

**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  
OLD MM GP INC.**

Applicant

**FACTUM OF THE COURT-APPOINTED MONITOR  
(Returnable October 31, 2024)**

October 24, 2024

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solely in its capacity as the Court-appointed  
Monitor and not in its personal or corporate  
capacity

**TO: THE SERVICE LIST**

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## PART I - OVERVIEW

1. Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) (together, the “**Debtor Companies**”), seeks an order (the “**Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the proceedings thereunder, the “**CCAA proceedings**”) further extending the Stay Period (as defined below).
2. Pursuant to prior orders granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), the Debtor Companies, with the assistance of the Monitor, successfully liquidated a sub-set of their retail stores and closed a going-concern sale transaction for the remainder of their business.
3. As at October 17, 2024, The Monitor has completed an initial distribution to creditors.
4. The Debtor Companies, with the assistance of the Monitor, continue to have discussions with the Canada Revenue Agency (“**CRA**”) in respect of certain outstanding input tax credit refunds that remain outstanding. The recovery of these refunds will contribute to the Debtor Companies’ estates and facilitate a second distribution (the “**Second Distribution**”) in accordance with the Termination and Distribution Order (as defined below). To that end, the proposed Order, among other things:

- (a) extends the Stay Period to the earlier of March 31, 2025, and the termination of the CCAA Proceedings; and
- (b) approves the Sixth Report (as defined below), and the activities of the Monitor described therein.

5. The relief sought under the proposed Order, among other things, will provide the necessary time to facilitate the Second Distribution (if applicable) and the resolution of all necessary remaining issues before terminating the CCAA proceedings. Such relief is in the best interests of the Debtor Companies' and their creditors and is appropriate in the circumstances.

## **PART II - FACTS**

6. The facts with respect to this motion are more fully set out in the Sixth Report of the Monitor dated October 24, 2024 (the "**Sixth Report**"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Sixth Report or the proposed Order, as applicable.<sup>1</sup>

### **A. Background to, and Initial Stages in, these CCAA Proceedings**

7. Together, the Debtor Companies formerly constituted Canada's largest privately held retailer of specialty toys and children's books. Facing several challenges and a liquidity crisis, the Debtor Companies resolved to commence these CCAA proceedings to provide the stability and flexibility necessary to allow them to pursue a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of their retail stores (the

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<sup>1</sup> Sixth Report of Alvarez & Marsal Canada Inc. dated October 24, 2024 [Sixth Report], Motion Record of the Court Appointed Monitor dated October 24, 2024 at Tab 2 [Motion Record].

“**Liquidation Sale**”). Accordingly, Old MM GP Inc. sought and, on November 23, 2023 (the “**Filing Date**”), obtained an initial order (the “**Initial Order**”) under the CCAA.<sup>2</sup>

8. Among other things, the Initial Order:

- (a) appointed A&M as the Monitor;
- (b) stayed, until November 30, 2023, all proceedings and remedies taken or that might be taken in respect of the Debtor Companies, the Monitor or the Debtor Companies’ directors and officers, or affecting the Business or the Property (each as defined in the Initial Order), except with the written consent of the Debtor Companies and the Monitor, or with leave of the Court (the “**Stay Period**”); and
- (c) extended the Stay Period and other protections and authorizations to Old MM LP.<sup>3</sup>

9. On November 30, 2023, Old MM GP Inc. sought and obtained the following:

- (a) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
  - (i) approved the Forbearance Agreement (as defined in the ARIO), among, *inter alios*, Old MM GP Inc. and Old MM LP, as credit parties, and Canadian Imperial Bank of Commerce (“**CIBC**”), as agent for certain lenders, and granted a corresponding DIP Charge over the Property (each as defined in the ARIO);
  - (ii) extended the Stay Period to January 26, 2024; and

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<sup>2</sup> *Ibid* at para 1.1, Motion Record at Tab 2.

<sup>3</sup> *Ibid* at paras 1.1-1.2, Motion Record at Tab 2.

- (iii) approved the KERP and granted the KERP Charge (as defined in the ARIIO).
- (b) an order (the “**Liquidation Sale Approval Order**”), which, among other things:
  - (i) approved the Consulting Agreement and Sale Guidelines (each as defined in the Liquidation Sale Approval Order); and
  - (ii) authorized Old MM LP, with the assistance of Gordon Brothers Canada ULC, to conduct the Liquidation Sale at 18 of the Debtor Companies’ store locations.

**B. The Sale of Old MM LP’s Assets and Business**

10. With a view to consummating a value maximizing going concern sale transaction, Old MM LP negotiated and entered into an asset purchase agreement dated December 1, 2023 (the “**APA**”) with Unity Acquisitions Inc. (“**Unity**”).<sup>4</sup>

11. To effectuate the transactions contemplated under the APA (collectively, the “**Transaction**”), Old MM GP Inc. sought and, on December 13, 2023, obtained an order, among other things:

- (a) approving the APA between Old MM LP, as vendor, and Unity or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”); and

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<sup>4</sup> *Ibid* at para 1.3, Motion Record at Tab 2.

- (b) vesting all of Old MM LP's rights, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).<sup>5</sup>

12. In accordance with the APA, Old MM GP Inc. sought and, on January 12, 2024, obtained an order (the "**Assignment Order**") assigning, conveying and transferring to the Purchaser the rights and obligations of the Debtor Companies under the Assigned Contracts (as defined in the Assignment Order).<sup>6</sup>

13. On that same date and in anticipation of the closing of the Transaction and the completion of the Liquidation Sale, Old MM GP Inc. also sought and obtained an order (the "**Ancillary Order**"), among other things:

- (a) expanding the Monitor's powers and granting certain additional protections in favour of the Monitor;
- (b) extending the Stay Period to and including April 30, 2024; and
- (c) authorizing and directing Old MM LP to make certain distributions to CIBC, including to satisfy all obligations under the Forbearance Agreement (collectively, the "**CIBC Distribution**").<sup>7</sup>

14. The Transaction resulted in excess proceeds being available after the CIBC Distribution (the "**Excess Proceeds**").<sup>8</sup>

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<sup>5</sup> *Ibid* at para 1.4, Motion Record at Tab 2.

<sup>6</sup> *Ibid* at para 1.5, Motion Record at Tab 2.

<sup>7</sup> *Ibid*, Motion Record at Tab 2.

<sup>8</sup> Fifth Report of the Monitor dated August 13, 2024 at paras 4.0-4.2 [Fifth Report], Motion Record at Tab 2A.

### C. The Claims Procedure

15. To facilitate the distribution of the Excess Proceeds and the termination of these CCAA proceedings, the Monitor sought and, on March 8, 2024, obtained an order (the “**Claims Procedure Order**”), among other things, (a) extending the Stay Period to October 31, 2024; and (b) establishing a procedure for the identification, quantification and resolution of claims against the Debtor Companies and their present and former directors and officers (the “**Claims Procedure**”). The Claims Procedure was developed to provide a fair, comprehensive, and expeditious process for identifying, quantifying and resolving claims against the Debtor Companies and their present and former directors and officers.<sup>9</sup>

16. The Monitor reviewed all Proofs of Claim received on or before the relevant bar date; and as applicable, either accepted, revised or disallowed the classification, nature, and/or amount of each Claim (as defined in the Claims Procedure Order). Ultimately, 300 Claims were finally determined and accepted by the Monitor in accordance with the Claims Procedure Order on an unsecured and non-priority basis.<sup>10</sup> Subsequently, the Debtor Companies’ assets were monetized, and all Claims against the Debtor Companies and their present and former directors and officers were quantified, resolved or barred.

### D. Termination and Distribution

17. Having completed the Claims Procedure, the Monitor sought and on August 22, 2024, obtained, an order (the “**Termination and Distribution Order**”), among other things:

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<sup>9</sup> Sixth Report, *supra* note 1 at para 1.6, Motion Record at Tab 2.

<sup>10</sup> Fifth Report, *supra* note 8 at paras 5.10-5.11, Motion Record at Tab 2A.

- (a) approving the distribution methodology (the “**Distribution Methodology**”) described in the Fifth Report of the Monitor dated August 13, 2024 (the “**Fifth Report**”), and authorizing and directing the Monitor, for and on behalf of the Debtor Companies, to make the distributions contemplated by the Distribution Methodology (collectively, the “**Distributions**”);
- (b) authorizing the Debtor Companies to make assignments in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) prior to the CCAA Termination Time (as defined in the Termination and Distribution Order), naming A&M as the licensed insolvency trustee (in such capacity, the “**Trustee**”);
- (c) authorizing the Trustee to administer the Debtor Companies’ estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as Trustee under the BIA;
- (d) authorizing the Monitor to establish a cash reserve (the “**Administrative Reserve**”), intended to account for certain obligations, to the extent not previously paid;
- (e) approving the Reports (as defined in the Termination and Distribution Order) as well as the activities of the Monitor described therein; and
- (f) authorizing the termination of the CCAA proceedings.<sup>11</sup>

18. As at October 17, 2024, the Monitor administered the Distributions on behalf of the Debtor Companies in accordance with the Distribution Methodology and the Termination and Distribution

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<sup>11</sup> Sixth Report, *supra* note 1 at para 1.7, Motion Record at Tab 2.

Order (the “**Initial Distribution**”). Net of the Administrative Reserve, approximately \$1.9 million of Excess Proceeds was distributed to 300 Claimants.<sup>12</sup>

**E. Sales Tax Returns**

19. As of the date of the Sixth Report, the Debtor Companies are expecting an input tax credit refund of approximately \$65,000 (the “**Pending ITC Refund**”). If or when received, the \$65,000 refund will be added to the Excess Proceeds pool and be distributed to Claimants in a potential subsequent distribution.

20. Additionally, based on the Initial Distribution, the Monitor intends to cause the Debtor Companies to file a final sales tax return. Once filed, the Monitor anticipates that the Debtor Companies will be eligible to receive a further input tax credit of approximately \$130,000 (“**Final ITC Refund**”).

21. Pending collection of the Pending ITC Refund and the Final ITC Refund, the Monitor, on behalf of the Debtor Companies, intends to make the Second Distribution in accordance with the Termination and Distribution Order. Whether a Second Distribution can be made, as well as the ultimate timing and quantum of the Second Distribution is uncertain at this time but will be completed as soon as reasonably practicable.

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<sup>12</sup> *Ibid* at paras 4.4-4.7, Motion Record at Tab 2.

**F. The Stay Period**

22. The Stay Period granted under the Claims Procedure Order is set to expire on October 31, 2024. Pursuant to the proposed Order, the Monitor is seeking to extend the Stay Period to the earlier of March 31, 2025, and the termination of the CCAA Proceedings.<sup>13</sup>

23. The anticipated costs through the extended Stay Period are expected to be modest and consist primarily of professional fees of the Monitor, and the Monitor's Counsel, and will be funded by Administrative Reserve established pursuant to the Termination and Distribution Order.<sup>14</sup> As such, the Debtor Companies are forecast to have sufficient liquidity throughout the Stay Period.<sup>15</sup>

**G. Approval of the Sixth Report and Activities**

24. The proposed Order also seeks approval of the Sixth Report, and the activities of the Monitor described therein.<sup>16</sup>

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<sup>13</sup> *Ibid* at para 6.1, Motion Record at Tab 2.

<sup>14</sup> *Ibid* at para 6.4, Motion Record at Tab 2.

<sup>15</sup> *Ibid*, Motion Record at Tab 2.

<sup>16</sup> *Ibid* at para 2.1, Motion Record at Tab 2.

### PART III - ISSUES

25. The issues to be considered on this motion are whether this Court should:
- (a) extend the Stay Period to the earlier of March 31, 2025, and the termination of the CCAA Proceedings; and
  - (b) approve the Sixth Report and the conduct and activities of the Monitor described therein.

### PART IV - LAW AND ANALYSIS

#### A. This Court Should Extend the Stay Period

26. The Stay Period is currently set to expire on October 31, 2024.<sup>17</sup> Subsection 11.02(2) of the CCAA provides that the Court may grant an extension of the stay of proceedings for “any period the court considers necessary.”<sup>18</sup>

27. The jurisdiction conferred to courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA”.<sup>19</sup> These purposes include, among others, providing for an efficient resolution of a debtor company’s insolvency, ensuring the fair and equitable treatment of claims against such debtor company and maximizing creditor recovery.<sup>20</sup> Accordingly, a stay of proceedings will be appropriate where it maintains the status

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<sup>17</sup> *Ibid* at para 6.1, Motion Record at Tab 2.

<sup>18</sup> *Companies’ Creditors Arrangement Act*, [RSC 1985, c. C-36](#) at [s 11.02\(2\)](#) [CCAA]; *U.S. Steel Canada Inc. (Re)*, [2017 ONSC 1967](#) at [para 23](#) [*U.S. Steel*]; *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at [para 24](#). [*Canwest*].

<sup>19</sup> *Canwest*, *ibid* at [para 24](#).

<sup>20</sup> *Ibid* at [paras 24-25](#); *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#) at paras [40](#), [42](#); *Timminco Limited (Re)*, [2012 ONSC 2515](#) at [para 15](#) [*Timminco Limited*].

quo and provides a debtor company with the breathing room necessary to achieve these objectives.<sup>21</sup>

28. To grant an extension of a stay of proceedings pursuant to section 11.02, the Court must be satisfied that circumstances exist that make the relief appropriate and that the debtor companies have acted, and are acting, in good faith and with due diligence.<sup>22</sup> In this case, the proposed extension of the Stay Period is appropriate given that:

- (a) the proposed extension of the Stay Period will maintain the status quo and provide the breathing room and stability necessary to, among other things, complete the Second Distribution (if applicable) and wind-down the Debtor Companies' estates;
  - (b) since the granting of the Initial Order, the Debtor Companies have acted in good faith and with due diligence to, among other things, implement and complete the Liquidation Sale and the Transaction;
  - (c) under the Monitor's direction, the Debtor Companies have continued to act in good faith to address post-closing matters related to the Transaction and to facilitate the Claims Procedure and the Distributions contemplated by the Distribution Methodology;
  - (d) the Debtor Companies are forecast to have sufficient liquidity throughout the Stay Period;
- and

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<sup>21</sup> *Timminco Limited*, *ibid* at [para 15](#); *Canwest*, *ibid* at [paras 24-25](#).

<sup>22</sup> *CCAA*, *supra* note 18 at [s 11.02\(2\) - s 11.02\(3\)](#); *U.S. Steel*, *supra* note 18 at [para 23](#); *Urbancorp Cumberland 2 GP Inc.*, *Re. 2022 ONSC 3248* at [para 8](#).

(e) the Monitor is not aware of any creditor that would be materially prejudiced by the proposed extension of the Stay Period.

29. Taken together, the Monitor submits that the proposed extension of the Stay Period is in the best interests of the Debtor Companies and their stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances.

**B. The Sixth Report and Activities Therein Should be Approved**

30. This Court routinely approves the reports and activities of Court-appointed monitors in CCAA proceedings pursuant to its jurisdiction under section 11 of the CCAA to make any order considered “appropriate in the circumstances”.<sup>23</sup> This Court has also previously recognized that there are policy and practical reasons for a court to approve a monitor’s activities. Specifically, Court approval:

- (a) allows the monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the monitor’s activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the monitor’s activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor not otherwise provided by the CCAA; and

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<sup>23</sup> CCAA, *ibid* at [s 11](#); *Re Target Canada Co*, [2015 ONSC 7574](#) at [paras 1-2](#) [*Target*]; *Laurentian University of Sudbury*, [2022 ONSC 5850](#) at [para 17](#) [*Laurentian*]; *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at para 13 [*Laurentian University*].

- (f) protects the creditors from the delay and disruption that would be caused by (i) the re-litigation of steps taken to date, and (ii) potential indemnity claims by the monitor.<sup>24</sup>

31. Given the aforementioned benefits, the customary limitations imposed upon reliance on such approval under the proposed Order and the Monitor's diligent and good faith performance of its activities in compliance with the CCAA and the orders of this Court, the Monitor submits that it is appropriate for this Court to approve the Sixth Report and the activities described therein

#### **PART V - ORDER REQUESTED**

32. For the reasons set out above, the Monitor respectfully requests that this Honourable Court grant the Order, substantially in the form included at Tab 3 of its Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24<sup>th</sup> DAY OF OCTOBER 2024**

***Bennett Jones LLP***  
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**BENNETT JONES LLP**

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<sup>24</sup> *Target*, *ibid* at [paras 22-23](#); *Laurentian*, *ibid* at [para 17](#); *Laurentian University*, *ibid* at paras 13-14.

## SCHEDULE “A” – LIST OF AUTHORITIES

### *Cases Cited*

1. 9354-9186 *Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#).
2. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#).
3. *Laurentian University of Sudbury*, [2022 ONSC 2927](#).
4. *Laurentian University of Sudbury*, [2022 ONSC 5850](#).
5. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).
6. *Timminco Limited (Re)*, [2012 ONSC 2515](#).
7. *Urbancorp Cumberland 2 GP Inc., Re.* [2022 ONSC 3248](#).
8. *U.S. Steel Canada Inc. (Re)*, [2017 ONSC 1967](#).

## SCHEDULE “B” – STATUES AND REGULATIONS RELIED ON

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

#### Section 11

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

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.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

#### Section 11.02

##### **Stays, etc. – initial application**

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

**Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

**Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

**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 OLD MM GP INC.**

Applicant

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

Proceeding commenced at Toronto

**FACTUM OF THE COURT-APPOINTED MONITOR**  
**(Returnable October 31, 2024)**

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