

**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**

B E T W E E N:

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 1 INC., HBC  
BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTREPOINT  
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

**FACTUM OF THE FILO AGENT  
(FILO AGENT'S MOTION: RETURNABLE AUGUST 28, 2025)**

August 21, 2025

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5

**Matthew B. Lerner (55085W)**

Tel: (416) 865-2940

Email: [mlerner@litigate.com](mailto:mlerner@litigate.com)

**Brian Kolenda (60153N)**

Tel: (416) 865-2897

Email: [bkolenda@litigate.com](mailto:bkolenda@litigate.com)

**Christopher Yung (62082I)**

Tel: (416) 865-2976

Email: [cyung@litigate.com](mailto:cyung@litigate.com)

**Julien Sicco (82939D)**

Tel: (416) 640-7983

Email: [jsicco@litigate.com](mailto:jsicco@litigate.com)

Lawyers for ReStore Capital, LLC,  
in its capacity as FILO Agent

TO: **SERVICE LIST**

## TABLE OF CONTENTS

<b>PART I - INTRODUCTION.....</b>	<b>1</b>
<b>PART II - SUMMARY OF FACTS .....</b>	<b>3</b>
<b>The FILO Lenders' recovery erodes.....</b>	<b>4</b>
<b>The Applicants and Pathlight take a high-risk gamble on the Central Walk Transaction with the FILO Lenders' priority collateral.....</b>	<b>6</b>
<b>The prejudice to the FILO Lenders' recoveries from delay has been substantial.....</b>	<b>8</b>
<b>PART III - STATEMENT OF ISSUES, LAW &amp; AUTHORITIES .....</b>	<b>9</b>
<b>A. The Monitor should be granted super-monitor powers to reign in this proceeding</b>	<b>10</b>
<b>B. The FILO Lenders should not bear any costs associated with the delay in the consummation of the Central Walk Transaction.....</b>	<b>16</b>
<b>C. The Court should order a distribution to the FILO Agent of at least \$4 Million .....</b>	<b>24</b>
<b>D. Central Walk Transaction Deposit.....</b>	<b>25</b>
<b>PART IV - ORDER REQUESTED.....</b>	<b>25</b>

## PART I - INTRODUCTION

1. The FILO Agent and the first-ranking secured FILO Lenders have watched as the Applicants have generated recoveries well in excess of their uncontested \$136.8 million claim, with only \$80 million distributed to date.<sup>1</sup> This is because the Applicants have failed to manage the costs of this CCAA proceeding, including by pursuing the long-delayed Central Walk transaction, breaches of which have been ignored, which will ultimately yield no net benefit for the FILO Lenders absent the orders sought by the FILO Agent here.

2. Unfortunately, the Court's hope in March 2025 that "the controls already in place, the obligations on the Applicants as parties to this proceeding, and the oversight of the Court-appointed Monitor, would be sufficient to protect the interests of the Lenders" has not come to pass.<sup>2</sup> As the Monitor observed some five weeks ago "it is [neither] fair nor equitable for the FILO Agent's priority collateral to continue to be used to fund the pursuit of the Central Walk Transaction, particularly in circumstances where Pathlight is the lender that stands to gain the most from the transaction being completed."<sup>3</sup>

3. All of the costs of this proceeding, including the costs of pursuing the Central Walk Transaction, will have to be addressed at some point. But the FILO Agent asks that the Court act now, as it evaluates whether to approve the Central Walk Transaction, and stops the substantial erosion of the FILO Lenders' collateral by:

---

<sup>1</sup> Application Record of the Applicants, dated March 7, 2025, Affidavit of Jennifer Bewley, sworn March 7, 2025, at para 143, Case Center Master Page ("CC"), [p D1474](#); Sixth Report of the Monitor, dated July 14, 2025 ("Sixth Report"), at para 5.4, [CC p D707](#); *In Re Hudson's Bay Company*, [2025 ONSC 4535](#), at paras [4](#), [17](#).

<sup>2</sup> *Hudson's Bay Company, Re*, [2025 ONSC 2005](#), at [para 20](#).

<sup>3</sup> Sixth Report at para 5.30, [CC p D717](#).

- (a) expanding the powers of the Monitor to allow it to assume carriage of the HBC liquidation with a view of completing the wind-down and maximizing recoveries, while reigning in spending on management and professionals; and
- (b) issuing orders that will ensure that the FILO Lenders are not prejudiced by the delays in advancing the Central Walk Transaction, including:
  - (i) ordering that the costs of the Central Walk Transaction be allocated equitably, to ensure that the Pathlight Lenders reimburse the Applicants for that ABL Priority Collateral which was expended for their benefit; and
  - (ii) ensuring that those parties who stand to gain from any (almost inevitable) appeals of any order made on the pending motion to approve the Central Walk Transaction bear the cost of dead rent and other wasted costs, and that they are not paid from the FILO Lenders' priority collateral.

4. The need for this relief is best illustrated by the simple fact that, as things stand, the FILO Lenders could only receive \$12.5 million in proceeds from the Central Walk Transaction. This compares to the \$11.7 million of the FILO Lenders' priority collateral spent on dead rent alone for the leases subject to the Central Walk Transaction between June and the end of August, plus tens of millions of dollars in professional fees, and any direct rent costs which may be incurred for September and beyond. This compares to the \$37.4 million expected to be available for Pathlight to recover against, at no cost to them.

5. The Court should decline to defer the allocation relief sought, as the Monitor proposes in its Eighth Report.<sup>4</sup> Any directions of the Court as to a fair allocation will necessarily be subject to implementation work by the Monitor and the parties, and, no doubt, further discussions. But that process can and should begin now, and not be delayed further. Any delay in that process may delay further distributions, and increase interest costs.

## **PART II - SUMMARY OF FACTS**

6. The history of the CCAA proceeding is set out in various materials before the Court and is not repeated in detail here. The key facts relevant to the FILO Agent's motion are below.

7. In December 2024, the FILO Lenders provided HBC \$151.4 million of urgent financing (the "**FILO Facility**").<sup>5</sup> Notwithstanding the FILO Facility, by March 7, 2025, HBC was insolvent and was granted CCAA protection.<sup>6</sup>

8. On December 23, 2024, the FILO Agent and Pathlight entered into the Intercreditor Agreement, which provides that FILO Lenders "shall not be obligated to pay any amounts to [the Pathlight Lenders] ... for or in respect of the use and/or occupancy ... of the [Pathlight Lenders' collateral]".<sup>7</sup>

9. Consistent with that agreement, all parties expected that the FILO Lenders would not carry costs associated with the Pathlight Leases post-liquidation. As Mr. Fredericks, CEO of the FILO Agent, deposed in his uncontested affidavit, a Consent to Intercreditor Agreement confirmed that

---

<sup>4</sup> Eighth Report of the Monitor, dated August 21, 2025 ("**Eighth Report**"), at para 7.10, [CC p E1099](#).

<sup>5</sup> Motion Record of the FILO Agent, dated July 8, 2025 (the "**FILO Moving Motion Record**"), Affidavit of Ian Fredericks, sworn July 8, 2025 (the "**Fredericks Affidavit**"), at para 26, [CC p D57](#).

<sup>6</sup> Fredericks Affidavit, at para 4, [CC p D50](#).

<sup>7</sup> Fredericks Affidavit, [Exhibit "E"](#) (the "**Intercreditor Agreement**"), at para 3.3(j), [CC p D518](#).

the FILO Lenders' ABL Priority Collateral could be used to fund lease payments relating to the Pathlight Leases, but only until the week ending in July 5, 2025.<sup>8</sup> This was consistent with the understanding that the costs of the Pathlight Leases would be borne by Pathlight after the liquidation sale,<sup>9</sup> and the representations to the Court that any lease monetization transaction approval motion was to be brought by June 17.<sup>10</sup>

10. The ARIO itself provides that the obligation to pay rent for the Pathlight Leases could be shifted to Pathlight if it refused to consent to disclaimer of any such leases.<sup>11</sup> Notwithstanding this mechanism, and contrary to the Intercreditor Agreement and Consent and the FILO Agent's repeated requests (as described below), the Applicants failed to do so.

### **The FILO Lenders' recovery erodes**

11. From mid-May to early June, the FILO Agent was told, including by the Applicants and their financial advisor at Reflect, that it could expect to be repaid in full by mid-June,<sup>12</sup> before any motion to assign the leases was to be heard.<sup>13</sup> This repayment expectation was confirmed to Mr. Fredericks repeatedly,<sup>14</sup> including as late as June 9, 2025.<sup>15</sup>

---

<sup>8</sup> Motion Record of the FILO Agent, dated August 12, 2025, Affidavit of Ian Fredericks, sworn August 12, 2025 (the "**Fredericks Reply Affidavit**"), at para 10, [CC p F035](#) and at [Exhibit "1"](#), Consent to Intercreditor Agreement, at para 3(a), [CC p F5052](#).

<sup>9</sup> Fredericks Affidavit, [Exhibit "F"](#), Emails between the FILO Agent and the Monitor, dated April 3, 2025, [CC p D555](#).

<sup>10</sup> *Hudson's Bay Company, Re*, [2025 ONSC 1897](#), at [para 64](#); Cross Examination of Franco Perugini, dated August 14, 2025 ("**Perugini Cross Examination**") QQ:968-976.

<sup>11</sup> Amended and Restated Initial Order, dated March 21, 2025 (the "**ARIO**"), at para 12, [CC p D616](#).

<sup>12</sup> Transcript of Cross Examination of Adam Zalev, dated August 14, 2025 (the "**Zalev Cross Examination Transcript**"), at QQ721, 775, Exhibits 3-7

<sup>13</sup> *Hudson's Bay Company, Re*, [2025 ONSC 1897](#) at [para 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.")

<sup>14</sup> Zalev Cross Examination Transcript, QQ723-755.

<sup>15</sup> Zalev Cross Examination Transcript, QQ810-815.

12. This repayment was expected regardless of the ultimate proceeds from the main transaction resulting from the Lease Monetization Process, the Assignment and Purchase Agreement entered into on May 23, 2025 (the “**Central Walk APA**” or the “**Central Walk Transaction**”) between the Applicants and Ruby Liu Commercial Investment Corp. (the “**Purchaser**”).<sup>16</sup> Accordingly, the FILO Agent was indifferent but content for the transaction to be pursued. Indeed, when it was asked to consent to the pursuit of the transaction on May 22, the FILO Agent was not even provided with a copy of the Central Walk APA, nor told that it would be brought before the Court for approval after the June 17 deadline endorsed by the Court.<sup>17</sup>

13. In mid-June, weeks after having given its consent to the Central Walk Transaction, the FILO Agent learned for the first time that the FILO Lenders would not be paid out in full in mid-June<sup>18</sup> – as the Draft Fifth Cash Flow demonstrated a significant shortfall on FILO Lender collateral.<sup>19</sup> In particular, despite realizing over \$54 million more in proceeds from the GOB Sale, the FILO Lenders’ anticipated recovery decreased by at least \$29 million.<sup>20</sup> Reflect previously represented to the FILO Agent that the Applicants expected a significant surplus (\$45 million), even after paying out the FILO Lenders in full (excluding the make whole), before any proceeds from the Central Walk Transaction.<sup>21</sup> Moreover, this surplus was large enough for the Applicants to pay out the FILO Lenders despite any net increase in costs of some \$20 million between May 23, 2025 to June 15, 2025.<sup>22</sup>

---

<sup>16</sup> Zalev Cross Examination Transcript, Exhibits 3-4.

<sup>17</sup> Zalev Cross Examination Transcript, QQ781-787.

<sup>18</sup> Fredericks Affidavit, [Exhibit “C”](#) (“**Draft Fifth Cash Flow**”), [CC p D126](#).

<sup>19</sup> Draft Fifth Cash Flow, [CC p D126](#).

<sup>20</sup> Fredericks Affidavit, at para 9, [CC p D52](#); Draft Fifth Cash Flow, [CC p D126](#).

<sup>21</sup> Zalev Cross Examination Transcript, Exhibits 3-4.

<sup>22</sup> Culhane Cross Examination Transcript, QQ54-65.

**The Applicants and Pathlight take a high-risk gamble on the Central Walk Transaction with the FILO Lenders' priority collateral**

14. By mid-June it was clear that the Central Walk Transaction was going to be contentious and likely delayed, because of breaches of the agreement,<sup>23</sup> opposition by landlords<sup>24</sup> and, ultimately, the conduct of the Applicants and Pathlight.

15. The FILO Agent insisted that the Applicants address the issue in letters to the Applicants and the Monitor on June 22<sup>25</sup> and 27.<sup>26</sup> The simple request was that the parties do what they had all expected: have the growing costs associated with the Pathlight Leases be borne, or at least be reimbursed, by Pathlight going forward.

16. Instead of invoking paragraph 12 of the ARIO<sup>27</sup> or taking other steps to put the costs onto Pathlight, the Applicants in consultation with Pathlight decided on July 8 to pursue what was, by then, a clearly high-risk, high-cost transaction.<sup>28</sup> This decision was made without the support of the Monitor,<sup>29</sup> which told the Applicants that it supported termination of the Central Walk APA.<sup>30</sup> The Applicants' July 5 letter laid out the Purchaser's many breaches of the APA,<sup>31</sup> with which the Monitor agreed,<sup>32</sup> and which letter the Applicants insisted be kept from the Court. These breaches

---

<sup>23</sup> Fredericks Reply Affidavit, [Exhibit "8"](#), Letter from counsel to the Applicants to counsel to the Purchaser, dated July 5, 2025 ("**July 5 Letter re Breach of Central Walk APA**"), [CC p F5192](#).

<sup>24</sup> Fifth Report of the Monitor, dated June 19, 2025 at para 4.6, [CC p D663](#).

<sup>25</sup> Fredericks Affidavit, [Exhibit "G"](#) (the "**June 22, 2025 Letter**"), [CC p D559](#).

<sup>26</sup> Fredericks Affidavit, at para 81, [CC p D74](#).

<sup>27</sup> Motion Record of the Applicants, dated July 29, 2025 ("**HBC Moving Motion Record**"), Affidavit of Franco Perugini, sworn July 29, 2025 ("**Perugini Affidavit**"), [Exhibit "B"](#), Central Walk APA ("**Central Walk APA**"), at s.5.3, which specifically confirmed that the Vendor's obligations to maintain and comply with the Leases during the "Interim Period" until the "Closing Time", subject to several exceptions, including "as otherwise provided in the Amended and Restated Initial Order", [CC p A6156](#).

<sup>28</sup> Affidavit of Franco Perugini sworn July 29, 2025 ("**Perugini Affidavit**"), at para 16, [CC p A6099](#); Perugini Cross Examination Transcript, QQ1053-1054.

<sup>29</sup> Eighth Report of the Monitor, dated August 21, 2025 ("Eighth Report"), at paras 6.29-6.30, [CC p E1081](#).

<sup>30</sup> Eighth Report, at para 3.12, [CC p E1057](#).

<sup>31</sup> July 5 Letter re Breach of Central Walk APA, [CC p F5192](#).

<sup>32</sup> Eighth Report, at para 3.11, [CC p E1057](#).

were rewarded with a \$3 million purchase price reduction, and extensions of time, financed by the Applicants' only source of cash – the FILO Lenders' priority collateral.<sup>33</sup> Mr. Perugini, the HBC head of real estate with day-to-day responsibility for the transaction,<sup>34</sup> indicated that the Applicants had considered terminating the transaction in light of costs,<sup>35</sup> but he had no actual knowledge of the deliberations leading to the decision to pursue the transaction.<sup>36</sup> He and other HBC executives had by then significant personal interests in the transactions' completion, namely potential continued employment by the Purchaser.<sup>37</sup>

17. On July 8, 2025, the FILO Agent brought this motion, originally seeking to terminate the Central Walk APA and to stop the deterioration of the FILO Lenders' collateral.<sup>38</sup> Meanwhile, the Applicants, still apparently lacking a credible business plan from the Purchaser, failed to file the motion record for this motion until required to do so three weeks later, on July 29, 2025<sup>39</sup> a week before the then-Outside Date of August 7, 2025.<sup>40</sup>

18. The extensions granted to the Purchaser, for the benefit of it and Pathlight, have never been accompanied by any serious attempt by the Applicants to either put the costs of this delay on Pathlight or the Purchaser (including by any reimbursement), despite repeated requests from the FILO Agent.<sup>41</sup>

---

<sup>33</sup>Perugini Affidavit, at para 14, [CC p A6098. Exhibit "B"](#), Amending Agreement (the "**Amended Central Walk APA**"), at para 1(1), [CC p A6189](#).

<sup>34</sup> Perugini Cross Examination Transcript, Q1101, 1108.

<sup>35</sup> Perugini Affidavit, at para 15, [CC p A6099](#).

<sup>36</sup> Perugini Cross Examination Transcript, QQ:1105-1110,

<sup>37</sup> Perugini Cross Examination Transcript, QQ:775-776; Motion Record of the Applicants, dated July 29, 2025, Affidavit of Adam Zalev, sworn July 29, 2025 ("**Zalev Affidavit**"), at para 27, [CC p 6299](#).

<sup>38</sup> FILO Moving Motion Record dated July 8, 2005, Notice of Motion, at para 1, [CC p D41](#).

<sup>39</sup> The HBC Moving Motion Record is dated July 29, 2025, [CC p A6048](#).

<sup>40</sup> The Amended Central Walk APA provides that the "Outside Date" means August 7, 2025.

<sup>41</sup> The Applicants say they asked the Purchaser and Pathlight to cover such costs, but it is clear that the Applicants were content to accept the refusal without any serious challenge. The form and content of these requests were never

**The prejudice to the FILO Lenders' recoveries from delay has been substantial**

19. The FILO Lenders are exclusively bearing the costs of funding the pursuit of the Central Walk Transaction to which they have objected since early July. As they predicted, the costs of the transaction have eroded all value for them already, as reflected in the tables at Schedule "C". The \$3.9 million per month direct rent costs alone will, by the end of September, have overtaken all recoveries from the FILO Lenders' priority Leases subject to that transaction.

20. More generally, the Applicants have spent excessively, including millions on professional fees,<sup>42</sup> to achieve nothing but a net reduction in the FILO Lenders' projected recovery. Top-line increased spending of over \$350 million has yielded with only \$300 million in increased net recoveries.<sup>43</sup> Corporate payroll and benefits have expanded by over 185% (\$18 million) and professional fees for the Applicants and Monitor have increased over 250% (an additional \$29 million for a total of \$41 million).<sup>44</sup>

21. Though the Applicants and Monitor quibble with comparing cash flow projections for different time periods,<sup>45</sup> it remains one of the only ways for this Court to understand the lack of any net value to the leading secured creditors associated with the conduct of these proceedings to date. The principal takeaway from the comparison is that the work of HBC, the Monitor and all

---

disclosed, and the request was so perfunctory that no details came to the attention of Mr. Perugini. Fredericks Reply Affidavit, [Exhibit "5"](#), Letter from counsel to the FILO Agent to counsel to the Applicants, dated July 23, 2025, [CC p F5183](#), and [Exhibit "6"](#), Letter from counsel to the FILO Agent to counsel to the Applicants, dated July 27, 2025, [CC p F5186](#); Letter from counsel to the Applicants to counsel to the FILO Agent, dated July 29, 2025 ("**July 29 Letter**"), [CC p F5189](#). Perugini Cross Examination Transcript, QQ:1105-1110.

<sup>42</sup> Seventh Report of the Monitor, dated July 29, 2025 at para 9.1, [CC p D1118](#).

<sup>43</sup> Fredericks Reply Affidavit, at para 20, [CC p F5039](#), [Exhibit "3"](#), Pro Forma Comparison of Cash Flows, [CC p F5179](#).

<sup>44</sup> Fredericks Reply Affidavit, at para 20, [CC p F5039](#), [Exhibit "3"](#), Pro Forma Comparison of Cash Flows, [CC p F5179](#).

<sup>45</sup> Responding Motion Record of the Applicants, dated July 13, 2025, Affidavit of Michael Culhane sworn July 13, 2025 ("**Culhane Affidavit**"), at para 62-65, [CC p D1761](#); Eighth Report, at paras 7.4-7.7, [CC p E1097](#).

their professionals has not generated an increase in net recoveries for creditors, but instead has caused remarkable deficits.<sup>46</sup>

22. The recent apparent under-budget spending reported in the Monitor's Eighth Report<sup>47</sup> is better than the alternative, but should not be taken as any indicator that there has been any fundamental shift in cost management, as the FILO Agent seeks.

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

23. The FILO Agent seeks the four following remedies on this motion:

- (a) expansion of the Monitor's powers to take control of the affairs and operations of the Applicants for the benefit of all their stakeholders;
- (b) an equitable allocation of costs associated with the Central Walk Transaction, including as to the Pathlight Lenders in respect of all such costs after July 15, and orders ensuring that parties that stand to gain from any appeals (and not the FILO Lenders) bear any further costs of delay due to appeals;
- (c) an order that that \$4 million be distributed by the Applicants to the FILO Agent; and
- (d) in the event of non-approval of the Central Walk Transaction, preservation of the Purchaser's deposit.

---

<sup>46</sup> Fredericks Reply Affidavit, at para 21, [CC p F5039](#).

<sup>47</sup> Eighth Report, at para 9.1, [CC p E1103](#).

**A. The Monitor should be granted super-monitor powers to reign in this proceeding**

24. The FILO Agent seeks expanded powers for the Monitor so that it is capable of assuming all the functions currently performed by HBC's management and board, with access to management's assistance if desired.<sup>48</sup> The FILO Agent could otherwise satisfy the higher burden to appoint a receiver,<sup>49</sup> but at this time the FILO Agent only seeks the narrower relief of maintaining a Monitor, and related safeguards, as set out in the draft order at Schedule "C".

25. The recognized factors,<sup>50</sup> presents in this case, which support the relief are that:

- (a) there is no longer an operating active business, and this is now a liquidating CCAA;
- (b) there are objective bases for the loss of confidence in management; and
- (c) the FILO Lenders face prejudice from the significant erosion of their collateral.

**(i) *The Applicant's management and professionals are not needed for this liquidating CCAA***

26. The efforts to obtain a going concern outcome for HBC ended long ago. The stores are closed. The liquidation sale is complete. The Monitor itself noted in July that "...it may be appropriate at some point in these CCAA Proceedings for its powers to be expanded given that, among other things, the Company is no longer operating an active business or pursuing a going concern restructuring."<sup>51</sup> That point is now.

---

<sup>48</sup> The removal of directors (who are not earning any salary), is not sought at this time under CCAA, [s. 11.5](#).

<sup>49</sup> *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at [para 45](#).

<sup>50</sup> *JBT Transport Inc. (Re)*, [2025 ONSC 1436](#), at [para 39](#).

<sup>51</sup> Sixth Report, at para 5.31, [CC p D718](#). However, the Monitor took no position on the expansion of its powers at para 10.4 of the Eighth Report, [CC E1107](#).

27. With respect to the lease monetization process, the Affiliate Lease Agreement, the YM Lease Assignment Agreement and the IC Lease Assignment Agreement have all been approved.<sup>52</sup> The Central Walk APA approval will be determined now, subject to any appeals. The assets of the RioCan JV are now being managed in the JV Receivership.<sup>53</sup> The sale of HBC's Intellectual Property is complete.<sup>54</sup>

28. Of the major steps that remain to be completed, including the Art Auction, the WEPPA claims, the potential Hardship Funds, removal and sale of the remaining FF&E, and wind-up and distribution of the pension, the Monitor has been in control of (or at least closely involved in) these steps,<sup>55</sup> and is capable of continuing with or overseeing them with a much-reduced role for management and its separate set of professionals. The pursuit of the pension surplus, addressed below, can also now be managed by the Monitor going forward, by it retaining relevant records and compensating the limited staff that have the required knowledge on an as-needed basis.

29. Courts have been prepared to enhance the powers of a monitor to allow them to effectively operate as a receiver once a going concern restructuring has ended.<sup>56</sup> Doing so engages the Court's jurisdiction under Section 11 and Section 23(1)(k), and has been exercised where it will advance

---

<sup>52</sup> *In Re Hudson's Bay Company*, [2025 ONSC 4535](#); Affiliate Lease Assignment Order of Osborne J., dated June 23, 2025, [CC p D635](#).

<sup>53</sup> Motion Record of the Applicants, dated July 25, 2025, Affidavit of Franco Perugini, sworn July 25, 2025 ("**Perugini July 25 Affidavit**"), at para 29, [CC p D1834](#).

<sup>54</sup> Perugini July 25 Affidavit, at para 21, [CC p D1832](#).

<sup>55</sup> Perugini July 25 Affidavit, at paras 30-45, [CC p D1834](#).

<sup>56</sup> See "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs", 2019 ANNREVINSOLV 14, citing *Re BioAmber Canada Inc, et al* (31 July 2018), Montreal, Que SC 500-11-054564-188 and *Re ILTA Grain Inc* (8 July 2019), Vancouver, BC SC S-197582, which provides that "[t]o remove management from the helm... it must be demonstrated to the court that [among other things]... any possible restructuring path available would be doomed to fail", Book of Authorities ("**BOA**"), Tab 2.

the objectives of the CCAA, particularly maximizing recovery for creditors.<sup>57</sup> Those circumstances exist here, as enhancing the powers of the Monitor has become necessary to protect the interests of creditors and prevent their recovery from being eclipsed by the substantial costs of the CCAA process itself.

**(ii) *Secured creditors have justifiably lost confidence in management***

30. The FILO Agent, on behalf of the most significant in-the-money secured creditors, has lost confidence in the abilities of management and their advisors.<sup>58</sup> This loss of confidence is well founded, and results from many of those matters canvassed above, including:

- (a) Failing to advance the Central Walk Transaction expeditiously, and allowing it to take double the time initially bargained for under the Central Walk APA,<sup>59</sup> at the expense of the FILO Lenders' priority collateral with no assurances of reimbursement from Pathlight, the party that stands to gain from the transaction, including by failing to invoke section 12 of the ARIO, without explanation, and designed for this very purpose;<sup>60</sup>

---

<sup>57</sup> *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, 2020 QCCA 659, at para 61-62, citing Section 23(1)(k), and para 82. See also *Bestriding the Narrow World: Is It Time to Bifurcate the Role of the CCAA Monitor?*, 2020 CanLIIDocs 3603, at p. 241.

<sup>58</sup> *JBT Transport Inc. (Re)*, 2025 ONSC 1436, at para 47 *Callidus v. Carcap*, 2012 ONSC 163, at para 51; *Ashcroft Urban Developments Inc. (Re)*, 2024 ONSC 7192, at para 102 and 106.

<sup>59</sup> Central Walk APA, s.1.1, CC p A6142; Fredericks Reply Affidavit, Exhibit "7", Letter from Counsel to the Applicants to Counsel to the FILO Agent, dated July 29, 2025, CC p F5189.

<sup>60</sup> ARIO, at para 12, CC p D616.

- (b) Doing nothing to address breaches of the Central Walk APA by the Purchaser, and then rewarding it with discounts and time extensions,<sup>61</sup> without requiring any financial *quid pro quo*,<sup>62</sup> or protections for the FILO Lenders from the cost of delay;
- (c) Failing to disclose material facts about Central Walk's breach of the APA;<sup>63</sup>
- (d) Failing to effectively manage the costs of this proceeding, exemplified by the \$300 million in incremental recoveries at an incremental cost of \$350 million.<sup>64</sup>
- (e) Seeking to justify its conduct as being in aid of the Pathlight Lenders, claiming that they are likely fulcrum creditors, without any financial justification.<sup>65</sup>

31. In essence, Management's activities have, to date, reduced and not enhanced the expected recoveries of the secured creditors. This is particularly true in relation to the handling of the Central Walk APA, which has exposed the estate, and specifically the FILO Lenders, to the risk of significant losses.

***(iii) The Applicants have failed to be forthright and sufficiently transparent about the assets available to the secured creditors, including as it relates to the pension assets***

32. The Applicants and Pathlight have taken the position that Pathlight is likely the fulcrum creditor because the FILO Lenders are likely to recover in full from the pension surplus,<sup>66</sup> but have failed to provide any evidence of it. Notwithstanding this position, Mr. Perugini testified that

---

<sup>61</sup> Amended Central Walk APA, at para 1(1), [CC p A6189](#).

<sup>62</sup> July 29 Letter, [CC p F5189](#).

<sup>63</sup> Fredericks Reply Affidavit, [Exhibit "8"](#), Letter from counsel to the Applicants to counsel to the Purchaser, dated July 5, 2025 ("July 5 Letter"), [CC p F5192](#).

<sup>64</sup> Fredericks Reply Affidavit, at para 20, [CC p F5039](#), [Exhibit "3"](#), Pro Forma Comparison of Cash Flows, [CC p F5179](#).

<sup>65</sup> Perugini Cross Examination, QQ:1113-1138.

<sup>66</sup> Culhane Affidavit at paras 16, 60-61, [CC p D1749](#), [D1761](#).

Reflect, not the Applicants, conducted the analysis relating to the identity of the fulcrum creditor, and that he had not seen this analysis.<sup>67</sup>

33. Moreover, any recoveries of the FILO Agent from the pension surplus are highly uncertain in quantum and timing. The Monitor confirmed that such recoveries are “highly contingent [and] it is too early to conclude that the FILO Obligations will ultimately be repaid in full”<sup>68</sup> in its Sixth Report, and again in its Eighth Report.<sup>69</sup>

34. The FILO Agent,<sup>70</sup> Pathlight,<sup>71</sup> and even the pension plan’s own administrator, have been seeking additional clarity on this issue.<sup>72</sup> Only limited and outdated information has been provided in response. After putting the pension surplus in issue on this motion, the Applicants improperly refused questions about it on cross-examination.<sup>73</sup>

35. The failure to be fully transparent on this issue is troubling and further undermines faith in management. It also deprives the parties and this Court of important information relevant to this motion.<sup>74</sup> Super-monitor powers will, among other things, remedy that failure and ensure that the pension matter is handled professionally and transparently.

---

<sup>67</sup> Perugini Cross Examination Transcript, QQ:1113-1138.

<sup>68</sup> Sixth Report, at para 5.26, [CC p D715](#).

<sup>69</sup> Eighth Report, at para 7.15, [CC p E1101](#).

<sup>70</sup> Fredericks Reply Affidavit, [Exhibit “10”](#), Letter from Counsel to Pathlight to Counsel to the Applicants, dated August 6, 2025, [CC p F5201](#), and [Exhibit “11”](#), Letter from Counsel to the FILO Agent to Counsel to the Applicants, dated August 6, 2025, [CC p F5203](#).

<sup>71</sup> Fredericks Reply Affidavit, [Exhibit “10”](#), Letter from Counsel to Pathlight to Counsel to the Applicants, dated August 6, 2025, [CC p F5201](#); Zalev Cross Examination Transcript, Q866.

<sup>72</sup> Fredericks Reply Affidavit, at para 41, [CC p F5047](#).

<sup>73</sup> See, for example, Culhane Cross Examination Transcript, QQ89-96, 105-106 and Zalev Cross Examination Transcript, QQ:867-868.

<sup>74</sup> *Inca One Gold Corp. (Re)*, [2024 BCSC 1970](#), at [para 35-36](#).

*(iv) Secured creditors face significant erosion of their collateral*

36. In March 2025 this Court put in place certain “safeguards” but these have been insufficient to provide adequate protection.<sup>75</sup> Despite Mr. Fredericks’ reply affidavit detailing the FILO Agent’s concerns regarding financial mismanagement, the Applicants elected not to challenge that evidence with cross-examination. That evidence confirms that, subsequent to the issuance of the Fourth Cash Flow, the FILO Lenders’ recovery position worsened and continues to worsen.<sup>76</sup>

37. The FILO Agent acknowledges that comparing cash flow projections for different time periods has its limitations,<sup>77</sup> as some increased costs are due to the duration of this proceeding. But that is no answer to what the evidence canvassed in detail above on this issue<sup>78</sup> demonstrates: the continued and increasing spending has not generated an increase in net recoveries, including of the significant increased costs since June 2025.

38. Mr. Culhane for the Company contended that enhancing the Monitor’s powers would not reduce, and may increase, the costs of these CCAA proceedings.<sup>79</sup> But on cross examination he admitted there was no analysis done in support of this assertion.<sup>80</sup> The cash flow projections themselves suggest that removing or reducing the need for advisors, including Stikeman Elliott and Reflect, will significantly reduce the overhead of this liquidating CCAA.

39. The Monitor has been closely involved in the steps taken and has significant knowledge of the Company and its affairs. There is no reason the Company is needed to manage any of the final

---

<sup>75</sup> *Hudson’s Bay Company, Re*, [2025 ONSC 1897](#).

<sup>76</sup> Fredericks Reply Affidavit, para 16, [CC p F5037](#).

<sup>77</sup> Fredericks Reply Affidavit, para 15, [CC p F5037](#).

<sup>78</sup> See paragraph 20 of this Factum.

<sup>79</sup> Culhane Affidavit, at para 70, [CC p D1764](#).

<sup>80</sup> Culhane Cross Examination Transcript, QQ:125-145.

stages of the wind-down, including the conclusion of any litigation/appeals related to the Central Walk Transaction, the sale of the Charter, dealing with employee and retiree claims, and pursuing the pension surplus for the benefit of creditors.

**B. The FILO Lenders should not bear any costs associated with the delay in the consummation of the Central Walk Transaction**

40. To date, the Applicants' cash has been used to fund all expenses of the CCAA proceeding. That cash is ABL Priority Collateral, over which the FILO Lenders have a priority claim. The FILO Agent intends to seek to remedy any inequities in respect of the proceeding in their entirety at an appropriate time.

41. But there is now no serious dispute about what the Monitor has said: that it is unfair for the FILO Lenders to exclusively shoulder the risk and costs of the Central Walk Transaction, when the majority of the benefits will flow to the Pathlight Lenders.<sup>81</sup> This state of affairs is antithetical to the well-known principle that, as articulated by Justice Morawetz, "it is essential, in a court supervised process, to give due consideration to the priority rights of secured creditors."<sup>82</sup>

42. For the reasons set out below, the FILO Agent seeks orders that will ensure that the costs of delay associated with the consummation of the Central Walk Transaction, if it closes at all, are borne (or reimbursed) by those parties who participated in or benefitted from that delay: the Pathlight Lenders or the Purchaser.

---

<sup>81</sup> Sixth Report, at para 5.30, [CC p D717](#).

<sup>82</sup> *Windsor Machine & Stamping Limited (Re)*, [2009 CanLII 39771](#) at [para 43](#). See also *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, [2025 ABKB 30](#) at [para 88](#) (refusing to approve a proposed RVO transaction that had a disproportionate impact on a single secured creditor, despite "business efficiency").

**(i) *The Court has jurisdiction to allocate costs of steps in a CCAA proceeding to those parties who will benefit from it***

43. The Court has broad jurisdiction to allocate the costs of a CCAA proceeding as between stakeholders under section 11 of the CCAA.<sup>83</sup> Further, the Court retains its residual inherent and equitable jurisdiction.<sup>84</sup>

44. This jurisdiction empowers the Court to require that Pathlight reimburse the Applicants for costs of pursuing the Central Walk Transaction properly allocable to Pathlight. That will be so in respect of costs paid by the Applicants for the benefit of Pathlight out of the FILO Lenders' priority collateral. Here, Pathlight supported and, as things stand, will be the only net beneficiary of the transaction. Absent an allocation, the FILO Lenders will not derive any net benefit from it, because the lease and other associated costs paid for in respect of all of the Subject Leases out of the FILO Lenders' priority collateral will have exceeded any proceeds of those Subject Leases to which the FILO Lenders have a priority claim.

45. Courts regularly allocate costs of preservation or monetization of property to be borne by those for whose benefit those costs were incurred.<sup>85</sup> In *Pride Group*, this Court rejected a request for advances to fund wind-down costs but also acknowledged that the "Court ... [has] jurisdiction

---

<sup>83</sup> *Arrangement relatif à FormerXBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#) at [para 17](#) (invoking section 11 in considering a proposal to allocate costs in a CCAA proceeding).

<sup>84</sup> *Re Air Canada*, 2003 CarswellOnt 9109, 28 C.B.R. (5th) 52 ("order to accomplish the goal of facilitating the restructuring of a debtor company, the court has a fund of discretionary powers arising from its inherent jurisdiction to make orders not only to do justice between the parties or other affected person but also to do what practicality demands"), BOA Tab 1; *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at [para 65](#) (explaining that this residual inherent and equitable jurisdiction should be resorted to after first taking account of the provisions of the CCAA).

<sup>85</sup> *Winnipeg Motor Express Inc., et al.*, [2009 MBQB 204](#), at [para 51](#).

to impose an allocation where appropriate” where (for instance) wind-down costs already incurred have been funded by other parties.<sup>86</sup>

46. The relief sought does not require Pathlight to make a “further advance of money or credit” under its existing facility<sup>87</sup> or at all. The FILO Agent asks only that the Court direct a fair allocation of the costs of the Central Walk Transaction already incurred, to Pathlight (i.e. the party that stands to benefit from that transaction), rather than allowing those costs to be borne solely by the FILO Lenders through the ABL Priority Collateral expended by the Applicants. Several sources of funds are available for the Applicants to be reimbursed for those costs, including the proceeds of Pathlight’s priority collateral, future distributions to Pathlight or other Pathlight resources. To the extent necessary, any allocation of costs can be subject to final re-allocation.<sup>88</sup>

47. In any case, this is a situation in which the Applicants were, in substance, the tool of Pathlight to pursue a transaction for Pathlight’s sole net benefit at no (initial) cost to Pathlight, over the objections of other relevant stakeholders. Pathlight itself supported and encouraged the Applicants to pursue the Central Walk Transaction, knowing full well that the Applicants could only do so using the FILO Lenders’ priority collateral, and despite their agreement with the FILO Lenders to bear those costs from early July. Accordingly, the Pathlight Lenders should reimburse the Applicants an equitable amount of the costs of that exercise, whether or not the transaction is approved or consummated.

---

<sup>86</sup> *Pride Group Holdings Inc. et al.*, [2024 ONSC 5902](#), at [para 27](#).

<sup>87</sup> *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“CCAA”), at [s.11.01\(b\)](#). However, the prohibition in section 11.01(b) must be narrowly construed (*Sproule v. Nortel Networks Corporation*, [2009 ONCA 833](#) at [para 17](#)), and is only applicable to “further” advances of money or credit. This implies that any payment sought from or on account of a party be of the same kind as that previously “advance[d]”. The Court of Appeal for Ontario in *Air Canada, Re*, [2003 CanLII 36792](#) (ON CA) specifically declined to determine this issue.

<sup>88</sup> *Pride Group Holdings Inc. et al.*, [2025 ONSC 1640](#) (directing interim allocation of costs, subject to final allocation).

(ii) *None of the parties could have reasonably expected the FILO Agent to bear the costs of monetizing the Pathlight Leases after July 5, 2025*

48. The record canvassed above demonstrates that the FILO Agent and the FILO Lenders expected and agreed that they would not bear any costs of monetizing the Pathlight leases after the beginning of July 2025. This is apparent from:

- (a) **The uncontested evidence of Ian Fredericks** that the FILO Agent and Pathlight agreed that ABL Priority Collateral would be used to fund costs related to the Pathlight Leases until early July 2025,<sup>89</sup> when it was expected that those leases would have been sold, disclaimed or the costs thereafter assumed by Pathlight.
- (b) **The Consent to Intercreditor Agreement**, by which the FILO Agent and Pathlight exchanged consideration for an alteration to their normal priority rights.<sup>90</sup>
- (c) **The Intercreditor Agreement**, which confirms that the FILO Lenders cannot be required to pay for the costs of monetizing the Pathlight Leases, which is in substance the result if there is no re-allocation of costs.<sup>91</sup>
- (d) **The modelling of the Applicants and Reflect**, who represented to the FILO Agent that it would be repaid in full (but for the make-whole) by mid-June 2025.<sup>92</sup>

---

<sup>89</sup> Fredericks Reply Affidavit, at para 10, [CC p F035](#).

<sup>90</sup> Fredericks Reply Affidavit, at para 10, [CC p F035](#); Consent to Intercreditor Agreement, at para 3(a), [CC p F5052](#).

<sup>91</sup> Intercreditor Agreement, at para 3.3(j), [CC p D518](#).

<sup>92</sup> Transcript of Cross Examination of Adam Zaley, dated August 14, 2025 (the “**Zaley Cross Examination Transcript**”), at QQ721, 775, Exhibits 3-7

- (e) **The objections of the FILO Agent** to the Central Walk transaction and its associated costs from June 2025-onwards, when it became clear that the transaction was risky and unlikely to yield any net benefit.<sup>93</sup>

**(iii) *It is equitable that the costs of monetizing the Pathlight Leases, and any incremental costs associated with delay occasioned by the Central Walk Transaction generally, be allocated to Pathlight***

49. The allocation of costs in a CCAA proceeding is not a science, and does not require a detailed review of dockets, which can itself be an expensive process antithetical to the CCAA's remedial purposes. The general principles governing the allocation of costs in an insolvency proceeding<sup>94</sup> include, among others, that:

- (a) allocation should be done on a case-by-case basis;<sup>95</sup>
- (b) costs should be allocated in a fair and equitable manner, one which does not readjust the priorities between creditors, and one which does not ignore the benefit or detriment to any creditor;<sup>96</sup>
- (c) costs are not limited to the cost of realization alone but relates to all receivership costs whether direct sales or indirect costs;<sup>97</sup> and
- (d) a creditor need not benefit "directly" before the costs of an insolvency can be allocated against that creditor's recovery.<sup>98</sup>

---

<sup>93</sup> June 22, 2025 Letter, [CC p D559](#); Fredericks Affidavit, at para 81, [CC p D74](#).

<sup>94</sup> *Royal Bank of Canada v. Atlas Block Co. Limited*, [2014 ONSC 1531](#), at [para 43](#); *Arrangement relatif a FormerXBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#), at [paras 44-45](#).

<sup>95</sup> *Arrangement relatif a FormerXBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#), at [paras 44-45](#).

<sup>96</sup> *Arrangement relatif a FormerXBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#), at [paras 44-45](#).

<sup>97</sup> *Re Hickman Equipment (1985) Ltd. (In Receivership)*, [2004 NLSCTD 164](#), at [para 17](#).

<sup>98</sup> *Arrangement relatif a FormerXBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#), at [paras 44-45](#).

50. Here, the FILO Agent asks that an assessment of all direct and indirect Central Walk Transaction costs be undertaken by the Monitor and that, absent further agreement between the FILO Lenders and Pathlight:

- (a) the Monitor determine an equitable allocation of all Central Walk Transaction-related costs prior to July 15, 2025; and
- (b) all of the costs of the Central Walk Transaction since July 15, 2025 to the date of the Court's decision on the Central Walk Transaction approval motion, be allocated to the Pathlight Lenders on an equitable basis, taking account of the extent to which the transaction generated recoveries on Pathlight priority collateral and FILO Agent priority collateral, if any.

51. This is a fair basis on which the Court can direct an allocation of costs because:

- (a) the FILO Agent acknowledges that it will benefit from some proceeds of the Central Walk Transaction, if approved and closed. It supported the transaction for a time, and recognized that it would bear the up-front costs of that portion of the costs associated with the Pathlight Lease until early July 2025;
- (b) the FILO Agent withdrew its support for the transaction, including as to any recovery for itself, when it became clear that the Purchaser was in breach of the Central Walk APA and that the Applicants had delayed the transaction at significant monthly cost to the Applicants. Pathlight continued to support the transaction;

- (c) the Company's decision to pursue the transaction on July 8 was made in consultation with Pathlight,<sup>99</sup> and without consulting the Monitor, who, unequivocally expressed the view that it was unfair for the FILO Lenders to continue to bear all of the costs of this transaction.<sup>100</sup> HBC's head of real estate acknowledged the reasonableness of this view;<sup>101</sup>
- (d) Pathlight has not had to expend any funds to maintain the Pathlight Leases or otherwise, even as the Central Walk Transaction was delayed, because the Applicants have inexplicably failed to exercise their right to disclaim the Pathlight Leases under paragraph 12 of the ARIO;
- (e) the delay in the Central Walk Transaction has led not only to delay and added cost associated with the transaction itself, but also delay in the resolution of these CCAA proceedings as a whole, and significantly reduced recoveries for the FILO Lenders despite growing receipts; and
- (f) the FILO Agent is the likely fulcrum creditor, because (as the Monitor notes) any pension recoveries are highly contingent and uncertain,<sup>102</sup> and there is no evidence or analysis from the Applicants to the contrary. Instead, they have refused to produce relevant information both before and on this motion.<sup>103</sup>

---

<sup>99</sup> Perugini Affidavit, at para 16, [CC p A6099](#); Perugini Cross Examination Transcript, QQ1053-1054.

<sup>100</sup> Eighth Report, at paras 6.29-6.30, [CC p E1081](#); Sixth Report, at para 5.30, [CC p D717](#).

<sup>101</sup> Perugini Cross Examination Transcript, QQ1046-1048.

<sup>102</sup> Sixth Report, at para 5.26, [CC p D715](#).

<sup>103</sup> Fredericks Reply Affidavit, [Exhibit "10"](#), Letter from Counsel to Pathlight to Counsel to the Applicants, dated August 6, 2025, [CC p F5201](#), and [Exhibit "11"](#), Letter from Counsel to the FILO Agent to Counsel to the Applicants, dated August 6, 2025, [CC p F5203](#); Zalev Cross Examination Transcript, QQ:867-868.

52. Any order made concerning allocation or reimbursement of costs should be without prejudice to the right of the FILO Agent to assess, challenge or review any of the costs, fees and expenses of any parties paid from the ABL Priority Collateral, including before July 15, 2025.

**(iv) *The Court should bring an end to any payments of Central Walk Transaction Costs from the ABL Collateral after the approval motion***

53. An appeal by one or more parties is practically inevitable. That will require leave from this Court or the Court of Appeal, and could cost \$3.9 million per month in dead rent alone.<sup>104</sup> The Court can and should consider the preservation of value during any appeals.<sup>105</sup> Section 13 of the CCAA grants this Court or the Court of Appeal the power to grant leave “on such terms as to security and in other respects as the [superior court] judge or court [of appeal] directs”.<sup>106</sup>

54. The FILO Agent asks that the Court impose such terms, subject to any order of the Court of Appeal, which would ensure that (1) ABL Priority Collateral is not used to preserve the Leases and (2) any costs of any such proceedings be borne by the parties who stand to benefit from them.

55. The Applicants should be prohibited from paying any rent or other associated costs pending leave to appeal, and of any appeal, unless the Company is paid funds to make such payments and, if no such funds are paid, the Applicants should be directed to forthwith disclaim any such Subject Leases. The FILO Agent’s proposed form of order at Schedule “C” sets out the details of the relief sought.

---

<sup>104</sup> As described in paragraph 19 of this Factum.

<sup>105</sup> See e.g. *Arrangement relatif à Bloom Lake General*, [2021 QCCS 2946](#) at [paras. 118-120](#) (directing provisional execution of the Court’s order notwithstanding any appeal).

<sup>106</sup> CCAA, at [s.13](#).

56. To the extent necessary, the ARIO should also be amended to clarify that no rent shall be paid after any notices of disclaimer. This motion marks the end of a lengthy Lease Monetization Process that everyone expected to bring an end to rent. Millions of dollars in dead rent have already been paid on premises the Applicants have not “use[d]”, within the meaning of section 11.01(a). Once notices of disclaimer are delivered, there is no reason for any rent to be paid thereafter.<sup>107</sup> While the CCAA contemplates a notice of disclaimer becoming effective after 30 days, there is no good reason why this insolvent estate should not be immediately relieved of those costs. The leases can immediately come to an end, with the keys handed back to the Landlords, or their costs shifted to those who wish to maintain them.

**C. The Court should order a distribution to the FILO Agent of at least \$4 Million at this time**

57. The Central Walk APA has cost approximately \$4.7 million per month,<sup>108</sup> and when a conservative amount of professional fees are allocated the costs are approximately \$6 to \$7 million per month.<sup>109</sup> While an exact cost allocation remains to be determined, there can be no argument that on any allocation of costs as requested above, at least \$4 million will ultimately be allocated to Pathlight. The Applicants have already indicated that the \$4 million of Pathlight collateral from the Affiliate Lease transaction would be available for costs related to the Central Walk APA.<sup>110</sup>

58. There should be no delay in distributing a further \$4 million from the ABL Priority Collateral held by the Applicants. There is sufficient cash flow projected to do so. The Monitor is holding an equivalent amount of Pathlight Priority Collateral. There is enough time for the Monitor

---

<sup>107</sup> Contrast with *Quest University Canada (Re)*, [2020 BCSC 921](#) at [para 90](#), see also *In Re Hudson’s Bay Company*, [2025 ONSC 1530](#) at [para 60](#), regarding the exercise of discretion on a case-by-case basis.

<sup>108</sup> Sixth Report, at para 5.28, [CC p D716](#).

<sup>109</sup> Fredericks Reply Affidavit, at para 34, [CC p 5044](#).

<sup>110</sup> Responding Factum of the Applicants dated July 14, 2025, at para. 19, [CC p D1959](#).

and the Applicants to replenish those funds, if required, following the equitable allocation of Central Walk Transaction costs to Pathlight described above.

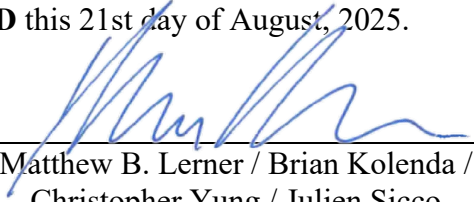
**D. Central Walk Transaction Deposit**

59. Another source of potential recovery for the secured lenders is the deposit under the Central Walk APA. If the Central Walk APA is not approved, the Applicants likely have a claim to that deposit given the conduct of the Central Walk Purchaser described above, for breach of the Central Walk APA. The FILO Agent asks that the parties be given an opportunity to address that issue before any movement of those funds. Accordingly, the FILO Agent seeks an order that, absent agreement between the Applicants, Purchaser, FILO Agent and Pathlight, the deposit continue to be held pending further Order of the Court.

**PART IV - ORDER REQUESTED**

60. The FILO Agent respectfully requests that the Court grant the relief described above and issue an order in the form attached hereto at Schedule “D”.

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



---

Matthew B. Lerner / Brian Kolenda /  
Christopher Yung / Julien Sicco

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

**Matthew B. Lerner (55085W)**

Tel: (416) 865-2940

Email: [mlerner@litigate.com](mailto:mlerner@litigate.com)

**Brian Kolenda (60153N)**

Tel: (416) 865-2897

Email: [bkolenda@litigate.com](mailto:bkolenda@litigate.com)

**Christopher Yung (62082I)**

Tel: (416) 865-2976

Email: [cyung@litigate.com](mailto:cyung@litigate.com)

**Julien Sicco (82939D)**

Tel: (416) 640-7983

Email: [jsicco@litigate.com](mailto:jsicco@litigate.com)

Lawyers for ReStore Capital, LLC,  
in its capacity as FILO Agent

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

<b>Item</b>	<b>Authority</b>
1.	<i>Air Canada, Re</i> , <a href="#">2003 CanLII 36792</a> (ON CA)
2.	<i>Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)</i> , <a href="#">2020 QCCA 659</a>
3.	<i>Arrangement relatif à Bloom Lake General</i> , <a href="#">2021 QCCS 2946</a>
4.	<i>Arrangement relatif à FormerXBC inc. (Xebec Adsorption inc.)</i> , <a href="#">2023 QCCS 2417</a>
5.	<i>Ashcroft Urban Developments Inc. (Re)</i> , <a href="#">2024 ONSC 7192</a>
6.	<i>BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.</i> , <a href="#">2020 ONSC 1953</a>
7.	<i>Callidus v. Carcap</i> , <a href="#">2012 ONSC 163</a>
8.	<i>Century Services Inc. v. Canada (Attorney General)</i> , <a href="#">2010 SCC 60</a>
9.	<i>Hudson’s Bay Company, Re</i> , <a href="#">2025 ONSC 1897</a>
10.	<i>Hudson’s Bay Company, Re</i> , <a href="#">2025 ONSC 2005</a>
11.	<i>In Re Hudson’s Bay Company</i> , <a href="#">2025 ONSC 1530</a>
12.	<i>In Re Hudson’s Bay Company</i> , <a href="#">2025 ONSC 4535</a>
13.	<i>Inca One Gold Corp. (Re)</i> , <a href="#">2024 BCSC 1970</a>
14.	<i>JBT Transport Inc. (Re)</i> , <a href="#">2025 ONSC 1436</a>
15.	<i>Pride Group Holdings Inc. et al.</i> , <a href="#">2024 ONSC 5902</a>
16.	<i>Pride Group Holdings Inc. et al.</i> , <a href="#">2025 ONSC 1640</a>
17.	<i>Quest University Canada (Re)</i> , <a href="#">2020 BCSC 921</a>
18.	<i>Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)</i> , <a href="#">2025 ABKB 30</a>
19.	<i>Re Air Canada</i> , 2003 CarswellOnt 9109, 28 C.B.R. (5th) 52
20.	<i>Re Hickman Equipment (1985) Ltd. (In Receivership)</i> , <a href="#">2004 NLSCTD 164</a>
21.	<i>Royal Bank of Canada v. Atlas Block Co. Limited</i> , <a href="#">2014 ONSC 1531</a>
22.	<i>Sproule v. Nortel Networks Corporation</i> , <a href="#">2009 ONCA 833</a>
23.	<i>Windsor Machine &amp; Stamping Limited (Re)</i> , <a href="#">2009 CanLII 39771</a>
24.	<i>Winnipeg Motor Express Inc., et al</i> , <a href="#">2009 MBQB 204</a>

Item	Authority
<i>Other Sources</i>	
25.	<i>Bestriding the Narrow World: Is It Time to Bifurcate the Role of the CCAA Monitor?</i> , <a href="#">2020 CanLIIDocs 3603</a>
26.	<i>In Search of a Purpose: The Rise of Super Monitors &amp; Creditor-Driven CCAAs</i> ", 2019 ANNREVINSOLV 14

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

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date August 21, 2025

  
Signature

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### **Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [s. 11](#)**

##### **General Power of Court**

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

#### **Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36, at [ss.11.01\(b\)](#)**

##### **Rights of suppliers**

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

#### **Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [s. 11.5\(1\)](#)**

##### **Removal of directors**

(1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

#### **Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [s. 13](#)**

##### **Leave to Appeal**

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

**Companies' Creditors Arrangement Act (R.S.C., 1985, c. C-36), s. 23(1)(k)**

Duties and functions

23 (1) The monitor shall

(k) carry out any other functions in relation to the company that the court may direct.

**Courts of Justice Act, R.S.O. 1990, c. C.43, ("CJA") [s. 131](#)**

Costs

131 (1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid. R.S.O. 1990, c. C.43, s. 131 (1).

## SCHEDULE “C”

### Summary of Central Walk Transaction Costs and FILO Central Walk Recovery Before Allocation

<b>CW Net Proceeds</b>	
<b>(\$MM's)</b>	<b>Total</b>
Gross Proceeds	\$69.1
Cure Costs	(15.0)
Lease Consultant Success Fees	(4.0)
<b>Net Proceeds prior to Direct &amp; Indirect Costs</b>	<b>\$50.1</b>

<b>CW Direct &amp; Indirect Costs</b>	
<b>(\$MM's)</b>	<b>Total</b>
<b>Direct Costs</b>	
Monthly Rent	\$ (3.9)
<b>Indirect Costs <sup>(1)</sup></b>	
Jun/25	(2.2)
Jul/25	(3.3)
Aug/25	(3.6)
Sep/25	(1.8)
Oct/25	(0.3)

<sup>(1)</sup> Indirect costs related to CW are comprised of an allocation of professional fees incurred ranging from 25% (June) to a peak of 55% (August) of total, in addition to a 25% share of utilities & corporate payroll.

<b>FILO Net Proceeds from CW prior to Cost Allocation</b>					
<b>(\$MM's)</b>	<b>Jun/25</b>	<b>Jul/25</b>	<b>Aug/25</b>	<b>Sep/25</b>	<b>Oct/25</b>
Gross CW Proceeds - FILO Portion				\$ 17.3	\$ 17.3
Cure Costs				(3.6)	(3.6)
Lease Consultant Success Fees				(1.0)	(1.0)
<b>Net CW Proceeds prior to Costs</b>				<b>12.7</b>	<b>12.7</b>
Direct (Occupancy)	(3.9)	(7.8)	(11.7)	(15.6)	(19.5)
Indirect (Professional Fees & Other)	(2.2)	(5.5)	(9.0)	(10.9)	(11.1)
<b>CW Related Cumulative Costs</b>	<b>(6.1)</b>	<b>(13.3)</b>	<b>(20.7)</b>	<b>(26.5)</b>	<b>(30.6)</b>
<b>Net Shortfall</b>	<b>\$ (6.1)</b>	<b>\$ (13.3)</b>	<b>\$ (20.7)</b>	<b>\$ (13.8)</b>	<b>\$ (17.9)</b>

**SCHEDULE “D”**

**Draft Order**

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

THE HONOURABLE MR. ) \_\_\_\_\_, THE \_\_\_\_\_  
JUSTICE OSBORNE )  
DAY OF \_\_\_\_\_, 2025

**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 CETERPOINT 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**

**ORDER  
(EXPANSION OF MONITOR'S POWERS AND  
ALLOCATION OF CENTRAL WALK COSTS)**

**THIS MOTION**, made by ReStore Capital, LLC (the "**FILO Agent**") for an Order pursuant to section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), granting the Monitor (as defined below) expanded powers and granting directions and a reallocation of proceeds resulting from the costs associated with the Central Walk APA (as defined below) and was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavits of Ian S. Fredericks sworn July 8, 2025, and August 12, 2025, and Michael Culhane sworn July 13, 2025, and Franco Perugini sworn July 29, 2025, and Adam Zalev sworn July 29, 2025, and the Exhibits thereto, and on reading the transcripts of the cross-examinations of the witnesses, the factums of the parties, filed, together with all of the material filed on the concurrent motion for approval of lease assignments, and on hearing submissions from counsel to the FILO Agent, the Applicants, the Monitor and such other counsel

who were present, with no one else appearing although duly served as appears from the Lawyer's Certificate of Service of Julian Sicco dated July 25, 2025.

## **DEFINED TERMS**

1. **THIS COURT ORDERS** that defined terms not otherwise defined in this Order have the meanings ascribed to them in the Amended and Restated Initial Order made by this Court in the within "**CCAA Proceedings**" on March 21, 2025 (the "**ARIO**").

## **SERVICE**

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

## **EXPANSION OF MONITOR'S POWERS**

3. **THIS COURT ORDERS** that, in addition to its powers and duties set out in the ARIO, any other Order of this Court, and its prescribed rights and obligations under the CCAA, and without altering in any way the limitations and obligations of the Applicants, Alvarez & Marsal Canada Inc. in its role as monitor (in such capacity, the "**Monitor**") of the Applicants be and is hereby authorized and empowered, but not required, for and on behalf of and in the name of the Applicants and their respective boards of directors (and not in its personal capacity), as the Monitor considers necessary or desirable, to:

- (a) conduct and control the financial affairs and operations of the Applicants and carry on business of any of the Applicants, including, without limitation:
  - (i) controlling the Applicants' receipts and disbursements, and executing banking and other transactions and executing any documents or taking any other action that is necessary or appropriate for the purpose of the exercise of this power;
  - (ii) executing such documents as may be necessary in connection with any proceedings before this Court or pursuant to any Order of this Court;

- (iii) taking any action or steps that any of the Applicants can take pursuant to the CCAA, this Order or prior or further Order of this Court in the CCAA Proceedings, including making distributions or payments;
- (iv) negotiating and entering into agreements with respect to the Business or the Property;
- (v) applying to the Court for any Orders which may be necessary or appropriate, including in order to convey the Property of any Applicant to a purchaser or purchasers thereof;
- (vi) exercising any shareholder, partner, member or other rights and privileges available to any of the Applicants for and on behalf and in the name of any of them;
- (vii) exercising any powers which may be properly exercised by any board of directors of the Applicants;
- (viii) settling, extending or compromising any indebtedness owing to or by the Applicants;
- (ix) initiating, prosecuting and continuing the prosecution of any and all proceedings and defending all proceedings now pending or hereafter instituted with respect to the Applicants, the Business, the Property or the Monitor and to settle or compromise any such proceeding;
- (x) exercising any rights of the Applicants;
- (xi) applying for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and in the name of the Applicants;
- (xii) taking any and all corporate governance actions for the Applicants;
- (xiii) providing instruction and direction to the Assistants of the Applicants;

- (xiv) claiming, or causing the Applicants to claim, any and all insurance refunds, tax refunds, return of duties or levies, including refunds of goods and services taxes and harmonized sales taxes, to which any Applicant is entitled;
  - (xv) facilitating or assisting the Applicants with their accounting, tax and financial reporting functions, including the preparation of cash flow forecasts, employee-related remittances, T4 statements and records of employment, in each case based solely upon the information provided by the Applicants on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements and records;
  - (xvi) causing the Applicants to perform any functions or duties, or take any actions, in order to facilitate or assist the Applicants in meeting their obligations or enforcing their rights, interests or entitlements in relation to any pension plans or benefit plans, regardless of whether any such plan is registered with any governmental authority, or any assets thereunder, including contingent rights, and including without limitation distributing or claiming any surplus pension assets or surplus benefit plan assets;
  - (xvii) disclaiming, in accordance with the CCAA, any contracts of the Applicants (or any of them);
  - (xviii) executing documentation or taking other steps as necessary to cause or implement the dissolution or winding-up of the Applicants (or any of them); and
  - (xix) taking any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;
- (b) preserve, protect and exercise control over the Business or Property, or any parts thereof, including, without limitation, to:

- (i) receive, collect and exercise control over all proceeds of sale of any of the Property;
  - (ii) exercise all remedies of the Applicants in collecting monies owed or hereafter owing to the Applicants and to enforce any security held by the Applicants;
  - (iii) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order; and
- (c) take any steps, enter into any agreements, execute any documents, incur any obligations or take any other action necessary, useful or incidental to the exercise of any of the aforesaid powers,

and in each case where the Monitor takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Applicants, and without interference from any other Person.

4. **THIS COURT ORDERS** that, in the exercise of its duties, obligations and powers, the Monitor shall:

- (a) use commercially reasonable efforts to cause the Applicants to comply with a budget that is agreed upon by the Applicants, the Monitor, the FILO Agent and Pathlight (the “**Budget**”), which Budget shall be updated periodically, as considered necessary by the Monitor, in consultation with the Applicants, the FILO Agent and Pathlight, acting reasonably;
- (b) advise the Court by way of Report or Supplement, on notice to the Service List, of any updated cash flow forecast or Budget or material variances from the any existing Budget or cash flow forecast on a timely basis as the Monitor considers appropriate;
- (c) consult with the FILO Agent and such other stakeholders as it determines appropriate regarding any material issue or change in circumstances;

- (d) advise the Court, on notice to the Service List, if at any time if, in the professional opinion of the Monitor, there is a net aggregate negative variance of actual results from the then current Budget or cash flow forecast by 15% or more; and
- (e) cause the Applicants not to make any disbursements other than those that are necessary and appropriate, including, in particular, any expenditure of cash or commitment to spend by the Applicants that is not contemplated by an Order made in this proceeding.

5. **THIS COURT ORDERS** that the Monitor shall, subject to the Cash Management System, be authorized and empowered, but not required, to operate and control, for and on behalf of and in the name of the Applicants, all of the Applicants' existing accounts at any financial institution (each an "**Account**" and, collectively, the "**Accounts**") in such manner as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation, to:

- (a) exercise control over the funds credited to or deposited in the Accounts;
- (b) effect any disbursement from the Accounts permitted by this Order or any other Order of this Court;
- (c) give instructions from time to time with respect to the Accounts and the funds credited or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
- (d) add or remove Persons having signing authority with respect to any Account or to direct the closing of any Account.

6. **THE COURT ORDERS** that the Applicants and their current and former directors, officers, employees and agents, representatives, accountants, auditors and all other Persons having notice of this Order shall cooperate with the Monitor in discharging its powers and duties set out in this Order or any other Order of this Court and forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Applicants.

## **MONITOR'S ADDITIONAL PROTECTIONS**

7. **THIS COURT ORDERS** that neither the Monitor nor any employee, representative or agent of the Monitor shall be deemed to: (i) be a director, officer, employee or trustee of any Applicant, (ii) be a legal representative or Person to whom section 150(3) of the *Income Tax Act* (Canada), as amended (the "ITA") applies; (iii) assume any obligation of the Applicants or any one of them; or (iv) assume any fiduciary duty towards the Applicants or any other Person, including any creditor or shareholder of the Applicants.

8. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities in respect of the employees of the Applicants, including any successor employer liabilities as provided for in Section 11.8(1) of the CCAA, Section 14.06(1.2) of the *Bankruptcy and Insolvency Act* (Canada) or any liabilities or obligations which may exist or which may arise or be asserted in the future under any other provincial, federal, municipal legislation or common law governing, pensions, benefits, employment or labour or any other statute, regulation or rule of law or equity, under any contract or otherwise, in any jurisdiction, including pursuant to any applicable collective bargaining agreement. Nothing in this Order shall cause the Monitor to be liable for any employee-related liabilities in respect of the employees of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefits amounts (including without limitation contributions, premiums, or benefit payments).

9. **THIS COURT ORDERS** that, without limiting the provisions of the ARIO, the Applicants shall remain in possession and control of the Applicants' Property and the Applicants' Business and the Monitor shall not take possession and control of the Applicants' Property, the Applicants' Business, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being (a) an employer or successor or related employer; or (b) an administrator, trustee, fiduciary, sponsor, employer, or any similar function in relation to any pension plan or benefit plan, regardless of whether any such plan is registered with any governmental authority, within the meaning of any statute, regulation, or rule of law or equity, for any purpose whatsoever.

10. **THIS COURT ORDERS** that the Monitor is not and shall not be deemed to be a director, officer, or employee of the Applicants. The Monitor shall not be liable or responsible for any liabilities or obligations of the Applicants (including but not limited to those related to retirees),

which may exist or which may arise or be asserted in the future, including but not limited, in relation to any action or inaction of the Applicants, or in the administration of the Monitor's powers and duties under this Order including under provincial or federal legislation or regulations governing pensions or benefits, or at or at common law, other than amounts the Monitor may specifically agree in writing to pay.

11. **THIS COURT ORDERS** that the enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Applicants of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as a trustee, fiduciary, sponsor, employer, or any similar function in relation to any pension plan or benefit plan (regardless of whether any such plan is registered with any governmental authority) within the meaning of the *Pension Benefits Act* (Ontario) or any other provincial, federal, or common law governing pension benefits standards or benefits or any other statute, regulation, the common law, or rule of law or equity in any jurisdiction, for any purpose whatsoever or expose the Monitor to liability or obligations to any individuals arising from or relating to any pension or benefit plan in respect of which any of the Applicants' is or was at any time, the administrator, sponsor, or an employer.

12. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, the *Ontario Occupational Health and Safety Act*, the *British Columbia Environmental Management Act*, the *British Columbia Riparian Areas Protection Act*, the *British Columbia Workers Compensation Act*, the *Alberta Environmental Protection and Enhancement Act*, the *Alberta Water Act*, the *Alberta Occupational Health and Safety Act*, the *Manitoba Environment Act*, the *Manitoba Contaminated Sites Remediation Act*, the *Manitoba Workplace Safety and Health Act*, the *Quebec*

*Environmental Quality Act*, the *Quebec Act Respecting Occupation Health and Safety*, *The Environmental Management and Protection Act, 2010* (Saskatchewan), *The Agricultural Operations Act* (Saskatchewan), *The Dangerous Goods Transportation Act* (Saskatchewan), *The Saskatchewan Employment Act*, *The Emergency Planning Act* (Saskatchewan), *The Water Security Agency Act* (Saskatchewan), the *Nova Scotia Environment Act*, the *Nova Scotia Water Resources Protection Act*, or the *Nova Scotia Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

13. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation. For greater certainty, the Monitor shall continue to have the benefit of all of the indemnities, charges, protections, and priorities as set out in the ARIO and any other Order of this Court and all such indemnities, charges, protections, and priorities shall apply and extend to the Monitor in the fulfillment of its duties or the carrying out of the provisions of this Order.

14. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors, or legal representative of the Property or any of the Applicants within the meaning of any relevant legislation including subsection 159(2) of the ITA, and that any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the applicable Applicants themselves.

15. **THIS COURT ORDERS** that the powers and authorities granted by the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants and their respective boards of directors, as applicable, with respect to such matters and,

in the event of conflict between the terms of this Order and those of the ARIO or any other Order of this Court, the provisions of this Order shall govern.

16. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order, the ARIO and any other Order granted by this Court in these proceedings shall remain in full force and effect.

#### **ALLOCATION OF CENTRAL WALK TRANSACTION COSTS**

***[NTD: if Central Walk APA is approved:]***

17. **THIS COURT ORDERS** that, concurrent with the Order made as of the date above, approving lease assignments pursuant to the Asset Purchase Agreement among HBC, as vendor, Ruby Liu Commercial Investment Corp., the (“Purchaser”), and Weihong Liu as Guarantor dated May 23, 2025 (the “**Central Walk APA**”) that, provided HBC and the Purchaser have waived all closing conditions, the Closing of the Central Walk APA, will occur within 7 days (the “**Outside Date**”) and that, notwithstanding any motion for, or the granting of, leave to appeal, but subject to any order made by the Court of Appeal in connection with any such appeal providing for security for costs, or other terms as a condition of any grant of leave to appeal, the Purchaser shall be responsible for all rent, utilities and other expenses associated with any Subject Leases assigned under the Central Walk APA as of the date of closing. For greater certainty, in such circumstance, the Applicants shall not be responsible for any liabilities in respect of the Subject Leases assigned under the Central Walk APA from and after the Outside Date.

18. If the Central Walk APA has not closed by the Outside Date, the Monitor is authorized and directed to cause HBC to forthwith terminate the Central Walk APA, and to forthwith deliver a notice of disclaimer in respect of each Lease that is subject to the Central Walk APA, and that, notwithstanding any motion for, or the granting of, leave to appeal, but subject to any order made by the Court of Appeal in connection with any such appeal providing for security for costs, or other terms as a condition of any grant of leave to appeal, the Applicants shall immediately cease paying rent, utilities or other expenses associated with any Subject Leases as of that date, unless and until the Monitor or the Applicants are provided with an undertaking from the Purchaser, Pathlight, or any interested Landlord or Landlords or other parties, in a form sufficient, in the

opinion of the Monitor, that any such party will pay or enable the Monitor or the Applicants to pay any and all such rent, utilities and other expenses associated with the Subject Leases pending any motion for leave to appeal and any and all appeals.]

***[NTD: if Central Walk APA is not approved:]***

19. **THIS COURT ORDERS** that, the Monitor is authorized and directed to cause Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI ("**HBC**") to immediately terminate the Central Walk APA, and to forthwith deliver a notice of disclaimer in respect of each Lease that is subject to the Central Walk APA, and that, notwithstanding any motion for, or the granting of, leave to appeal, the Applicants shall cease paying rent, utilities and any other expenses associated with the Subject Leases as of that date unless and until the Monitor or the Applicants are provided with an undertaking from the Purchaser, Pathlight, or any interested Landlord or Landlords or other parties, in a form sufficient, in the opinion of the Monitor, that any such party will pay or enable the Monitor or the Applicants to pay any and all such rent, utilities and other expenses associated with the Subject Leases pending any motion for leave to appeal and any and all appeals. The Monitor shall continue to hold the Deposit (as defined in the Central Walk APA) in trust until further order of the Court or mutual written agreement between the Monitor, Purchaser, the FILO Agent and the Pathlight Agent. ]

***[NTD: in either case:]***

20. **THIS COURT ORDERS** that, the Monitor is hereby directed to undertake, prepare and report on to the Court a proposed allocation of all direct and indirect costs, fees and expenses associated with the Central Walk APA, in accordance with the directions of this Court reflected in the court's endorsement issued in connection with this Order.

21. **THIS COURT ORDERS** that, paragraph 10 of the ARIO is amended to replace the words "disclaimed in accordance with the CCAA" with "the subject of a notice of disclaimer delivered in accordance with the CCAA". ]

## **DISTRIBUTION**

22. **THIS COURT ORDERS** that the Applicant is directed to make a distribution to the FILO Agent of \$4 million within one day of the date hereof.

## **GENERAL**

23. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or any other jurisdiction, to give effect to this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor and its agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that the Monitor is at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

26. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

---

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

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

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

Proceeding Commenced at Toronto

**ORDER  
(EXPANSION OF MONITOR'S POWERS AND  
ALLOCATION OF CENTRAL WALK COSTS)**

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600  
Toronto, ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Email: [mlerner@litigate.com](mailto:mlerner@litigate.com)

Brian Kolenda (60153N)

Tel: (416) 865-2897

Email: [bkolenda@litigate.com](mailto:bkolenda@litigate.com)

Christopher Yung (62082I)

Tel: (416) 865-2976

Email: [cyung@litigate.com](mailto:cyung@litigate.com)

Julien Sicco (82939D)

Tel: (416) 640-7983

Email: [jsicco@litigate.com](mailto:jsicco@litigate.com)

Lawyers for ReStore Capital, LLC,  
in its capacity as FILO Agent

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

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

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE FILO AGENT  
(FILO AGENT'S MOTION: RETURNABLE AUGUST 28, 2025)**

**LENCZNER SLAGHT LLP**

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

**Matthew B. Lerner (55085W)**

Tel: (416) 865-2940

Email: [mlerner@litigate.com](mailto:mlerner@litigate.com)

**Brian Kolenda (60153N)**

Tel: (416) 865-2897

Email: [bkolenda@litigate.com](mailto:bkolenda@litigate.com)

**Christopher Yung (62082I)**

Tel: (416) 865-2976

Email: [cyung@litigate.com](mailto:cyung@litigate.com)

**Julien Sicco (82939D)**

Tel: (416) 640-7983

Email: [jsicco@litigate.com](mailto:jsicco@litigate.com)

Lawyers for ReStore Capital, LLC,  
in its capacity as FILO Agent