

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

BETWEEN:

**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 1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD.,
1330096 B.C. LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY
COMPANY, 1329608 B.C. UNLIMITED LIABILITY COMPANY, 2745263
ONTARIO INC., 2745270 ONTARIO INC., SNOSPMIS LIMITED, 2472596
ONTARIO INC., AND 2472598 ONTARIO INC.**

Applicants

**FACTUM OF PATHLIGHT CAPITAL LP
(Lease Assignment Motion – August 28, 2025)**

August 21, 2025

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman

Tel: 416.862.4908
Email: mwasserman@osler.com

Jeremy Dacks

Tel: 416.862.4923
Email: jdacks@osler.com

Kevin O'Brien

Tel: 416.862.4861
Email: kobrien@osler.com

Dave Rosenblat

Tel: 416.862.5673
Email: drosenblat@osler.com

Lawyers for Pathlight Capital LP

PART I - OVERVIEW

1. On March 7, 2025, the Applicants sought and obtained an initial order (the “**Initial Order**”), together with certain related relief, pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”). At the Comeback Hearing, the Applicants, with the support of the Monitor, the FILO Agent and Pathlight Capital LP (“**Pathlight**”),¹ obtained this Honourable Court’s approval of (among other things) a Lease Monetization Process.²

2. This motion is the culmination of the Court-ordered Lease Monetization Process. The Applicants seek this Court’s approval of the Successful Bid that emerged from the Lease Monetization Process – a bid for twenty-five of the Applicants’ store leases (the “**CW Leases**”) submitted by Ruby Liu Commercial Investment Corp. (“**Central Walk**”) as purchaser, in the form of an Asset Purchase Agreement (the “**Central Walk APA**”). The Applicants seek an order (the “**CW Leases Assignment Order**”) approving the Central Walk APA and, among other things, assigning the right, title and interest of the Applicants in the CW Leases to Central Walk (the “**CW Transactions**”). The CW Transactions will generate substantial value – approximately \$69.1 million (less applicable cure cost adjustments) – for the Applicants’ estate in the form of the purchase price.

3. Pathlight has a first priority security interest in 19 of the 25 CW Leases. Pathlight supports the CW Transactions and the requested CW Leases Assignment Order on the basis that these transactions represent the best (and only) available means, as tested through a robust Lease Monetization Process, to achieve meaningful recoveries from the CW Leases in order to start

¹ The Pathlight Agent and the Pathlight Lenders are referred to collectively as “Pathlight” below, except where otherwise specified.

² Capitalized terms have the same meaning as in the [Affidavit of Franco Perugini sworn July 29, 2025](#), Applicants’ Motion Record dated July 29, 2025, Tab 2 [Perugini Affidavit], unless otherwise indicated.

paying down the outstanding indebtedness owed to Pathlight in the principal amount of US\$68,569,092.³ Closing of the CW Transactions would also result in additional recoveries to the FILO Agent from the six remaining leases, the proceeds from which are subject to the FILO Agent's first priority security interest.

4. The requested order is also in the best interests of the Applicants' other stakeholders, particularly their former employees, vendors and suppliers, as well as the communities where the CW Lease premises (the "**Premises**") are located. Approval of the CW Transactions is consistent with the objectives of the CCAA, with what is reasonable in all the circumstances and with the balancing of interests that is the hallmark of the CCAA.

5. This Court has the jurisdiction to grant the CW Leases Assignment Order, despite the opposition from the landlord counterparties (the "**Objecting Landlords**"), pursuant to its authority under section 11.3 of the CCAA. Section 11.3 exists to address this exact scenario – where a counterparty to a contract that a debtor company seeks to monetize is opposed to the transfer of the agreement. That the counterparty would not have voluntarily selected the assignee outside the CCAA context cannot be determinative in assessing what is appropriate or reasonable within the CCAA. Otherwise, section 11.3 would have no purpose.

6. Section 11.3 requires this Court to be satisfied regarding the financial wherewithal of Central Walk and that it is appropriate to assign the CW Leases to Central Walk. Both criteria are satisfied, on a balance of probabilities, by means of voluminous evidence. The standard is not perfection or guaranteed success, as this Court has stated on several occasions. Nor should it allow

³ See [Affidavit of Jennifer Bewley sworn March 7, 2025](#), Application Record, Tab 2 [Initial Bewley Affidavit] at para. 147. Also see the [Third Report of the Monitor dated May 9, 2025](#) [Third Report] which provides as follows at para. 8.1: "Pathlight Capital LP has advised the Monitor that the total principal amount owing under the Pathlight Credit Facility was understated by \$3 million in the initial affidavit of Jennifer Bewley sworn on March 7, 2025." In addition to principal, interest, fees and expenses continue to accrue.

contractual counterparties to subject the proposed assignee to more stringent requirements than were imposed on the assignor – they must simply be “appropriate”.

7. The expectations placed on a purchaser in a scenario such as this must also be reasonable and commensurate with the circumstances. A proposed purchaser in a CCAA sale process must invest enough funds and time in developing the transaction (and the related financial and operational plans) to demonstrate their *bona fides* as an appropriate assignee. However, where the transaction in question is not yet approved by the Court, a purchaser cannot and should not be expected to invest all of the resources and enter into the binding contractual relationships that would be required to operate in the post-approval period and to place those resources at risk if the Court does not approve the transaction. Where there is substantial opposition to a purchase transaction, the proposed purchaser is in a particularly difficult dilemma – the purchaser must satisfy the Court, in circumstances where the very existence (and in this case, the extent) of the opposition highlights the risk to the purchaser’s investment if the opposing parties succeed.

8. Pathlight accordingly submits that this Court should be mindful not to establish such a high bar to obtain an assignment order under section 11.3 of the CCAA that the powers granted under that section become effectively meaningless. Specifically, the bar to obtain such an order cannot be so high that it can effectively never be satisfied unless the affected contractual counterparty consents to the transaction in question. It also cannot be so high as to “chill the market” and prevent potential purchasers that could maximize value for the stakeholders of a debtor company from participating in a court-ordered sales process at all.

9. Pathlight does not intend to canvass all of the extensive and detailed evidence adduced by Central Walk, the Applicants and the Objecting Landlords. However, Pathlight submits that the extent of the financial evidence supporting Central Walk’s ability to perform the economic

requirements of the CW Leases and the evidence demonstrating appropriateness (e.g. the business plan, the steps already taken towards engaging the necessary expertise to operate the business and to line up supplier and other relationships) is commensurate with and may properly be viewed as materially more robust than the evidence that has satisfied this Court on other occasions.

10. Although the Objecting Landlords have sought to undermine Central Walk and its principal, Ms Liu, alleging that Central Walk's plans are unachievable and aspirational, this Court can and should accept the evidence that the business to be carried out in the Premises will be well-capitalized and supported by qualified personnel, including numerous senior personnel formerly employed by the Applicants. Moreover, Ms Liu, on behalf of Central Walk, has clearly and expressly committed to the Objecting Landlords and to this Court that Central Walk will comply with all the terms of the CW Leases, particularly the use clauses.

11. Central Walk's significant equity commitment is further backstopped by the commitment by Ms Liu to guarantee one year of rent for the Objecting Landlords and to make further financial contributions, as needed, to ensure the success of the venture. In fact, Ms Liu has shown herself to be responsive to concerns raised regarding her ability to satisfy the section 11.3 criteria by providing further financial and other assurances during the period leading up to the hearing of this motion.

12. It might be assumed that it would be beneficial to the Objecting Landlords, in today's challenging leasing environment, to have a financially strong tenant in the Premises without any change in use (thereby preserving the tenant mix in the particular shopping centre). However, the Objecting Landlords would nonetheless have this Court reject the CW Transactions.

13. The Objecting Landlords chose not to bid for the surrender of their respective CW Leases under the Lease Monetization Process. The evidence strongly indicates that they are seeking to

engineer a disclaimer of the CW Leases, without providing any value to the estate, with a view to obtaining the return of their below-market Leases for their benefit. Importantly, the Objecting Landlords stand to greatly benefit from the elimination of the Restrictive Development Covenants in the CW Leases and they seek to obtain such benefit without providing any compensation to the Applicants. Such a result not only deprives the debtor company of a key tool in the CCAA process, but it provides a windfall to the Objecting Landlords who would have had to pay to eliminate these covenants outside the CCAA context.

14. In addition to the ability of the proposed assignee to perform the assigned contracts, the objectives of the CCAA itself must be considered when applying section 11.3. It is appropriate to exercise this Court's jurisdiction in these circumstances in the interests of maximizing value not only for Pathlight, but for all the other stakeholders who stand to realize tangible and intangible benefits from the CW Transactions. If the CW Leases Assignment Order is granted, there is a reasonable prospect that Central Walk will succeed in its venture.

15. In any event, the Objecting Landlords are guaranteed to receive further rental payments while Central Walk pays for renovations to address long overdue repairs and improvements to the Premises for the benefit of the Objecting Landlords that would not have been undertaken by Hudson's Bay. The commercial reasonableness of the Objecting Landlords' position can only be explained by their obvious and ultimate intention – to eliminate Restrictive Development Covenants, redevelop the Premises or free themselves from below market leases for their sole benefit, to the detriment of the estate.

PART II - FACTS

16. Pathlight agrees with and relies on the facts set out in the submissions of the Applicants.

17. On December 23, 2024, Hudson's Bay, as borrower, entered into an amended and restated credit agreement with Pathlight Capital LP (the "**Pathlight Agent**"), as agent, and the Pathlight Lenders, as set out in the Pathlight Credit Agreement. Certain affiliates act as guarantors.⁴

18. As of March 7, 2025, the outstanding principal owing under the Pathlight Credit Facility was approximately US\$68,569,092. The Pathlight Credit Facility matured on May 1, 2025.⁵

19. The relative priorities between the Revolving Credit Facility, the FILO Credit Facility and the Pathlight Credit Facility are governed by a second amended and restated intercreditor agreement dated as of December 23, 2024 (the "**Intercreditor Agreement**").⁶ Pursuant to the Intercreditor Agreement, the Pathlight Agent has priority over the ABL Agent as to certain leasehold interests in real property and the fixtures, accounts, and proceeds related thereto (the "**Pathlight Priority Collateral**").⁷ The Pathlight Priority Collateral includes 19 of the 25 CW Leases that are the subject of the requested CW Leases Assignment Order.⁸

20. The Applicants have expressed the view that Pathlight is the "fulcrum" creditor in these proceedings.⁹

⁴ Initial Bewley Affidavit, para. 146.

⁵ Initial Bewley Affidavit, paras. 147, 152; Third Report, para. 8.1.

⁶ Initial Bewley Affidavit, para. 162.

⁷ Initial Bewley Affidavit, para. 163.

⁸ The Pathlight Priority Collateral includes all CW Leases listed at Exhibit C to the Perugini Affidavit other than the CW Leases for Guildford Town Centre, Mapleview Centre, Masonville Place, Oshawa Centre, St. Laurent Shopping Centre and Southgate Shopping Centre.

⁹ Perugini Affidavit, paras. 16, 45.

PART III - ISSUES AND THE LAW

21. Pathlight's submissions are focused on the issue of whether the CW Leases Assignment Order should be granted. Pathlight agrees with and supports the submissions of the Applicants with respect to the other issues that are relevant to this motion. Pathlight adds the following.

A. This Court Has Jurisdiction Under Section 11.3 of the CCAA

22. Section 11.3(1) of the CCAA provides that, on appropriate notice, this Court may make an order assigning the rights and obligations of the debtor company under an agreement to "any person who is specified by the court and agrees to the assignment". There are certain limited exceptions to this principle. However, there is no dispute that the CW Leases do not represent by their nature rights or obligations that cannot be assigned, nor do the rights or obligations arise under any of the excluded categories of agreement specified in section 11.3(2).¹⁰

(a) Consent of the Counterparty is Not Expressly or Implicitly Required

23. On the plain wording of section 11.3(1), it is the assignee that must agree to the assignment; there is no requirement for the counterparty to agree. As submitted further below, it is well-accepted that the purpose of section 11.3 is to provide jurisdiction to this Court to authorize an assignment of an executory contract where the counterparty does not agree, with a view to maximizing the value of the debtor's estate and, where available, to support a solution that preserves some aspect of the debtor's business.

24. At the time that section 11.3 was added to the CCAA in 2009, legislators recognized that the purpose of section 11.3 is to protect and enhance the value of the debtor company by allowing

¹⁰ CCAA, s. 11.3(1) and (2).

the debtor company to assign existing agreements to third parties for value. The court acts as a disinterested third party in making a determination of the appropriateness of the assignment to the assignee on the facts of the case. The court's intervention is only strictly necessary where the counterparty refuses to agree to the assignment.¹¹

25. This principle applied even before section 11.3 was enacted in 2009. In *Playdium*, this Court granted an order, in reliance on its broad statutory jurisdiction under the CCAA, assigning a key contract to a new entity over the objections of the counterparty.¹² The Court granted the order, even though the counterparty was entitled to reasonably withhold consent to an assignment under the terms of the contract and the Court would have concluded that the counterparty's refusal, viewed outside the CCAA context, was reasonable.¹³

26. In *Playdium*, the Court addressed the objection by the counterparty that the assignor was in default of certain provisions in the agreement, noting that it was not clear when the assignee could bring itself into compliance. In the Court's view, this matter could be negotiated post-assignment and if it could not, the counterparty could rely on its contractual remedies. To the extent that the counterparty's objection related to an opportunity to enter into a better deal with another party, this would not be a reasonable basis for the counterparty to refuse consent to the assignment under the terms of the lease, nor would it be a proper reason to allow the objection to stand in the

¹¹ Industry Canada, [Bill C-55: Clause by Clause Analysis](#), Bill Clause No. 128.

¹² *Playdium Entertainment Corp., (Re)*, [2001 CanLII 28281](#) (ON SC) [*Playdium*], additional reasons [2001 CanLII 28282](#) (ON SC).

¹³ *Playdium* at paras. 16, 22.

way of the assignment under the CCAA.¹⁴ As a result, it was not a factor that the CCAA court considered.¹⁵

27. These findings are important for two reasons: (a) an assignment can be approved even if some negotiation among the assignee and the counterparty may be necessary in the post-closing period; and (b) a refusal to consent that is based on an ulterior motive such as a better deal with a third party (*Playdium*) or a redevelopment opportunity (in the case of the Objecting Landlords) (i.e. a factor not related to the financial health or other characteristics of the assignee) should not carry any weight in the analysis.¹⁶

28. There are several examples in the case law decided since section 11.3 was enacted where this Court has granted an order requiring the assignment of a contract despite the objections of a counterparty¹⁷ or where consent has not been obtained or sought.¹⁸

29. The statutory purpose of section 11.3 of assisting debtor companies to maximize value for stakeholders and preserve some aspect of their business should not be undermined by establishing such high legal and evidentiary hurdles for debtor companies seeking to rely on section 11.3 that

¹⁴ *Playdium* at paras. 28-31.

¹⁵ See also *Hayes Forest Services Ltd. (Re)*, [2009 BCSC 1169](#) at para. 31, in which the Court cited *Playdium* in noting that “the CCAA Court can approve an assignment even if I reach the conclusion that it is not unreasonable for [the counterparty] to withhold its consent.”

¹⁶ In *Urbancorp Cumberland I GP Inc. (Re)*, [2020 ONSC 7920](#), this Court confirmed the jurisdiction to grant an assignment order in a receivership. The Court accepted the argument of the receiver that the jurisdiction to make the order existed, even where the contract in question allowed the counterparty to act unreasonably in determining whether to consent to an assignment: see paras. 13, 35, 41-44, and 54.

¹⁷ See *Dundee Oil and Gas Limited (Re)*, [2018 ONSC 3678](#) [*Dundee*]; *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#) [*Urthecast*].

¹⁸ *Veris Gold Corp. (Re)*, [2015 BCSC 1204](#) [*Veris Gold*]; *TBS Acquireco Inc. (Re)*, [2013 ONSC 4663](#).

contractual assignments for value are effectively precluded except where the counterparty consents or otherwise approves of the proposed assignee.

(b) Section 11.3 Criteria Require a Balancing of Competing Interests

30. Section 11.3(3) sets out three factors, among others, that the Court is to consider in deciding whether to make a forced assignment order over the objection of a counterparty. The CCAA does not stipulate the respective weight to be given to any of these factors. They include:

- (a) whether the monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.¹⁹

31. As is the case with many determinations under the CCAA that are based on the Court's discretion, including an assessment of "appropriateness", the determination of whether to grant an order under section 11.3 requires a balancing of the competing interests at play.²⁰

32. As the British Columbia Supreme Court noted, the CCAA context brings additional considerations into play over and above whether the refusal of the counterparty to consent is "reasonable", viewed outside the CCAA context. Whether the proposed assignment is "appropriate" must be analyzed in light of the objectives of the CCAA.²¹ Decisions such as

¹⁹ CCAA, s. 11.3(3).

²⁰ *Donnelly Holdings Ltd. (Re)*, [2024 BCSC 275](#) [*Donnelly*] at paras. 53, 56, citing *Veris Gold* at para. 58 and *Dundee* at para. 29.

²¹ *Donnelly* at paras. 51-52, citing *Century Services v. Canada (Attorney General)*, [2010 SCC 60](#) at para. 70.

Playdium demonstrate that what is appropriate (or “reasonable”) outside the CCAA context may not be determinative of what is appropriate within the CCAA.

33. It is well-accepted that an orderly wind-down and liquidation of an insolvent debtor is a legitimate objective of the CCAA.²² As the Supreme Court of Canada held in *Callidus*, the objectives of the CCAA are multi-faceted, including preserving and maximizing the value of a debtor’s assets, ensuring fair and equitable treatment of the claims against the debtor, protection of the public interest and balancing the costs and benefits of restructuring or liquidating the debtor company.²³ In a liquidating CCAA, the objectives of maximizing recovery for creditors assume paramount importance.²⁴

34. The Court’s power under section 11.3 has been described as “extraordinary”, since it requires parties to an executory contract to accept performance from a party that they never agreed to deal with.²⁵ A debtor need not, however, “establish that the assignment is ‘absolutely required’ to the reorganization, although the *degree of importance* will no doubt be a factor in the balancing exercise.”²⁶ Since there is no other monetization transaction available for the CW Leases that would provide any recovery for the Applicants’ stakeholders, the approval of the CW Transactions and the CW Leases Assignment Order is indisputably important to this liquidating CCAA.

35. Pathlight recognizes that this Court must ensure that the treatment of stakeholders is “fair” in the circumstances. Such stakeholders include the counterparties to contracts that the debtor

²² See 9354-9186 *Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at paras. 42-45 [*Callidus*].

²³ *Callidus* at para. 40.

²⁴ See, for example, *Callidus* at para. 40.

²⁵ See, for example, *Dundee* at para. 27.

²⁶ *Donnelly* at para. 58 (emphasis in original).

company seeks to monetize – in this case, the Objecting Landlords.²⁷ However, such stakeholders also include Pathlight who advanced credit to the debtor company on a secured basis,²⁸ not to mention the employees, suppliers and other community stakeholders who stand to benefit if the CW Transactions are approved.

36. In balancing all of the relevant interests, it cannot be overlooked that the Objecting Landlords had every opportunity to participate in the Lease Monetization Process and to obtain a surrender of their leases in exchange for value. None of the Objecting Landlords did so. By contrast, Central Walk submitted a bid for and was determined to be the Successful Bidder with respect to three leases for premises owned by its affiliates – *i.e.* Tsawwassen Mills in Tsawwassen Mills, British Columbia; Mayfair Shopping Centre in Victoria, British Columbia and Woodgrove Centre in Nanaimo, British Columbia.²⁹ Upon approval of this transaction on June 23, 2025, the purchase price for the assignment of these Leases – CDN \$6 million in total – accrued to the Applicants’ estate for the benefit of stakeholders.³⁰

37. Additionally, Central Walk has committed, as required under section 11.3(4) of the CCAA, to pay all required “cure” costs.³¹

38. Pathlight received a copy of the Monitor’s Report with respect to this motion one day before this factum was due. In that report, the Monitor comments on certain matters related to the

²⁷ *Donnelly* at para. 56, citing *Dundee* at para. 29.

²⁸ Creditors are among the stakeholders that are specifically included in the interests to be taken into account in the balancing exercise: see *Donnelly* at para. 56, citing *Dundee* at para. 29.

²⁹ Perugini Affidavit, para. 18.

³⁰ See Fifth Updated Cash Flow Forecast at Appendix J to the [Seventh Report of the Monitor dated July 29, 2025](#).

³¹ Perugini Affidavit, para. 41.

proposed approval of the CW Transactions; however, the Monitor states that it does not approve the proposed assignment.

39. In the context of this contested litigation with voluminous evidence, Pathlight submits that this Court should give little to no weight to the Monitor's views with respect to whether the CW Leases Assignment Order should be granted. The Monitor's role is not to make legal conclusions or to opine on the ultimate legal issue before the Court but to provide information, and in particular financial information, that may be helpful to the parties and to the Court as it considers the issues before it. The Monitor does not play the role of a "gatekeeper" with respect to whether an Order under section 11.3 should be issued, and the Monitor's views are only one factor that the Court is to consider. The Monitor itself admits that its view is not determinative. Whether the order can and should be granted is a matter that is solely for the Court to decide.

40. Furthermore, the Monitor has noted that Central Walk has the financial wherewithal to meet the financial obligations under the CW Leases. The Monitor's views on the viability of the purchaser and its business plan and whether the purchaser has relevant retail experience should be given no weight. In fact, many of the factors now being raised by the Monitor existed at the time that the Monitor approved of the company pursuing and signing this transaction as the Successful Bid in the Lease Monetization Process and there has been significant expense incurred in connection therewith.

B. Central Walk Is Able to Perform the Obligations

41. This factor under section 11.3 focuses on the assignee's financial stability and the ability of the assignee to satisfy the economic requirements under the assigned contract. As this Court

noted in *Dundee*, the evidence does not need to rise to the level of guaranteeing the assignee's success.³²

42. Central Walk has provided voluminous evidence regarding its financial ability to perform the obligations under the CW Leases. Not only is Central Walk to be capitalized by means of an initial equity investment in the amount of \$400 million, Ms Liu has provided a personal guarantee for one year's rent.³³ In addition, Ms Liu's evidence is that, if additional funds are required, she has the means to obtain them and will do so.³⁴ Of the \$400 million, approximately \$120 million will be used on leasehold improvements.³⁵

43. Central Walk will commence paying rent, common area maintenance charges, property taxes and any related charges under the CW Leases immediately as of the date of closing of the assignment, notwithstanding that the stores will remain dark for approximately six to twelve months while Central Walk conducts leasehold improvements and renovations.³⁶

44. The fact that the proposed assignee is a "shell" company, or a special purpose company that does not yet have operations, should not preclude an assignment to that company, provided the proposed assignee satisfies the court that it has the means to perform its financial obligations.

³² *Donnelly* at para. 66, citing *Dundee* at para. 30 and *UrtheCast* at para. 44.

³³ [Reply Affidavit of Weihong Liu sworn August 12, 2025](#), Reply Motion Record of Ruby Liu Commercial Investment Corp. dated August 12, 2025, Tab 1 [Liu Reply Affidavit] at para. 8; Reply Affidavit of Adam Zalev sworn August 12, 2025, [Applicants' Reply Motion Record dated August 12, 2025](#), Tab 3 at para. 27.

³⁴ Liu Reply Affidavit, para. 7.

³⁵ Perugini Affidavit, paras. 20, 70.

³⁶ Perugini Affidavit, para. 21.

For example, in *UrtheCast*, the court was satisfied regarding the assignee's financial wherewithal on the basis that the assignee's new venture would be viable and capitalized.³⁷

45. A similar issue arose in *Dundee*. In that case, the purchaser was "largely a shell company" at the time of the proposed assignment. The evidence also demonstrated that, unlike here, substantially all of the purchase price would be debt-financed. Thus, there would be little to no equity in the purchaser and significant leverage that would have to be serviced entirely from cash flow. The Court concluded that, although these factors were relevant, the evidence demonstrated that the test was met, including the evidence that cash flow was historically solid.³⁸

46. Pathlight submits that the evidence before this Court provides a reasonable basis for believing that Central Walk can and will perform the financial obligations under the CW Leases, despite the fact that it is embarking on a new business venture. As the British Columbia Supreme Court noted in *UrtheCast*, it was "reasonable" for the Court to assume that a sophisticated purchaser would not be proceeding if it did not have confidence that it could satisfy the economic projections that it had presented. Among other things, the proposed assignee had invested a significant amount of money in conducting diligence and on professional fees.³⁹ This conclusion exemplifies the standard that must be applied in evaluating the section 11.3 factors, consistent with the objectives of the CCAA and the need to ensure that section 11.3 does not require perfection.

³⁷ *UrtheCast* at para. 54. In *Donnelly*, by contrast, the Court refused to approve the proposed assignment on the basis that the assignee was a shelf company and that there was no evidence as to how the assignee would finance the purchase price (among other issues): at para. 68. See Cross-Examination Transcript of Sharon Hamilton dated August 18, 2025, p. 30, q. 109, line 23 to p. 31, q. 112, line 19 for an example of a successful forced assignment where the purchaser was a numbered company.

³⁸ *Dundee* at paras. 24-26, 33-37.

³⁹ *UrtheCast* at para. 50.

47. Pathlight submits that the evidence that Central Walk can and will perform the obligations under the CW Leases should satisfy this Court on a balance of probabilities, viewed in light of all the circumstances of this CCAA proceeding and applying the appropriate standard.

C. “Appropriate” to Assign the CW Leases to Central Walk

48. There is no formula for determining whether the assignment of one or more contracts to an assignee under section 11.3 is “appropriate”. This determination requires an evaluation of all the circumstances.

(a) Intention to Comply with the CW Leases

49. Ms Liu, on behalf of Central Walk, has expressly committed to complying with the terms of the CW Leases, as is, including the “use” clauses.⁴⁰ Furthermore, there is no relief being sought with respect to such clauses, nor does the Central Walk APA include a requirement that any relief therefrom be agreed to by the landlords.

50. To the extent that her vision includes features that are currently not permitted under the “use clauses” of the CW Leases, Ms Liu is not intending to breach those clauses. Instead, she recognizes that negotiations with the Objecting Landlords would be required to the extent that any variation in the CW Leases’ terms is necessary.⁴¹

⁴⁰ Perugini Affidavit, paras. 19, 68; [Affidavit of Weihong Liu sworn July 29, 2025](#), Supporting Motion Record of Ruby Liu Investment Corp. dated July 29, 2025, Tab 1 [Liu Affidavit] at para. 29.

⁴¹ Liu Affidavit, para. 38.

(b) Same Type of Business

51. One of the key factors in favour of the CW Transactions is that Ms Liu and Central Walk will be carrying out a substantially similar business to that formerly carried out by the Applicants. There will therefore be no change in tenant mix or quality in the shopping centres where the Premises are located.⁴² In this sense, the Objecting Landlords are not being asked to accept a counterparty that carries out an entirely different business from the Applicants' former business.

52. Ms Liu, as principal of Central Walk, does not have direct experience operating a large retail department store business, nor does Central Walk have an established business of this nature. However, this is not a requirement of section 11.3. While it can be a relevant factor, there is no fixed means by which this criterion can be satisfied. In *UrtheCast*, the lack of direct experience of the proposed assignee was not a barrier to the requested relief since the proposed assignee had retained experts to assist it.⁴³

53. There is ample evidence of Ms Liu's relevant past experience as a successful business person. Specifically, Ms Liu has a demonstrated track record in a number of business ventures, including as owner/operator of three shopping centres in British Columbia where Hudson's Bay was a tenant.⁴⁴

54. Moreover, Ms Liu has demonstrated her willingness to engage the professionals and advisors that are necessary to support her new business venture, despite the uncertainty with respect to whether the proposed transaction will close. These professionals include a number of

⁴² Liu Affidavit, para. 37.

⁴³ *UrtheCast* at para. 51.

⁴⁴ See for example, Perugini Affidavit, para. 18; Liu Affidavit, paras. 13-14.

former senior officers from key areas of the Applicants' business who have committed to leading the operations of Central Walk's business, if the CW Transactions are approved. Several of these senior personnel have had input into the Central Walk business plan.⁴⁵ Central Walk also intends to leverage additional resources, such as the experience of its sister group of companies.⁴⁶

55. Several experienced witnesses have expressed the view in this proceeding that the Central Walk business plan, or relevant aspects of it, can reasonably be achieved, subject to ordinary-course execution risks.⁴⁷ Such evidence, from experienced personnel, should be sufficient to satisfy the requirements of this aspect of section 11.3.

56. Central Walk's commitments, including those of Ms Liu, demonstrate her *bona fides* and are reasonable in light of the uncertainty with respect to whether the CW Leases Assignment Order will be granted. A potential assignee such as Central Walk cannot and should not be expected to enter into all of the contractual commitments necessary to operate the business in the assigned Premises while there remains uncertainty as to whether the CW Transactions will be approved. Ms Liu's investment in preparing for this business opportunity, despite the risk that it may never come to fruition, should be given material weight by this Court.

(c) CW Leases Assignment Order Consistent with Objectives of CCAA

57. Consistent with the objectives of the CCAA, the CW Leases Assignment Order is also "appropriate" as it provides employment opportunities for a substantial number of former Hudson

⁴⁵ Perugini Affidavit, paras. 18, 77-79, 96; see also [Affidavit of Elias Louis Ampas sworn July 29, 2025](#), Applicants' Motion Record dated July 29, 2025, Tab 3 [Ampas Affidavit] at paras. 25, 28.

⁴⁶ Ampas Affidavit, paras. 30-32.

⁴⁷ For example, see Ampas Affidavit, paras. 29, 34.

Bay employees across all 25 stores.⁴⁸ It will also generate value for the Applicants' broader stakeholder group, including the Applicants' former suppliers, lenders and the Objecting Landlords themselves, not to mention the communities where the Premises are located.⁴⁹

58. The CW Transactions therefore offer tangible and intangible benefits to the other stakeholders who stand to benefit from Central Walk's business plan, all of which will be lost if the CW Leases Assignment Order is denied.⁵⁰

59. The very significant prejudice to Pathlight and to these other stakeholders if the CW Leases Assignment Order is not granted must be given considerable weight in the balancing exercise. Pathlight submits that the interests of the creditors and other stakeholders in the completion of the CW Transactions outweigh any alleged prejudice to the Objecting Landlords.

(d) Landlords Are Not Acting in Accordance with CCAA Principles

60. The Objecting Landlords would have this Court dismiss Ms Liu and Central Walk as doomed to fail and her business plan as unrealistic and unachievable. Their approach to this motion – which effectively seeks to raise as many barriers as possible to Central Walk's success – sets an impossibly high bar for the debtor company (and for Central Walk) to satisfy. For example, according to the Objecting Landlords, Ms Liu and Central Walk are required to commit to levels of capital expenditure on store renovations and repairs that were not previously required of the debtor company by the Objecting Landlords.⁵¹

⁴⁸ Perugini Affidavit, paras. 22, 24, 80-81.

⁴⁹ Perugini Affidavit, paras. 24-25, 92-93, 95, 103.

⁵⁰ Perugini Affidavit, para. 104.

⁵¹ [Affidavit of Franco Perugini sworn August 12, 2025](#), Applicants' Reply Motion Record dated August 12, 2025, Tab 1 [Perugini Reply Affidavit] at para. 40. Many of the Objecting Landlords confirmed this fact on cross-

61. This is not the proper approach to a proposed assignment under section 11.3 of the CCAA. The Court in *Dundee* noted that contractual counterparties are not expected to improve their situation by reason of an assignment. The desire to ensure that an assignee is reasonably fit and proper “should not morph into an exercise in patching up contracts previously negotiated by requiring financial covenants and safeguards never before required.”⁵²

62. Moreover, the Objecting Landlords would have this Court presume that Ms Liu and Central Walk will not make every good faith effort to create a successful business venture, and instead suggest that the Objecting Landlords themselves will not work in good faith with Ms Liu to facilitate her success. For example, the Objecting Landlords imply that they will strictly require Ms Liu and Central Walk to follow all internal processes – *e.g.* the requirement to provide technical drawings and permits to the landlord 90 days before construction begins – even where doing so would jeopardize the projected timelines for store reopening and where the Objecting Landlords could work cooperatively to ensure that such approvals are forthcoming within a shorter time.⁵³

63. Pathlight submits that, in the spirit of the CCAA, this Court cannot assume that Ms Liu will not follow through on her representations to this Court, nor can this Court base its decision on assumptions that the Objecting Landlords will not work in good faith with Central Walk to facilitate successful store re-openings. In fact, in order for section 11.3 of the CCAA to provide meaningful benefits to debtor companies, an objecting counterparty must be required by the Court to work cooperatively and in good faith with the assignee following the assignment.

examination. For example, see Cross-Examination Transcript of Jay Camacho (QuadReal) dated August 15, 2025, p. 61, line 23, to p. 62, line 6.

⁵² *Dundee* at para. 38.

⁵³ For example, see para. 101(a) of the [Affidavit of Rory MacLeod affirmed August 9, 2025](#), Responding Motion Record of The Cadillac Fairview Corporation Limited dated August 9, 2025, Tab 1.

64. The Objecting Landlords certainly have not offered any alternative solution that would assist in furthering the objectives of this CCAA proceeding. To the contrary, the Objecting Landlords acknowledged on cross-examination the scarcity of available department store anchor tenants, and ongoing vacant tenancies in anchor tenant locations from previous department store insolvencies. Further, in many instances, anchor tenant locations are being re-demised into multiple locations or are left vacant.⁵⁴ Instead, they would simply have the Applicants disclaim the CW Leases, leaving the Objecting Landlords free to pursue their own plans for the Premises, without providing any value whatsoever to the Applicants or to their stakeholders who will be prejudiced.⁵⁵ The Objecting Landlords' positions, including referencing standards they did not historically apply to Hudson's Bay as a basis for disputing the transaction, cannot be considered to be appropriate in the circumstances.

(e) Objecting Landlords' Motives Are Questionable

65. The true rationale for the Objecting Landlords' position is not obviously apparent, given the challenging environment for retail leasing, particularly in the wake of major retail insolvencies such as Target and Nordstrom. As described above, there are many examples of the disclaimed retail space from those insolvencies that remain vacant a number of years later.⁵⁶ It might be presumed that it would be in the interests of the Objecting Landlords to have a financially strong tenant in the Premises that will carry on the same type of business as the Applicants. Yet on cross-

⁵⁴ Cross-Examination Transcript of Theresa Warnaar (KingSett) dated August 14, 2025 [Warnaar Transcript], p. 57, q. 215, lines 6-9; Cross-Examination Transcript of Rory MacLeod dated August 18, 2025, p. 15, lines 3-11, p. 44, lines 7-19, p. 48, line 19 to p. 49, line 5; Cross-Examination Transcript of Ruby Paola (Ivanhoe) dated August 18, 2025 [Paola Transcript], p. 26, lines 9-21; Cross-Examination Transcript of Nadia Corrado (Oxford) dated August 18, 2025, p. 14, line 17 to p. 15, line 1, p. 19, line 24 to p. 20, line 12, p. 22, line 24 to p. 23, line 3; Cross-Examination Transcript of David Wyatt (Morguard) dated August 18, 2025, p. 32, line 1 to p. 33, line 22.

⁵⁵ See Perugini Affidavit, para. 26.

⁵⁶ Perugini Affidavit, paras. 27-29, 105-117. This was confirmed by the Objecting Landlords on cross-examination.

examination, representatives for the Objecting Landlords stated that regardless of the strength of Central Walk's business plan, they would view it as a non-starter because they are not an established retailer.⁵⁷ The fact that the Objecting Landlords are mounting a strenuous campaign against the CW Transactions supports the inference, which is also borne out by the evidence, that they are objecting for the purpose of securing certain extraneous benefits for themselves.

66. This Court has been alert to the potential for opportunism in failing to grant an assignment order as part of a purchase transaction under the CCAA. For example, in *Dundee*, Dunphy J. noted that insolvency is not always a "catastrophe" for contractual counterparties; sometimes it is a "godsend". It may free a contractual counterparty from a long-term contract and allow the counterparty to re-price the contract (or, in this case, move forward without its restrictions). This poses a risk to creditors of the CCAA debtor, who risk seeing the debtor lose critical assets while the counterparty benefits from an unexpected windfall.⁵⁸

67. In this case, the CW Leases contain numerous restrictions on the Objecting Landlords' ability to redevelop their respective locations, which would fall away should the leases be either terminated or disclaimed.⁵⁹ In order to be free of these limitations outside the CCAA context, the Objecting Landlords would have to provide significant value to their tenant. Further, a number of the Objecting Landlords have already made public proposed redevelopment plans, including redeveloping their properties for mixed-use commercial, office, residential and recreational uses.⁶⁰

⁵⁷ See Paola Transcript where Ms Paola stated that a new start-up business could not fit the role of an anchor tenant: p. 12, lines 18-22. See also Warnaar Transcript, p. 33, q. 128, lines 7-12.

⁵⁸ *Dundee* at para. 28.

⁵⁹ Perugini Reply Affidavit, paras. 6-15. Also see Cross-Examination Transcript of Patrick Sullivan (Primaris) dated August 15, 2025, p. 45, line 17 to p. 52, line 1 with respect to Primaris' press release following the disclaimer of certain of its leases in this CCAA proceeding.

⁶⁰ Perugini Reply Affidavit, para. 12. On cross-examination, the Objecting Landlords described their redevelopment plans for spaces in various malls, which included plans for non-retail uses.

One could therefore reasonably assume that the Objecting Landlords' objections have less to do with Central Walk itself, or any actual desire to find another department store they deem more suitable to act as a new anchor tenant, and more to do with securing a means to reacquire their leases at no cost to themselves and with no value flowing to the Applicants' estate. Were the Objecting Landlords truly concerned with the alleged state of disrepair of the former HBC stores (as they cite in their critiques of the sufficiency of the funding Central Walk has allocated to improve them), it would stand to reason that they would have issued at least one notice of default to HBC under the leases during their time operating their stores. There is no evidence demonstrating they ever did so.⁶¹

(f) Not "More of the Same"

68. Finally, this Court should not be of the view that Ms Liu's business venture is doomed to fail in the same manner that the debtor company's business failed. Even though Ms Liu proposes to embark on a substantially similar business to that of the debtor company, there are a number of key differences that should lead this Court to conclude that the new business venture will not fail for the same reasons that Hudson's Bay did.

69. In particular, Central Walk will be well-capitalized and, unlike the debtor company, debt-free.⁶² This means that the Central Walk business is being established on a stable financial footing without the legacy liabilities that impeded the profitability of Hudson's Bay. Moreover, should additional funding be required to achieve store reopening, there is capacity to raise debt-financing.

⁶¹ Perugini Reply Affidavit, para. 25. This was confirmed by the Objecting Landlords on cross-examination.

⁶² [Affidavit of Adam Zalev sworn July 29, 2025](#), Applicants' Motion Record dated July 29, 2025, Tab 4 at para. 36.

Similar considerations were given considerable weight in the Court's reasoning for granting the requested order in *UrtheCast*.⁶³

70. For all of the reasons set out above, Pathlight submits that the CW Leases Assignment Order should be granted on the basis that the section 11.3 criteria are satisfied and that the Order is in the best interests of a number of key stakeholders, consistent with the objectives of the CCAA.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of August, 2025.



OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8
Lawyers for Pathlight Capital LP

⁶³ *UrtheCast* at paras. 49-50, 54.

SCHEDULE “A”

LIST OF AUTHORITIES

Cases

1. 9354-9186 *Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#)
2. *Century Services v. Canada (Attorney General)*, [2010 SCC 60](#)
3. *Donnelly Holdings Ltd. (Re)*, [2024 BCSC 275](#)
4. *Dundee Oil and Gas Limited (Re)*, [2018 ONSC 3678](#)
5. *Hayes Forest Services Ltd. (Re)*, [2009 BCSC 1169](#)
6. *Playdium Entertainment Corp., (Re)*, [2001 CanLII 28281](#) (ON SC)
7. *Playdium Entertainment Corp., Re*, [2001 CanLII 28282](#) (ON SC)
8. *TBS Acquireco Inc. (Re)*, [2013 ONSC 4663](#)
9. *Urbancorp Cumberland I GP Inc. (Re)*, [2020 ONSC 7920](#)
10. *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#)
11. *Veris Gold Corp. (Re)*, [2015 BCSC 1204](#)

Secondary Sources

12. Industry Canada, [Bill C-55: Clause by Clause Analysis](#)

I certify that I am satisfied as to the authenticity of every authority.

Date August 21, 2025



Signature

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

- (a)** an agreement entered into on or after the day on which proceedings commence under this Act;
- (b)** an eligible financial contract; or
- (c)** a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

- (a)** whether the monitor approved the proposed assignment;
- (b)** whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c)** whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company’s insolvency, the commencement of proceedings under this Act or the company’s failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

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

Court File No: CV-25-00738613-00CL

**AND IN THE MATTER OF HUDSON'S BAY COMPANY ULC
COMPAGNIE DE LA BAIE D'HUDSON SRI et al.**

Applicants

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

PROCEEDING COMMENCED AT TORONTO

FACTUM OF PATHLIGHT CAPITAL LP

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908
Email: mwasserman@osler.com

Jeremy Dacks (LSO# 41851R)

Tel: 416.862.4923
Email: jdacks@osler.com

Kevin O'Brien (LSO# 51568U)

Tel: 416.862.4861
Email: kobrien@osler.com

Dave Rosenblat (LSO# 64586K)

Tel: 416.862.5673
Email: drosenblat@osler.com

Lawyers for Pathlight Capital LP