognized as to their utility and importance, and approved, in numerous debtor-in-possession proceedings and receivership proceedings pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, and the *Courts of Justice Act*, R.S.O. 1990, c. C.43, in addition to the *CCAA*.

87. All of those statutes are, however, silent with respect to the approval of KERPs. Jurisdiction to approve a KERP is found in the general power of the Court under section 11 of the *CCAA* to make any order it sees fit in a *CCAA* proceeding: See, for example: *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at para. 14, quoting with approval from *Aralez Pharmaceuticals Inc*., *(Re)*, 2018 ONSC 6980; *Cinram International Inc., (Re)*, 2012 ONSC 3767 and *Grant Forest Products Inc., (Re)*, [2009] O.J. No. 3344.

88. The factors that the Court considers in approving a KERP include:

a. the approval of the Monitor;

b. whether the beneficiaries of the KERP are likely to consider other employment opportunities if the KERP is not approved;

c. whether the beneficiaries of the KERP are crucial to the successful restructuring of the debtor company;

d. whether a replacement could be found in a timely manner should the beneficiary elect to terminate his or her employment with the debtor company; and

e. the business judgment of the board of directors of the debtor

See: *Just Energy Group Inc et al*, 2021 ONSC 7630 at para. 7; and *Aralez Pharmaceuticals Inc (Re)*, 2018 ONSC 6980 at para. 29.

89. Three criteria underlie the factors applicable to approving a KERP or similar incentive program in an insolvency proceeding: (a) arm's length safeguards; (b) necessity; and (c) reasonableness of design. Within these parameters, the scope of the KERP and the amounts allocated to beneficiaries are both highly fact dependent, based on the needs of the particular *CCAA* debtor and the role of the beneficiaries in the business and the restructuring: *Just Energy* at para. 137; *Aralez* at para. 30; *Walter Energy (Re),* 2016 BCSC 107 at para. 57 and *Re Timminco Limited*, 2012 ONSC 2515 at para. 15.

90. I am satisfied that the proposed KERP is necessary and appropriate here. It was developed in consultation with the Monitor, and is intended to authorize retention payments to certain individuals who have been identified as key employees in the implementation of the processes described above.

91. I am satisfied that the key employees are essential to the continued operation of the Business and in particular, will be needed to assist in the SISP, the closing of any transaction thereunder assuming that occurs, the Liquidation and the Lease Monetization.

92. There are approximately 121 key employees, with an aggregate of approximately $2.7 million in potential KERP payments. Those payments will be received by the key employees on the earlier of September 30, 2025, or the date on which the liquidation is complete and their services are no longer required. The entitlement of a key employee under the KERP is forfeited if they resign or have their employment terminated with just cause prior to payment.

93. It is important to note that a number of the identified key employees are store level or distribution centre level employees, such as is to be expected in a retail insolvency like this.

94. The Monitor supports the approval of the KERP and submits that it will provide stability to, and facilitate, an orderly wind down. The list of key employees is appropriate in the view of the Monitor. I am satisfied that the key employees are likely to consider other employment opportunities. If the KERP is not approved, and that, given the scale and complexity of the business, it will be beneficial if they remain employed to minimize the impairment of the proposed Liquidation Sale, Lease Monetization Process and SISP.

95. The corresponding KERP Charge is therefore appropriate for the same reasons, and to provide security for the obligations under the KERP. It has a maximum amount of $3 million and is proposed to rank behind the Administration Charge. In my view, the KERP Charge is appropriate and reasonable and is approved.

96. Subsection 137(2) of the *Courts of Justice Act* provides for the Court's authority to grant a sealing order. It provides that the Court may order that any document filed in a civil proceeding be treated as confidential, sealed and not part of the public record.

97. The Supreme Court of Canada in *Sherman Estate v Donovan,* 2021 SCC 25, at para. 38, recast the test from *Sierra Club of Canada v. Canada (Minister of Finance)* 2002 SCC 41 (CanLII):

> The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core principles that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking the court to exercise discretion in a way that limits the open court presumption must establish that:
>
> a. court openness poses a serious risk to an important public interest;
>
> b. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
>
> c. as a matter of proportionality, the benefits of the order outweigh its negative effects.
>
> Only where all of these prerequisites have been met can a discretionary limit on openness - for example, a sealing order, a publication ban, an order excluding the public from the hearing, or a redaction order - properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments (*Toronto Star Newspapers Ltd. v. Ontario*, 2005 SCC 41, [2005] 2 S.C.R. 188 at paras. 7 and 22).

98. Under the first branch of the three-part test, an "important commercial interest" is one that can be expressed in terms of the public interest in confidentiality. The Supreme Court was clear that the interest in question cannot merely be specific to the party requesting the order and must be one which can be expressed in terms of a public interest in confidentiality.

99. Here, as in *Sierra Club*, the Applicants submit that the exposure of the information sought to be sealed includes the names of individual employees and the compensation for each to the extent of the applicable KERP entitlement, such that the commercial interest affected can be characterized more broadly as the general commercial interest of preserving confidential information as well as maintaining the sanctity of contract. I agree.

100. Further, in *Sierra Club* (at paras. 59-60), the Supreme Court recognized that the preservation of confidential information constitutes a sufficiently important commercial interest to pass the first branch of the test, provided however that certain criteria were met. The applicant must demonstrate that the information in question has been treated at all relevant times as

confidential and that on a balance of probabilities its proprietary, commercial and scientific interest could reasonably be harmed by the disclosure of the information. The information must be of a "confidential nature" in that it has been "accumulated with a reasonable expectation of it being kept confidential" as opposed to "facts which a litigant would like to keep confidential by having the court room doors closed".

101. I am also satisfied that the second requirement is met since the order sought is necessary to prevent the risks identified above and is an important public interest.in addition, reasonably alternative measures will not prevent the risk.

102. The third requirement is also met. While these three documents would be kept confidential, the balance of the materials in the Application (which constitutes the overwhelming proportion of the information) would not be sealed, and available to the public. The gist of the issues would remain available to the public. On balance, I am satisfied that the benefits of the requested order outweigh its negative effects. The small amount of information over which confidentiality is sought (i.e., individual employee names and their compensation) to be maintained is discrete, proportional and limited.

103. I am satisfied that there is a public interest in both maximizing recoveries in this insolvency and in protecting the integrity of a Court-ordered SISP, Lease Monetization process and Liquidation Sale. There are no reasonable alternatives to sealing the material and the information contained therein is discrete, proportional and limited. It follows that the salutary effects of sealing the material outweigh the deleterious effects of doing so.

104. This Court has previously granted sealing orders with respect to KERPs: *Just Energy Corp (Re)*, 2021 ONSC 1793 at paras. 123−124; *Indiva Limited et al,* 2024 ONSC 3691 at paras. 28−29; and *Tacora Resources Inc (Re)*, 2023 ONSC 6126 at paras. 160−161.

105. For all of these reasons, the test set out by the Supreme Court of Canada in *Sierra Club* and refined in *Sherman Estate* is met.

The Repayment of the DIP Facility

106. The Applicants seek approval to repay the DIP Obligations in the near term. As set out above, and as reflected in the cash flow variance report of the Monitor, sales of inventory since March 7, 2025 have been higher than anticipated, with the result that the Applicants no longer require further DIP financing to commence the Liquidation Sale, Lease Monetization, and the SISP. Finally in this regard, the Applicants have sufficient funding to repay the outstanding DIP obligations.

107. Given that the DIP Facility is no longer needed in connection with the *CCAA* proceedings, the Monitor supports the relief sought by the Applicants. I observe that the repayment of all outstanding DIP obligations is also supported by RioCan and numerous other stakeholders. It is, however, opposed by certain pre-filing lenders. Their position, in short, is that the terms of the DIP Facility approved on March 7 as part of the Initial Order provided that all pre-filing indebtedness of the Applicants was to be repaid before the DIP Facility was repaid.

108. I am satisfied that the repayment of all DIP obligations should be repaid from cash on hand which has in turn been realized from the sales of merchandise. The principal reason supporting this result, as submitted by the Monitor, is the minimization of unnecessary expenses and costs, including the continuing accrual of interest payable. The draws on the DIP Facility total approximately $16 million. Interest continues to accrue on that amount until repaid. It is critical to the maximization of recoveries for stakeholders that expenses be minimized.

109. Given the unexpectedly robust sales and corresponding revenues earned by the Applicants in the recent days, there is sufficient liquidity to repay the principal outstanding plus accrued interest. In my view, it is to the benefit of the Applicants, the stakeholders and the restructuring process, that these amounts be repaid and further interest costs (which are significant, given the applicable interest rate of CORRA + 11.5% or approximately 14.5%), which can be avoided, should be avoided.

110. In my view, the objections of certain prefiling lenders are without merit. They are not prejudiced and nor are they worse off by the repayment of outstanding DIP obligations, as a result of both the minimization of continued interest expenses and the maximization of chances of recoveries as a result of this restructuring.

111. Moreover, the DIP indebtedness authorized by the Initial Order could be repaid (together with interest and costs) if, on the comeback hearing, a replacement DIP facility was approved and the DIP Facility here was no longer needed. While no replacement DIP facility is required, as noted above, the same result has been achieved - the DIP Facility approved as part of the Initial Order is no longer needed and can and should be repaid together with interest and costs.

112. I approve the repayment of the DIP indebtedness pursuant to the discretion given to this Court under section 11 of the *CCAA*. I am satisfied that such is appropriate and reasonable in the circumstances. This insolvency proceeding is extremely fluid at the moment. The minimization of additional costs and expenses is critically important.

Restructuring Support Agreement

113. The Applicants seek approval of a Restructuring Support Agreement ("RSS") between and among the Loan Parties, the ABL Agent, the FILO Agent and the Term Loan Agent.

114. The Applicants submit that the RSS will allow the Company to continue to use its cash which is subject to the security of the secured lenders who are parties to the RSS, among others. Distilled to its core, the argument is that the collateral for the indebtedness owing to the secured lenders is the very inventory now being sold to generate liquidity. While that liquidity is accretive to a successful restructuring, it results from the corresponding erosion of the security for the outstanding secured debt of the Company.

115. The terms of the RSS in favour of the ABL Lenders, FILO Lenders and Term Loan Lenders are substantially similar to what was included in the DIP Term Sheet.

116. However, approval of the RSS is opposed by certain stakeholders who submit, in the main, that there are no benefits to the Applicants derived therefrom, and particularly no benefits that justify the onerous terms and obligations of the Applicants in the RSS given that DIP financing is no longer required. The stakeholders further submit that they may have additional objections to the RSS, but that they have not had time to review the document in any detail since it was just distributed to the service list shortly before the commencement of the hearing of these motions.

117. I am sympathetic to the fact that, notwithstanding that *CCAA* proceedings invariably constitute "real-time litigation" and that circumstances evolve very rapidly, as they have here, the parties on the Service List have had an extremely limited opportunity to review the terms of the RSS.

118. The Applicants and the Monitor agree that no immediate prejudice to the parties or to the process arises if approval of the RSS is adjourned for a short period of time.

119. Accordingly, and in the circumstances, I am deferring the proposed approval of the RSS to give stakeholders a realistic opportunity to consider their positions with respect thereto. That element of these motions is adjourned to be considered at the next hearing in this application, scheduled for Wednesday, March 26, 2025.

Result and Disposition

120. For all of the above reasons, I signed the four orders, amended in accordance with the directions given by me at the conclusion of the hearing of these motions, and directed that the Court-appointed Monitor distribute them to the Service List immediately.

121. The orders have immediate effect without the necessity of issuing and entering.

Osborne J.

Note re: Corrections. On April 4, 2025, counsel drew to the attention of the Court four typographical errors contained in the Endorsement as released on March 26, 2025. Those have been corrected as follows. In paragraph 62, the reference to "the Pathlight Agent" has been corrected to refer to "the Agents". In the Footnote to paragraph 67, the language has been corrected to reflect the updated agreement among the parties as to the reservation of rights. In paragraph 80, the timelines have been corrected to refer to April 30 and May 16, respectively, rather than April 15 and April 29. In paragraph 119, the reference to the next hearing has been corrected to refer to March 26, rather than September 26. No other changes, additions or deletions have been made. Osborne J. 4/4/25.