

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF COMARK HOLDINGS INC.,
BOOTLEGGER CLOTHING INC., 9376208 CANADA INC.
AND 10959367 CANADA INC.

APPLICANTS

**FACTUM OF THE APPLICANTS
(Approval and Reverse Vesting Order)**

March 18, 2025

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Tracy Sandler (LSO# 32443N)
Tel: 416.862.5890
Email: tsandler@osler.com

Shawn T. Irving (LSO# 50035U)
Tel: 416.862.4733
Email: sirving@osler.com

Sean Stidwill (LSO# 71078J)
Tel: 416.862.4217
Email: sstidwell@osler.com

Sierra Farr (LSO# 87551D)
Tel: 416.862.6499
Email: sfarr@osler.com

Fax: 416.862.6666

Lawyers for the Applicants

PART I - NATURE OF THE MOTION

1. On January 7, 2025 (the “**Filing Date**”), Comark Holdings Inc. (“**Comark**”), and its subsidiaries, 10959367 Canada Inc. (formerly, Ricki’s Fashions Inc.) (“**Old Ricki’s**”), 9376208 Canada Inc., (formerly, cleo fashions Inc.) (“**Old cleo**”) and Bootlegger Clothing Inc. (“**Bootlegger**”) (together with Comark, the “**Applicants**” or the “**Comark Group**”), were granted protection under the Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “**CCAA**,” and the within proceedings the “**CCAA Proceedings**”) pursuant to an initial order (the “**Initial Order**”) of Ontario Superior Court of Justice (Commercial List) (the “**Court**”). Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as monitor of the Applicants within the CCAA proceedings (the “**Monitor**”).

2. As of the Filing Date, the Applicants operated as large Canadian specialty apparel retailers with a nationally recognized portfolio of banners and exclusive private labels. Together, Old Ricki’s, Old cleo and Bootlegger had 221 store locations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland and Labrador.

3. At the Comeback Hearing held on January 17, 2025 (the “**Comeback Hearing**”), the Court granted an order (the “**Realization Process Approval Order**”), which, among other things, approved a liquidation sale (the “**Sale**”) of the Applicants’ merchandise and inventory. At the Comeback Hearing, the Court also granted an Amended and Restated Initial Order (the “**ARIO**”), which, among other things, authorized the Applicants to concurrently pursue, with the assistance of the Monitor, offers for or avenues of restructuring, sale or reorganization of the Comark Group’s business or assets, in whole or in part (each, a “**Going Concern Transaction**”).

4. The Applicants ultimately identified two Going Concern Transactions for the Applicants' business and assets:

- (a) On February 4, 2025, the Court approved a Going Concern Transaction (the **"Putman Transaction"**) between 1001110197 Ontario Inc. (an affiliate of 2625229 Ontario Inc. (operating as Putman Investments)), as purchaser (the **"Putman Purchaser"**), and Old Ricki's and Old cleo, as vendors, providing for the purchase by the Putman Purchaser of merchandise, FF&E, intellectual property rights and certain real property leases owned by Old Ricki's and Old cleo. The Putman Transaction closed on February 19, 2025.
- (b) On the same day, the Court granted an order (the **"Sale Process Order"**), which, among other things, authorized the Applicants and the Monitor to engage in a sales process (the **"Sales Process"**) for the remaining business or assets of the Applicants which were not included in the Putman Transaction (the **"Remaining Business"**) in accordance with the terms of the process letter prepared by the Monitor (the **"Process Letter"**). The Sales Process was backstopped by a term sheet (the **"Stalking Horse Term Sheet"**) between the Applicants and Warehouse One Clothing Ltd. (**"Warehouse One"**), with respect to a transaction providing for the acquisition by Warehouse One or one of its affiliates of Bootlegger's business and assets and certain tax attributes and other assets of the Comark Group through a reverse vesting transaction (the **"Stalking Horse Transaction"**). The Stalking Horse Term Sheet would serve as a stalking horse bid in the Sales Process.

5. Since the granting of the Sale Process Order, the Applicants and the Monitor worked diligently to carry out the Sales Process and to solicit interest in the Remaining Business.

Ultimately, however, no expressions of interest in respect of the Remaining Business were received by the bid deadline set out in the Process Letter. As a result, the Monitor designated the Stalking Horse Transaction as the successful bid in the Sales Process.

6. In order to facilitate the completion of the sale of the Remaining Business, the Applicants seek on this motion an approval and reverse vesting order (the “**ARVO**”), *inter alia*:

- (a) approving the purchase agreement (the “**Purchase Agreement**”) among Comark, Old Ricki’s, Old cleo, and Bootlegger (each, a “**Comark Entity**” and collectively, the “**Comark Entities**”), 9383921 Canada Inc, as vendor (the “**Vendor**”), and 16751598 Canada Inc., an affiliate of Warehouse One, as purchaser (the “**Purchaser**”), and the transactions contemplated therein (the “**Transaction**”) pursuant to which the Purchaser will acquire substantially all of the Remaining Business by way of a reverse vesting structure, while certain property, agreements, and liabilities will be transferred to 2688182 Alberta Inc. (“**ResidualCo**”), and granting certain related relief in order to facilitate the Transaction; and
- (b) declaring that, pursuant to subsections 5(1)(b)(iv) and 5(5) of the Wage Earner Protection Program (“**WEPPA**”), the Applicants meet or will meet the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations (“**WEPP Regulation**”), and that, on and from the applicable effective date, the Applicant’s former employees are eligible to receive payments under and in accordance with WEPPA (“**WEPP Payments**”) following the termination of their employment.

7. The requested relief is in the interests of stakeholders generally and should be approved. The Transaction is the only going-concern solution to emerge following the extensive marketing

efforts undertaken by the Applicants and the Monitor in accordance with the Court-approved Sales Process. As the Purchaser has indicated that it is not willing to proceed by way of an asset transaction (owing to the need to preserve certain favourable tax attributes of Comark), a reverse vesting structure is necessary to complete the Transaction and to obtain the benefits of the Transaction for stakeholders. Since the value of the Transaction is insufficient to repay in full the Applicants' secured indebtedness, there will be no recovery for unsecured creditors under any viable alternative, including a liquidation of the Remaining Business. The Transaction produces a superior economic result to any viable alternative by preserving a material portion of the Bootlegger business, preserving at least 45 Retained Leases through consensual arrangements negotiated with landlords, and resulting in continued employment for approximately 360 employees. Accordingly, the Transaction represents the best and only going concern outcome for the Applicants and their stakeholders.

PART II - SUMMARY OF FACTS

8. The facts are more fully set out in the Affidavit of Shamsh Kassam.¹

A. Background

9. On January 7, 2025, the Court granted the Initial Order, *inter alia*: (i) appointing A&M as Monitor; (ii) granting a stay of proceedings in respect of the Applicants for an initial 10-day period (the “**Stay of Proceedings**”); (iii) authorizing the Applicants to borrow from Canadian Imperial Bank of Commerce (“**CIBC**”), as interim lender, under the Applicants' existing revolving facility;

¹ Affidavit of Shamsh Kassam, sworn March 14, 2025 [Fourth Kassam Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Fourth Kassam Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

(iv) authorizing, but not requiring, the Applicants to pay certain pre-filing amounts; and (v) granting various court-ordered charges.²

10. At the Comeback Hearing, the Court granted the following Orders:

- (a) **ARIO**, *inter alia*: (i) extending the Stay of Proceedings to May 15, 2025; (ii) authorizing the Applicants to enter into the DIP Term Sheet with CIBC in the maximum principal amount of \$18 million and granting the DIP Lender's Charge; and (iii) increasing the amount of certain charges authorized by the Initial Order. The ARIO also authorized the Applicants, with the support of the Monitor and the DIP Lender, to pursue Going Concern Transactions, subject to certain conditions.³
- (b) **Realization Process Approval Order**, *inter alia*: authorizing the Applicants, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Realization Process Approval Order, the Consulting Agreement and the Sale Guidelines.⁴

11. The authorization in the ARIO to pursue Going Concern Transactions was designed to allow the Applicants and the Monitor to immediately commence testing the market, to ascertain whether there may be one or more Going Concern Transactions that would generate more value for creditors and stakeholders than the Sale. To that end, under the terms of the Consulting Agreement, the Applicants were entitled to remove any of the Applicants' stores from the Sale and terminate the Consulting Agreement should one or more Going Concern Transactions emerge.⁵

² Fourth Kassam Affidavit at paras. 5-6.

³ Fourth Kassam Affidavit at para. 8.

⁴ Fourth Kassam Affidavit at paras. 9-10.

⁵ Fourth Kassam Affidavit at para. 10.

12. On February 4, 2025 (the “**February 4 Hearing**”), this Court granted the Approval and Vesting and DIP Assignment Order, which approved and authorized the implementation of the Putman Transaction as a Going Concern Transaction, and granted the Sale Process Order.⁶

13. On February 19, 2025, the Putman Transaction closed, resulting in: (i) the assignment of 61 leases from Ricki’s and cleo to the Putman Purchaser; (ii) approximately 455 former Ricki’s and cleo employees accepting employment offers from the Putman Purchaser; and (iii) a final Cash Purchase Price of \$14,460,621.77 paid by the Putman Purchaser to the Applicants.⁷ The Applicants terminated the Consulting Agreement in accordance with its terms immediately prior to the date of the closing of the Putman Transaction.⁸

B. The Sales Process

14. The Sales Process, as approved in the Sale Process Order, was structured on an expedited timeline and required interested parties to: (i) execute a standard form of confidentiality agreement; and (ii) prepare and submit a non-binding expression of interest (each, an “**EOI**”) by no later than 5:00 p.m. on February 20, 2025 (the “**EOI Bid Deadline**”). Parties who signed the confidentiality agreement were provided with access to a virtual data room.⁹

15. The Applicants, in close consultation and with the assistance of the Monitor, worked diligently and in good faith to implement the Sales Process in accordance with the terms of the Process Letter. On January 30, 2025, the Monitor sent the Process Letter to 25 parties known to the Applicants and/or the Monitor as having interest, or potentially having interest, in the Bootlegger business and/or the Remaining Business. Additional parties also independently

⁶ Fourth Kassam Affidavit at para. 11.

⁷ Fourth Kassam Affidavit at para. 15.

⁸ Fourth Kassam Affidavit at para. 13(e).

⁹ Fourth Kassam Affidavit at para. 20.

reached out to the Monitor and/or the Applicants to inquire about the Sales Process and the Remaining Business. Of this group of potentially interested parties, six parties executed a confidentiality agreement and received access to the virtual data room. Despite the considerable efforts of the Applicants and the Monitor, none of these parties completed any substantial diligence or contacted the Applicants or the Monitor with substantive questions or additional information requests.¹⁰

16. On February 17, 2025, the Applicants, in accordance with the authority granted to them by the Sale Process Order, executed the Purchase Agreement.¹¹ The Purchase Agreement was then served on the CCAA Service List, posted to the Monitor's Website, and made available to participants in the Sales Process.

17. Ultimately, no parties submitted expressions of interest by the EOI Bid Deadline. As a result, the Purchase Agreement, and the Transaction contemplated therein, was the only Qualified Bid, and was designated by the Monitor as the successful bid pursuant to the Process Letter.¹²

C. The Transaction

18. To preserve accrued tax liabilities for the go-forward business, the Transaction is structured as a reverse vesting transaction, whereby the Purchaser will acquire substantially all of the Remaining Business, while certain property, agreements, and liabilities will be transferred to ResidualCo.¹³ The Purchase Agreement is on substantially the terms set out in the Stalking Horse Term Sheet approved by the Court pursuant to the Sale Process Order.¹⁴

¹⁰ Fourth Kassam Affidavit at para. 21.

¹¹ Fourth Kassam Affidavit at para. 22. The Purchase Agreement was served on the Service List and posted on the Monitor's case website.

¹² Fourth Kassam Affidavit at para. 23.

¹³ Fourth Kassam Affidavit at paras. 25, 28.

¹⁴ Fourth Kassam Affidavit at para. 19.

19. Pursuant to the Purchase Agreement,¹⁵ in exchange for the Purchase Consideration¹⁶:

- (a) the Purchaser will acquire the Purchased Shares, being all of the issued and outstanding common shares of Comark;
- (b) Comark will continue to own the issued and outstanding shares of Bootlegger, Old Ricki's and Old cleo;
- (c) the Comark Entities will retain the Retained Assets free and clear of all Claims and Encumbrances (other than Retained Liabilities and Permitted Encumbrances), which Retained Assets will consist principally of: (i) cash, accounts receivable, inventory and tangible personal property of Bootlegger; (ii) specified contracts and leases (as described below, the "**Retained Leases**"), goodwill, information technology and intellectual property of Bootlegger or Comark or relating to their Business; and (iii) ancillary assets of the Comark Group not acquired by the Putman Purchaser in the Putman Transaction, including certain books and records, prepaid expenses, insurance entitlements and intercompany claims;
- (d) all Excluded Assets and Excluded Liabilities will be transferred to and vested in ResidualCo; and
- (e) the Comark Group will emerge from CCAA protection in its restructured form and the CCAA Proceedings will continue in relation to ResidualCo.

¹⁵ For a detailed summary of the terms of the Purchase Agreement, see the Fourth Kassam Affidavit at para. 31.

¹⁶ The Purchase Consideration consists of the following: (i) payment to the Vendor of \$1.00, and, on behalf of Comark, cash in the amount of the Outstanding Senior Secured Indebtedness outstanding at the Closing Time; (ii) the retention of the Retained Liabilities (as defined below).

20. The parties are seeking to close the Transaction in April 2025.¹⁷ Following the closing of the Transaction, the go-forward business, including the stores corresponding to the Retained Leases, will continue to be operated in the ordinary course by Warehouse One, a retailer and affiliate of the Purchaser which currently operates over 100 locations across Canada.¹⁸

21. Prior to the Closing Time, the Purchaser intends to reach a consensual resolution and finalize definitive agreements with respect to the assignment of approximately 45 Retained Leases to Warehouse One. Bootlegger Stores that are governed by leases that are not Retained Leases (the “**Non-Retained Leases**”) are currently being liquidated and will be exited by the Applicants.¹⁹

22. Under the terms of the Purchase Agreement, termination notices will be delivered to all employees of the Comark Group at least two (2) Business Days prior to Closing (or by such other date which is prior to Closing and agreed upon by the Parties with the Monitor’s consent).²⁰ The Purchaser will then make offers of employment to employees that work at the stores corresponding to the Retained Leases on substantially the same terms and conditions that these employees have immediately prior to closing the Closing Date and will recognize the employees’ original dates of hire for any purposes required by applicable employment standards legislation.²¹ All of the employees who accept these Offers will be “**Continuing Employees**” and their employment will commence on the Closing Date. Employees who are terminated prior to or at Closing will be paid all accrued and unpaid vacation pay as at Closing.²²

¹⁷ Fourth Kassam Affidavit at para. 27.

¹⁸ Fourth Kassam Affidavit at para. 25.

¹⁹ Third Report of the Monitor dated March 18, 2025 at paras. 6.7, 6.8 [**Third Report**].

²⁰ Third Report at para 7.5.

²¹ Fourth Kassam Affidavit at paras. 26, 39; The Purchaser will not be exercising its right under the Purchase Agreement to pursue the assignment of leases to Warehouse One under section 11.3 of the CCAA.

²² Fourth Kassam Affidavit at paras. 39-41.

23. The closing of the Transaction is subject to a number of conditions precedent, including the granting of the ARVO.²³

24. The Applicants have served this motion as broadly as possible in the circumstances, based on the records available. Approximately 800 contractual counterparties have been served this motion, in addition to the service list in these CCAA proceedings.²⁴

PART III - ISSUES AND THE LAW

25. This Factum addresses the following issues:

- (a) the Transaction should be approved;
- (b) ResidualCo should be added as a CCAA applicant;
- (c) the Releases should be granted; and
- (d) the WEPP declaration should be made.

A. The Transaction Should be Approved

26. In transactions effected by way of a reverse vesting order (“RVO”): (i) the purchaser becomes the sole shareholder of the debtor company; (ii) the debtor company retains the desired assets and liabilities; and (iii) the liabilities not desired by the purchaser are vested out and transferred, together with any excluded assets, to a new incorporated entity (here, ResidualCo).

²³ Fourth Kassam Affidavit at paras. 29, 32.

²⁴ Third Report at para 5.4. Courts have noted favourably where materials have been broadly served on contractual counterparties of a corporation subject to an RVO whose contracts potentially contained change of control or assignment provisions: *Chesswood Group Ltd. et al. (Re)*, (March 10, 2025), Ont S.C.J. [Commercial List], Court File No. CV-24-00730212-00CL ([Endorsement of Justice Osborne](#)) at para. 43.

The unwanted assets and liabilities vested in the separate entity are often then addressed through a bankruptcy or similar process.²⁵

27. CCAA courts have confirmed their jurisdiction to approve RVOs by virtue of section 11 of the CCAA, which gives a CCAA court the authority to make any order that it considers appropriate in the circumstances.²⁶ Although CCAA courts have said that RVOs should not be the “norm”, RVOs have been recognized as appropriate when the circumstances justify their use.²⁷

28. In deciding whether to approve a reverse vesting transaction, courts have considered the factors in s. 36 of the CCAA, which addresses court approval of an asset sale outside the ordinary course of business.²⁸ These include: (i) whether the sales process was reasonable in the circumstances; (ii) whether the monitor approved the sales process and filed a report supporting the sale; (iii) the extent to which the creditors were consulted; (iv) the effects of the proposed disposition on the creditors and other interested parties; and (v) whether the purchase price is fair and reasonable. These factors largely correspond to the *Soundair* criteria for approving an asset sale, which remain relevant in evaluating an RVO. These criteria are: (i) whether sufficient effort had been made to obtain the best price and that the debtor had not acted improvidently; (ii) the interests of all parties; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in the working out of the process.²⁹

29. Where approval of an RVO is sought, the court asks additional questions, namely: (i) why the RVO is necessary; (ii) whether the RVO structure produces an economic result at least as

²⁵ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#) at para. 27 [*Just Energy*], citing *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#) at para. 85 [*Blackrock Metals*], leave to appeal ref’d [2022 QCCA 1073](#), leave to appeal ref’d [2023 CanLII 36969](#) (SCC).

²⁶ *Just Energy* at para. 29; *Harte Gold Corp (Re)*, [2022 ONSC 653](#) [*Harte Gold*] at paras. 36-37.

²⁷ *Blackrock Metals* at paras. 86, 96, 99; *Harte Gold* at para. 38.

²⁸ *Just Energy* at para. 31; *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#) at para. 10 [*Acerus*].

²⁹ *Just Energy* at para. 32, citing *Harte Gold* and *Royal Bank of Canada v. Soundair Corp.* [1991 CanLII 2727](#) (ON CA) [*Soundair*].

favourable as any other viable alternative; (iii) whether any stakeholder is worse off under the RVO structure than they would have been under any other viable alternative; and (d) whether the consideration reflects the importance and value of intangible assets being preserved under the RVO structure.³⁰

30. The Applicants submit that the Transaction fulfills the criteria found in s. 36 of the CCAA and *Soundair*, along with the additional criteria applicable to RVOs.

(a) The Section 36 Factors and the *Soundair* Criteria are Satisfied

31. Both the s. 36(3) factors and the *Soundair* criteria are satisfied, for the following reasons:

(a) **Conduct of the Sales Process:** Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.³¹ This inquiry does not require the court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer,³² or to hold the sales process to a standard of perfection.³³ Here, the Sales Process was approved by the Court,³⁴ and was structured in order to provide a fair and reasonable process for canvassing the market for interest in the Remaining Business.³⁵ The Sales Process was overseen

³⁰ *Acerus* at para. 12; *Harte Gold* at para. 38.

³¹ See *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#), at para. 49: “The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA.”

³² *Soundair*, at paras. 48-49.

³³ *Sanjel Corporation (Re)*, [2016 ABQB 257](#) at para. 80 [*Sanjel*].

³⁴ In approving the Sales Process, the court found that the Sales Process was an “effective means of realizing the value of the Applicants’ assets for the benefit of the entire economic community,” and that expedited timeline of the Sales Process “appropriately balance[d] the need to adequately canvass the market with the Applicants’ liquidity constraints, and the need to limit the degradation of the value of the Remaining Business”: *Comark Holdings Inc. et al. (Re)*, (February 4, 2025), Ont S.C.J. [Commercial List], Court File No. CV-25-00734339-00CL ([Endorsement of Justice Cavanaugh](#)) at paras. 22-24.

³⁵ Third Kassam Affidavit at para. 39.

by the Monitor, and was conducted in accordance with the terms of the Process Letter, with the Monitor soliciting 25 potentially interested parties (and engaging with additional interested parties who independently reached out the Monitor and/or the Applicants), six of which ultimately executed a confidentiality agreement. All interested parties were treated fairly, and the virtual data room was made available to all parties that executed a confidentiality agreement.³⁶

- (b) **Purchase Price:** In order to establish that a purchase price is fair and reasonable, a debtor must show that sufficient efforts have been made to obtain the best price, and that the debtor has not acted improvidently, based on the information available at the time the offer was accepted.³⁷ Significant deference is given to a debtor's business judgment, absent clear evidence that the purchase price of the transaction is unreasonably low.³⁸ In this case, the Transaction will achieve the repayment in full of the Outstanding Senior Secured Indebtedness, which is owing by the Applicants to ParentCo as a result of the of the DIP Assignment and the Pre-Filing Debt Assignment (collectively, the "**Debt Assignments**"). The Transaction was a fundamental component of the overall restructuring of the Comark Group that enabled CIBC, the Applicants' pre-filing secured creditor and initial DIP Lender, to receive payment in full of the obligations owing to it under the DIP Facility, the CIBC Revolving Loan Facility and the CIBC Term Loan Credit Facility. Moreover, ParentCo, which is now the Applicants' fulcrum secured creditor (with obligations owing under the ParentCo Loan Facility of approximately \$57 million) and would suffer the loss from any inadequacy in the consideration received from the sale of

³⁶ Fourth Kassam Affidavit at para. 21.

³⁷ See for example *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#) at paras. 50-55 [*Terrace Bay*].

³⁸ *Soundair* at paras 21 and 30-31; see also *Sanjel* at para. 56 and *Terrace Bay* at paras. 45 and 51-52.

the Purchased Assets, supports the Transaction.³⁹ If the Transaction is not completed, the result will be a full liquidation. In its Third Report, the Monitor opines that under a liquidation, the value of the Remaining Business will not exceed the obligations outstanding under the Outstanding Senior Secured Indebtedness (currently approximately \$3.6 million) and the ParentCo Loan Facility, and accordingly there is no scenario that would result in any economic recovery for unsecured creditors.⁴⁰

- (c) **Benefits to Creditors and Stakeholders:** The proposed Transaction provides a number of benefits to the Applicants' creditors and other stakeholders, including: (i) approximately 45 leases will be retained by the Purchaser; (ii) a material portion of the Bootlegger business will continue to operate as a going concern; (iii) employment will be preserved for the Continuing Employees; (iv) various contracts will continue in the normal course, to the benefit of all parties; and (v) following closing, only limited matters will remain for the administration and wind-down of the CCAA Proceedings, which will be funded by way of a reserve to be held by the Monitor (the "**Wind-Down Reserve**").⁴¹
- (d) **Support of the Monitor:** The Monitor was involved in the development of the Sales Process, supported its approval, and played a leading role in soliciting offers during the Sales Process itself. The Monitor supports the proposed Transaction and the Applicants' request for the AVRO.⁴²

³⁹ Third Report at para. 6.9(d).

⁴⁰ Third Report at para. 6.9(e).

⁴¹ Fourth Kassam Affidavit at paras. 24, 35, 46.

⁴² Third Report at paras. 1.7(b), 5.2, 6.13; Fourth Kassam Affidavit, at paras. 21, 23, 56, 61.

32. Further, the additional criteria applicable RVOs are satisfied for the reasons set out below.

(b) The Additional Criteria Applicable to RVOs are Satisfied

(i) The RVO Structure is Necessary

33. Parties seeking court approval of an RVO must address why a reverse vesting structure is “necessary” in the circumstances.⁴³ While a reverse vesting structure must be “necessary” under the *Harte Gold* criteria, it need not be “necessary in the absolute sense.”⁴⁴ In other words, the debtor is not required to show that valuable assets would be impossible to transfer to a purchaser through a traditional asset sale (“AVO”) structure; rather, the RVO structure must result in a “net benefit” to the restructuring.⁴⁵ Accordingly, RVOs have been granted where the RVO structure maximizes the benefit that all stakeholders receive as part of a transaction in furtherance of the remedial objectives of the CCAA,⁴⁶ including where the delay, costs, uncertainty, and risk associated with a transfer of the valuable intangible assets in question through an AVO would jeopardize the ability of the purchaser to operate the business as a going concern upon closing or affect the purchaser’s willingness to complete the transaction or pay the purchase price.⁴⁷

34. A reverse vesting structure is necessary in this case to preserve the significant accrued tax attributes of the Comark Group for the go-forward business. As of February 24, 2024, the

⁴³ *Harte Gold* at para. 38; *Acerus* at para. 12.

⁴⁴ *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, [2024 BCSC 1722](#) at para. 33 [*Haro-Thurlow*].

⁴⁵ See *Haro-Thurlow* at para. 33, in which the court approved an RVO on the basis that “the structure of an RVO will result in a net benefit to the estate.”

⁴⁶ See *Quest University Canada (Re)*, [2020 BCSC 1883](#) at paras. 170-172, leave to appeal ref’d [2020 BCCA 364](#).

⁴⁷ See, e.g., *Harte Gold* at para. 71; *Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership*, [2024 BCSC 764](#) at paras. 94-95 [*Aquilini*]; *Blackrock Metals* at paras. 115-117.

Applicants have approximately \$98.8 million of non-capital tax losses, the value of which cannot be realized by way of an asset sale (had one been available).⁴⁸

35. RVOs have been frequently employed for the purpose of maintaining favourable tax attributes of a debtor corporation. For example, this Court recently held in *OMNI Conversion Technologies Inc. (Re)*, that a reverse vesting structure was necessary in the circumstances as it permitted the purchaser to acquire the intellectual property within the existing corporate structure and retain the debtor's significant tax losses in excess of \$250 million.⁴⁹ Similarly, in *Re Plant-Based Investment Corp.*, this Court approved an RVO for the purpose of maintaining a debtor's corporate status and material tax attributes.⁵⁰ RVOs have also been granted where the major or only benefit of the RVO structure is to obtain a favourable tax outcome: in *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, the BC court recently found that an RVO was necessary in order to prevent the triggering of a \$3.5 million property transfer tax obligation,⁵¹ noting in the process that Canadian courts have "blessed the objective of avoiding a tax liability."⁵²

36. Further, there is no viable alternative to the proposed RVO structure. As noted above, the Transaction is the only going-concern solution to emerge following the canvassing of the market pursuant to the Court-approved Sales Process. The granting of the ARVO is a condition precedent to Closing the Transaction,⁵³ and the Purchaser has indicated that it is not prepared to proceed with the Transaction as an asset sale because an asset sale structure does not enable the Purchaser to

⁴⁸ Fourth Kassam Affidavit at paras. 47-48.

⁴⁹ *Omni Conversion Technologies Inc. (Re)*, (March 6, 2025), Ont. S.C.J., Court File No. BK-24-03155126-0031 ([Endorsement of Justice Steele](#)) at para. 20 [*Omni*].

⁵⁰ *Plant-Based Investment Corp. (Re)* (August 17, 2023), Ont. S.C.J., Court File No. CV-23-00698826-00CL ([Endorsement of Justice Conway](#)) at para. 4. See also *PaySlate Inc. (Re)*, [2023 BCSC 977](#) at para. 11.

⁵¹ *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, [2023 BCSC 1476](#) at paras. 5, 77 [*Peakhill*] (aff'd [2024 BCCA 246](#)); See also *Comark et. al. (Re)* (13 July 2020), Toronto Ont S.C.J. [Commercial List], Court File No. CV-20-00642013-00CL ([Reverse Vesting Order](#)) [*Comark ARVO (2020)*].

⁵² *Peakhill* at para. 61.

⁵³ Fourth Kassam Affidavit at para. 28.

acquire the tax attributes of the Comark Group that are fundamental to the overall Transaction.⁵⁴ Courts have held that RVOs are necessary where the court recognizes that there is no viable alternative to the proposed RVO structure to complete a substantially similar transaction,⁵⁵ such as where the purchaser has insisted that it will not move forward under any other structure.⁵⁶

(ii) The Transaction is in the Best Interest of Stakeholders

37. In addition to being necessary, the proposed Transaction satisfies the other *Harte Gold* criteria and is in the best interest of stakeholders generally. As noted above, the Transaction will generate the best economic result possible in the circumstances, as it will permit a material portion of the Bootlegger business to continue as a going concern while also realizing the value of the Applicants' tax losses, which would not have been possible in an asset sale.⁵⁷ The RVO structure will therefore produce an economic result more beneficial to the Applicants' stakeholders than what could be achieved by way of an asset sale (had one been available).

38. Finally, no stakeholders would be worse off under the proposed RVO structure than they would under any other viable alternative. First, as noted above, there is no viable alternative to the Transaction, which represents the best and only solution available to the Applicants in the circumstances. Second, the Transaction ensures positive outcomes for a number of prominent stakeholders, including by: (i) ensuring the repayment of the Outstanding Senior Secured Indebtedness; and (ii) ensuring that Bootlegger continues to operate as a going concern, to the benefit of, among others, the Continuing Employees and various contractual counterparties. Given the \$57 million of secured debt obligations owing under the ParentCo Facility (which will not be

⁵⁴ Fourth Kassam Affidavit at paras. 48.

⁵⁵ See *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2024 ONSC 250](#) at para. 47 [*Validus*]; *Just Energy* at paras. 51 and 58; *Aquilini* at para. 96.

⁵⁶ See *Validus* at paras. 47-48; *Harte Gold* at para. 73; *Omni*, at para. 20.

⁵⁷ Fourth Kassam Affidavit at paras. 48. 51.

satisfied under the Transaction), there is no prospect of a recovery for the Applicants' unsecured creditors under any alternative scenario or transaction structure.⁵⁸

(c) The Requirements for a Related Party Transaction have been Satisfied

39. Subsection 36(4) of the CCAA imposes additional criteria that apply where the proposed sale is to a person who is related to the debtor company. The court must be satisfied that: (i) good faith efforts were made to sell the assets to persons who are not related to the company; and (ii) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale.⁵⁹ This provision requires that the court be “satisfied, overall, that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated.”⁶⁰

40. The proposed Transaction satisfies these criteria. As set out above, the Monitor solicited parties — including unrelated parties — known to the Applicants and/or the Monitor as having interest, or potentially having interest, in the Remaining Business, and unrelated parties signed the standard form confidentiality agreement and received access to the data room to evaluate a potential acquisition of the Remaining Business.⁶¹ Despite the efforts of the Applicants and the Monitor, there were no other Qualified Bids — arm's length or otherwise — such that the Purchase Agreement represents the best and only transaction available in the circumstances.⁶²

⁵⁸ Third Report at para. 6.13(c).

⁵⁹ CCAA, s. 36(4).

⁶⁰ *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para. 15.

⁶¹ Fourth Kassam Affidavit at para. 21.

⁶² Fourth Kassam Affidavit at paras. 23-24.

41. The Monitor has opined in the Third Report that, in its view, the factors set out in section 36(4) of the CCAA are satisfied.⁶³

B. ResidualCo Should be Added as a CCAA Party

42. The Transaction provides that, upon delivery of the Monitor's certificate confirming closing, ResidualCo "shall be a company to which the CCAA applies and...shall be added as a CCAA Party in these CCAA proceedings."⁶⁴ This step is typical in RVO transactions.

43. The CCAA applies to a "debtor company" or affiliated debtor companies where the total claims against the debtor/affiliated debtors exceed \$5 million.⁶⁵ A "debtor company" means, *inter alia*, a company that is insolvent.⁶⁶ Whether a company is insolvent is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and Insolvency Act* ("BIA") and the expanded concept of insolvency adopted by this court in *Stelco*.⁶⁷

44. Upon the transfer of the Excluded Assets and Excluded Liabilities to ResidualCo, the realizable value of its assets will be insufficient to satisfy all of its obligations. ResidualCo will therefore become "insolvent" under the BIA test and face the kind of imminent liquidity crisis that satisfies the expanded *Stelco* test, making it a "debtor company" to which the CCAA applies. ResidualCo should therefore be added as a CCAA Party in these CCAA proceedings.

⁶³ Third Report at para. 6.12.

⁶⁴ Proposed ARVO at para. 18.

⁶⁵ CCAA, s. 3(1).

⁶⁶ CCAA, s. 2(1).

⁶⁷ *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) at paras. 49-50; *Laurentian University of Sudbury*, [2021 ONSC 659](#) at paras. 30-32, citing *Stelco Inc., Re* (2004), [48 C.B.R. \(4th\) 299](#) (ONSC) at para. 26 ("a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring").

C. The Releases should be Approved

45. The proposed ARVO provides for releases of all present and future claims arising in connection with or relating to the Purchase Agreement or consummation or implementation of the Transaction and/or any document, agreement, instrument, matter or transaction involving the Applicants arising in connection with or pursuant to the foregoing (the “**Releases**”) provided that, nothing in the proposed release shall waive, discharge, release, cancel or bar (i) any claim with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud or any claim against the current or former directors of the Applicants that is not permitted to be released pursuant to section 5.1(2) of the CCAA, or (ii) any Released Party from the performance of its obligations pursuant to the Purchase Agreement.⁶⁸

46. The Releases apply in relation to all claims against: (i) the current and former directors, officers, employees, consultants legal counsel and advisors of the Applicants and ParentCo; (ii) the current and former directors, officers, employees, consultants, legal counsel and advisors to ResidualCo; (iii) the Purchaser and its legal counsel and their respective current directors, officers, partners, employees, consultants, advisors and assignees; and (iv) the Monitor and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors (collectively, the “**Released Parties**”).

47. The Court has repeatedly confirmed that it has jurisdiction to grant orders approving releases (including third-party releases) in the context of CCAA proceedings. Such releases may be granted outside of a plan of arrangement, including in circumstances in which no plan is proposed or anticipated,⁶⁹ and third-party releases are commonly found in CCAA approval and

⁶⁸ Fourth Kassam Affidavit at para. 40.

⁶⁹ See, i.e., *ENTREC Corporation (Re)*, [2020 ABQB 751](#) at paras. 5-9 and *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#) at paras. 91-95.

vesting orders approving sale transactions outside the context of plans of arrangement.⁷⁰ Outside of the plan context, CCAA courts have granted releases to, among other parties: (i) monitors;⁷¹ (ii) debtors and related parties, including residual corporations created for the purpose of an RVO;⁷² and (iii) the purchasers of a debtor's assets.⁷³ Such orders frequently release a broad range of persons associated with the released parties, including affiliates, directors and officers, employees, consultants, legal counsel, partners and advisors.⁷⁴

48. The same test for granting third party releases in a CCAA plan applies to a release in an RVO.⁷⁵ The court must ask:

- (a) whether the parties to be released were necessary to the restructuring of the debtor;
- (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;
- (c) whether the restructuring could succeed without the releases;

⁷⁰ See *Blackrock Metals* at para. 128, in which the court held that “is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction.”

⁷¹ See, i.e., *CannaPiece Group Inc. et al. (Re)*, (February 10, 2023), Ont. S.C.J [Commercial List], CV-22-00689631-00CL ([Approval and Vesting Order](#)) at para. 17 [*Cannapiece*]; *Cirque du Soleil Canada inc.*, [2020 QCCS 4849](#) at para. 51 [*Cirque de Soleil*]; *Rambler Metals and Mining Limited (Re)*, [2023 NLSC 134](#) at paras. 90-92 [*Rambler Metals*]; *Comark ARVO* (2020) at para. 18.

⁷² See, i.e., *Omni* at paras. 24-26; *Omni Conversion Technologies Inc. (Re)*, (February 27, 202), Ont. S.C.J., Court File No. BK-24-03155126-0031 ([Approval and Reverse Vesting Order](#)) at para. 26 [*Omni ARVO*]. See also *Cirque de Soleil*, at para. 51; *Rambler Metals*, at para. 90; *Comark ARVO* (2020) at para. 18.

⁷³ See, i.e., *Cannapiece*, at para. 11; *Rambler Metals*, at paras. 90-92.

⁷⁴ See *Omni ARVO* at para. 26, in which the “Proposal Trustee and its legal counsel and their respective current directors, officers, partners, employees, consultants and advisors” were released. See also *Cirque de Soleil*, at para. 51, in which the “respective affiliates, funds under management, affiliated funds, shareholders, members, equity holders, trustees, directors, officers, managers, employees, partners, legal counsel, advisors and other representatives” of the other released parties were released. See also *Harte Gold* at paras. 78-80, in which releases for the directors and officers of the debtor and the residual corporations were granted; *Rambler Metals*, at paras. 90-92; *Comark ARVO* (2020) at para. 18.

⁷⁵ See *Harte Golde* at para. 80, citing the factors set out in *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 54 [*Lydian International*].

- (d) whether the parties being released contributed to the restructuring; and
- (e) whether the releases benefit the debtors as well as the creditors generally.

49. It is not necessary for each of these factors to apply in order for release to be granted.⁷⁶

50. The proposed Releases satisfy this test. Each of the Released Parties have made significant and material contributions in connection with the CCAA proceedings, including with regard to the Sale, the Sales Process, and the Transaction. The continued involvement of the Applicants' directors and officers, along with the Monitor and the Purchaser and their professional advisors, have been critical to advancing the Applicants' restructuring efforts, which ultimately resulted in Going Concern Transactions for a material portion of the Old Ricki's business, the Old cleo business and the Bootlegger business, all of which has operated for the benefit of the Applicants' stakeholders generally.⁷⁷

51. Further, the proposed Releases are appropriately limited in scope. The proposed Releases apply only in respect of claims relating to the Transaction. The proposed Releases do not apply in respect of any claim or liability arising out of any actual fraud of the Released Parties; further, the proposed Releases do not apply in respect of: (i) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; (ii) any claims in relation to the obligations of a Released Party pursuant to the Purchase Agreement.⁷⁸

⁷⁶ *Harte Gold* at para. 80.

⁷⁷ Fourth Kassam Affidavit at para. 53, 55.

⁷⁸ Fourth Kassam Affidavit at paras. 52, 55.

52. Finally, granting the Releases will provide certainty and finality to all parties in the efficient and appropriate manner in the circumstances. The proposed Releases are supported by the Purchaser and the Monitor.⁷⁹

D. The Applicants' Employees are Eligible for WEPP Payments

53. The WEPPA enacts the Wage Earner Protection Program, pursuant to which eligible former employees may be entitled to payments in respect of outstanding eligible wages, including termination and severance pay if certain criteria are met (as defined above, the WEPP Payments).

54. Section 5(1) of the WEPPA provides that an individual is eligible to receive WEPP Payments if, among other things: (i) the individual's employment is ended for a reason prescribed by regulation; (ii) the individual is owed eligible wages by a former employer; (iii) the former employer is subject to proceedings under the CCAA; and (iv) a court determines under s. 5(5) of the WEPPA that the criteria prescribed by regulation are met. Section 3.2 of the WEPP Regulations establishes the criteria which the court must consider under s. 5(5) of the WEPPA. Pursuant to s. 3.2, the court "may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to winddown its business operations." If the court so determines, the former employees are entitled to WEPP Payments.

55. In order to assist eligible terminated employees, the Applicants seek a declaration, effective as of (i) in the case of Old Ricki's and Old cleo, May 1, 2025, and (ii) in the case of Bootlegger, the Effective Time of the Transaction, that such corporations meet the criteria by prescribed by s. 3.2 of the WEPP regulations and, from and after the applicable effective date, their former employees are individuals to whom the WEPPA applies:

⁷⁹ Third Report at para. 6.18; Fourth Kassam Affidavit at para. 53.

- (a) **Old Ricki's and Old cleo Employees:** As discussed above, on the closing of the Putman Transaction 61 leases were assigned from Old Ricki's and Old cleo to the Putman Purchaser, with the Putman Purchaser additionally intending to operate seven store locations under new leases. All employees that were not offered or did not accept employment with the Putman Purchaser have received notice that they will be terminated on a rolling basis. Each of Old Ricki's and Old cleo has terminated all of its employees in Canada other than employees retained to wind down their business operations.⁸⁰
- (b) **Bootlegger Employees:** As discussed above, prior to the Closing Date, Warehouse One will offer employment to substantially all employees at Bootlegger stores subject to a Retained Lease. Prior to the Closing Date of the Transaction, written termination notices will be delivered to all Bootlegger employees, with employee terminations expected to occur on a rolling basis. Accordingly, Bootlegger will not have any remaining employees following completion of the Bootlegger Transaction and the store closure process.⁸¹

56. The requested declaration is necessary in order to assist eligible former employees in obtaining timely access to the WEPP Payments and is supported by the Monitor.⁸² Declaratory relief in relation to WEPP Payments is commonly granted in CCAA proceedings.⁸³

⁸⁰ Fourth Kassam Affidavit at para. 58.

⁸¹ Fourth Kassam Affidavit at para. 59.

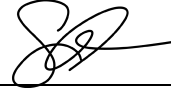
⁸² Third Report at para. 7.9.

⁸³ See, i.e., *Accuride Canada Inc. (Re)*, (January 27, 2025), Ont S.C.J. [Commercial List], Court File No. CV- 24-00729147-00CL ([Order](#)) at para. 14; *Bed Bath & Beyond Canada Ltd. (Re)*, [2023 ONSC 1230](#) at para. 16; *Inscape Corporation et al. (Re)*, (January 20, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00692784-00CL ([Amended and Restated Initial Order](#)) at para. 41.

PART IV - NATURE OF THE ORDER SOUGHT

57. The Applicants therefore request that this Court grant the proposed ARVO substantially in the form of the draft Order attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of March, 2025

A handwritten signature in black ink, appearing to read 'Sierra Farr', is positioned above a horizontal line.

Sierra Farr

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Accuride Canada Inc. (Re)*, (January 27, 2025), Ont S.C.J. [Commercial List], Court File No. CV- 24-00729147-00CL ([Order](#))
2. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
3. *Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership*, [2024 BCSC 764](#)
4. *Arrangement relatif à Blackrock Metals Inc.*, [2022 QCCS 2828](#)
5. *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, [2024 BCSC 1722](#)
6. *Bed Bath & Beyond Canada Ltd. (Re)*, [2023 ONSC 1230](#)
7. *CannaPiece Group Inc. et al. (Re)*, (February 10, 2023), Ont. S.C.J [Commercial List], CV-22-00689631-00CL ([Approval and Vesting Order](#))
8. *Chesswood Group Ltd. et al. (Re)*, (March 10, 2025), Ont S.C.J. [Commercial List], Court File No. CV-24-00730212-00CL ([Endorsement of Justice Osborne](#))
9. *Cirque du Soleil Canada inc.*, [2020 QCCS 4849](#)
10. *Comark et. al. (Re)* (13 July 2020), Toronto Ont S.C.J. [Commercial List], Court File No. CV-20-00642013-00CL ([Reverse Vesting Order](#))
11. *Comark Holdings Inc. et al. (Re)*, (February 4, 2025), Ont S.C.J. [Commercial List], Court File No. CV-25-00734339-00CL ([Endorsement of Justice Cavanaugh](#))
12. *ENTREC Corporation (Re)*, [2020 ABQB 751](#)
13. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
14. *Inscape Corporation et al. (Re)*, (January 20, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00692784-00CL ([Amended and Restated Initial Order](#))
15. *Just Energy Corp. (Re)*, [2021 ONSC 1793](#)
16. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#)
17. *Laurentian University of Sudbury*, [2021 ONSC 659](#)
18. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
19. *Omni Conversion Technologies Inc. (Re)*, (February 27, 202), Ont. S.C.J., Court File No. BK-24-03155126-0031 ([Endorsement of Justice Steele](#))
20. *Omni Conversion Technologies Inc. (Re)*, (February 27, 2025), Ont. S.C.J., Court File No. BK-24-03155126-0031 ([Approval and Reverse Vesting Order](#))

21. *PaySlate Inc. (Re)*, [2023 BCSC 977](#)
22. *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, [2023 BCSC 1476](#), (aff'd [2024 BCCA 246](#))
23. *Plant-Based Investment Corp. (Re)* (August 17, 2023), Ont. S.C.J., Court File No. CV-23-00698826-00CL ([Endorsement of Justice Conway](#))
24. *Quest University Canada (Re)*, [2020 BCSC 1883](#)
25. *Rambler Metals and Mining Limited (Re)*, [2023 NLSC 134](#)
26. *Royal Bank of Canada v. Soundair Corp.* [1991 CanLII 2727](#) (ON CA)
27. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
28. *Stelco Inc., Re* (2004), [48 C.B.R. \(4th\) 299](#) (ONSC)
29. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
30. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247](#)
31. *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#)
32. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2024 ONSC 250](#)
33. *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#)

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

Date March 18, 2025



Signature
Sierra Farr

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS
COMPANIES’ CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

Definitions

2 (1) In this Act,

...

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

[...]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

[...]

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.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b)** the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

WAGE EARNER PROTECTION PROGRAM ACT

SC 2005, c 47, s 1, as amended

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
 - (i) the former employer is bankrupt,
 - (ii) the former employer is subject to a receivership,
 - (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and

(A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and

(B) a trustee is appointed, or

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

[...]

(5) On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

WAGE EARNER PROTECTION PROGRAM REGULATIONS

SOR/2008-222, as amended

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations

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

Court File No: CV-25-00734339-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF COMARK HOLDINGS INC., BOOTLEGGER CLOTHING INC.,
9376208 CANADA INC. AND 10959367 CANADA INC.

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(Approval and Reverse Vesting Order)**

OSLER, HOSKIN & HARCOURT LLP

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

Tracy Sandler (LSO# 32443N)

Tel: 416.862.5890
Email: tsandler@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733
Email: sirving@osler.com

Sean Stidwill (LSO# 71078J)

Tel: 416.862.4217
Email: sstidwell@osler.com

Sierra Farr (LSO# 87551D)

Tel: 416.862.6499
Email: sfarr@osler.com

Fax: 416.862.6666

Lawyers for the Applicants