

**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 TOYS "R" US (CANADA) LTD. /  
TOYS "R" US (CANADA) LTEE (the "Applicant")**

**FACTUM OF THE APPLICANT**

February 2, 2026

**AIRD & BERLIS LLP**  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)  
Tel: (416) 865-3082  
Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)  
Tel: (416) 865-3428  
Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**Samantha Hans** (LSO #84737H)  
Tel: (437) 880-6105  
Email: [shans@airdberlis.com](mailto:shans@airdberlis.com)

Lawyers for the Applicant

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## PART I - INTRODUCTION

1. This factum is filed in support of an Application (the “**CCAA Proceedings**”) by Toys “R” Us (Canada) Ltd. / Toys “R” Us (Canada) Ltee (the “**Applicant**”) for an initial order (the “**Initial Order**”) and certain related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Capitalized terms not otherwise defined have the meaning ascribed to them in the affidavit of Neil Taylor sworn February 2, 2026 (the “**Taylor Affidavit**”).

2. The Applicant is a large toy, clothing and baby products retailer in Canada, selling a broad selection of children’s products from leading national, international and proprietary brands under the iconic “Toys “R” Us” and “Babies “R” Us” store banners. The Applicant has 22 store locations located in Canada.<sup>1</sup> These stores, and the hundreds of employees who support them, continue to serve customers nationwide. However, persistent inflation, rising labour and occupancy costs, post-pandemic supply chain disruptions, and a structural shift toward e-commerce have materially weakened the performance of traditional bricks and mortar retailers.<sup>2</sup>

3. As further detailed below and in the Taylor Affidavit, over the past several years, the Applicant has faced sustained operational and financial pressures that have eroded liquidity and compromised its ability to continue operating outside of a formal restructuring. The Applicant has taken aggressive steps to reduce expenses, improve margins, and right size its retail footprint, including head office reductions, workforce optimization, closing of unprofitable stores, supplier negotiations, and the introduction of new revenue generating concepts.<sup>3</sup> Despite significant efforts to stabilize the business and adapt to evolving industry conditions, pressures affecting the retail

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<sup>1</sup> Affidavit of Neil Taylor sworn February 2, 2026 at para 7, Application Record at Tab 2 [“**Taylor Affidavit**”].

<sup>2</sup> Taylor Affidavit at para 90.

<sup>3</sup> Taylor Affidavit at para 91.

landscape have intensified to the point where the Applicant is no longer able to meet obligations as they come due.<sup>4</sup>

4. The Applicant now faces more than \$120 million owing to trade vendors and substantial amounts to landlords across its national store footprint. Its liquidity position has deteriorated to the point where it cannot continue funding ordinary course operations, meet near term obligations, or maintain essential relationships with suppliers. Without immediate relief, the business is at risk of abrupt cessation, which would materially reduce recoveries for all creditor groups.<sup>5</sup>

5. The Applicant believes that a CCAA filing will provide the structure and breathing room necessary to stabilize operations, preserve going concern value, and conduct a court supervised sale and investment solicitation process.<sup>6</sup>

6. The Applicant is seeking an Initial Order providing for, among other things:

- (a) the appointment of Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor of the Applicant (in such capacity, the “**Monitor**”);
- (b) a stay of proceedings against the Applicant, the Monitor, and the Applicant’s employees, directors, advisors, officers and representatives, including the CRO, acting in such capacities for an initial 10-day period (the “**Initial Stay Period**”);
- (c) authorization to borrow from 2625229 Ontario Inc. (“**262**”), the Applicant’s primary secured creditor and sole shareholder, as debtor in possession lender (the “**DIP Lender**”), pursuant to a DIP Facility Loan Agreement dated as of February

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<sup>4</sup> Taylor Affidavit at para 89.

<sup>5</sup> Taylor Affidavit at para 92.

<sup>6</sup> Taylor Affidavit at para 93.

2, 2026 (the “**DIP Agreement**”) to fund the Applicant’s working capital requirements and the costs of these CCAA Proceedings during the Initial Stay Period (the “**Interim Borrowings**”), provided certain conditions precedent are satisfied; and

(d) the granting of the following priority charges (collectively, the “**Charges**”) over the Property (as defined in the Initial Order), listed in the following order of priority:

(i) the Administration Charge (defined below) in the maximum amount of \$600,000;

(ii) the DIP Lender’s Charge (defined below) with Interim Borrowings under the DIP Agreement of \$4,500,000; and

(iii) the Directors’ Charge (defined below) in the maximum amount of \$3,200,000.<sup>7</sup>

7. If the proposed Initial Order is granted, the Applicant intends to bring a motion within 10 days of the granting of the Initial Order (the “**Comeback Hearing**”) to seek an Amended and Restated Initial Order, among other things:

(a) extending the stay of proceedings;

(b) increasing the Administration Charge to \$1,000,000;

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<sup>7</sup> Taylor Affidavit at para 4.

- (c) increasing the Directors' Charge to an amount to be calculated in consultation with the Monitor prior to the Comeback Hearing; and
- (d) authorizing (but not requiring) the Applicant to pay certain pre-filing amounts, with the consent of the Monitor and the DIP Lender, consistent with the Cash Flow Forecast or as otherwise agreed to with the DIP Lender, to key participants in the Applicant's distribution network, and to other critical suppliers, if required.<sup>8</sup>

## **PART II - FACTS**

### **The Applicant**

8. The Applicant is a privately-held corporation governed by the *Business Corporations Act* (Ontario), R.S.O. 1990, c. B.16. While the Applicant formed by amalgamation with 2853294 Ontario Inc. ("285") on August 19, 2021, the Toys "R" Us business has been in operation in Canada since 1984, with Babies "R" Us opening in 1996.<sup>9</sup>

9. The Applicant operates under the registered trademarks and business names of "Toys "R" US Canada", "Toys "R" Us", "Babies "R" Us", "Babies "R" Us Canada" and "Toys "R" Us Express", and is extra-provincially registered in every other Province (excluding the Territories).<sup>10</sup> The Applicant's chief place of business is the Province of Ontario.<sup>11</sup>

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<sup>8</sup> Taylor Affidavit at para 5.

<sup>9</sup> Taylor Affidavit at para 23.

<sup>10</sup> Taylor Affidavit at para 23.

<sup>11</sup> Taylor Affidavit at para 26.

10. Douglas Putman (“**Mr. Putman**”) is the sole director and Secretary of the Applicant, and Jesse Gardner is the President of the Applicant.<sup>12</sup> 262 is the direct parent company of the Applicant, and is not an applicant in these CCAA Proceedings. Mr. Putman is the sole shareholder of 262.<sup>13</sup>

### **The 2017 CCAA Proceedings**

11. In September 2017, the Applicant filed for and obtained CCAA protection (the “**2017 CCAA Proceedings**”). The 2017 CCAA Proceedings were part of a coordinated global restructuring of the Toys “R” Us group, including a Chapter 11 proceeding in the US.<sup>14</sup>

12. Following the 2017 CCAA Proceedings, the Applicant sought to position itself for success. However, over the past several years, the Applicant has experienced a series of challenges, which have negatively impacted profitability and strained liquidity, including (i) the long-lasting effects of the COVID-19 pandemic, which issues continued after the Applicant emerged from the 2017 CCAA Proceedings; and (ii) the preservation of all retail stores, including underperforming locations, during the 2017 CCAA Proceedings and subsequent extensions of the lease terms for various store leases.<sup>15</sup>

13. The Applicant did not close any stores during the 2017 CCAA Proceedings, and retail leases with landlords were not re-negotiated. Consequently, the Applicant was not able to exit the leases for underperforming stores. As a result of the foregoing, the Applicant’s businesses have not recovered, and the post-restructuring success that the Applicant had planned for has not materialized.<sup>16</sup>

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<sup>12</sup> Taylor Affidavit at para 24.

<sup>13</sup> Taylor Affidavit at para 25.

<sup>14</sup> Taylor Affidavit at para 8.

<sup>15</sup> Taylor Affidavit at para 11.

<sup>16</sup> Taylor Affidavit at para 11.

## **The Business of the Applicant**

### **(a) Retail Locations and Leases**

14. The Applicant operates Toys “R” Us and Babies “R” Us retail businesses in Canada, selling a range of children’s products including toys, games, electronics, books, outdoor play equipment, clothing, and children’s furniture, with Toys “R” Us primarily serving children aged 5–12 and Babies “R” Us serving newborns through toddlers aged 0–4, and carrying products from major manufacturers such as Hasbro, Mattel, and Lego. The Applicant historically maintained a significant Canadian e-commerce platform, which has been recently suspended as it navigates these CCAA Proceedings and assesses restructuring options.<sup>17</sup>

15. The typical format for the Applicant’s retail stores is a strategically located store in a mall or shopping centre. The average store size is approximately 45,000 square feet. Currently, there are 22 Toys “R” Us store locations. All Toys “R” Us locations maintain a Babies “R” Us section within them.<sup>18</sup>

16. The Applicant’s stores are leased from various landlords, as particularized in the Taylor Affidavit. The Applicant’s stores are located in Alberta, Saskatchewan, Manitoba, Ontario, Quebec and Newfoundland.<sup>19</sup>

17. In 2023 and 2024, the Applicant experienced a decline in sales and many stores became unprofitable. This led the Applicant to begin closing unprofitable store locations, implementing targeted reductions of its workforce, and adding new streams of revenue.<sup>20</sup>

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<sup>17</sup> Taylor Affidavit at paras 28-29.

<sup>18</sup> Taylor Affidavit at paras 30-31.

<sup>19</sup> Taylor Affidavit at para 32.

<sup>20</sup> Taylor Affidavit at para 13.

18. Due to the Applicant's recent financial challenges, it currently owes significant arrears to its landlords. The proposed Initial Order provides that, with respect to the Applicant's current stores with active operations, until a lease is disclaimed or consensually terminated:

- (a) all fixed rent will be paid (i) for rent incurred and relating to the Initial Stay Period, forthwith upon approval of the Initial Order, (ii) for rent incurred and relating to the remainder of February 2026, forthwith upon approval of the DIP Agreement at the Comeback Hearing, and (iii) thereafter twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears); and
- (b) all percentage rent regarding revenues incurred during the period from and including the date of the Initial Order shall be calculated and paid in accordance with the terms of the applicable pre-existing arrangement.<sup>21</sup>

**(b) Employees**

19. The Applicant currently has approximately 654 full time and part time employees across Canada, 439 of which are hourly and 215 of which are salaried. All employees of the Applicant are compensated through base salaries or hourly wages and company-paid benefits (which is a cost shared by the Applicant and the employees, respectively).<sup>22</sup>

20. The Applicant also provides group health and dental benefits to hourly and salaried employees through GreenShield, and life and disability insurance benefits to salaried employees

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<sup>21</sup> Taylor Affidavit at para 34; Similar relief has been granted recently in other retail CCAA proceedings, including *In Re Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI* (March 7, 2025) at [para 9 of the Initial Order](#); *In Re Comark Holdings Inc. et al.* (January 7, 2025) at [para 8 of Initial Order](#); and *In Re Ted Baker Canada Inc. et al.* (April 24, 2024) at [para 9 of Initial Order](#). A chart comparing the referenced paragraphs as against the Commercial List Model Initial Order and as against the proposed paragraph contained in the Initial Order in these CCAA Proceedings is attached as Schedule "C" hereto.

<sup>22</sup> Taylor Affidavit at para 39-40.

through Canada Life. Hourly employees become eligible to receive health and dental benefits and life insurance benefits upon six months of service. Salaried employees receive benefits as of the date of hire, and have the option to add additional health and dental coverage.<sup>23</sup>

**(c) Gift Cards and Return Policies**

21. Customers of the Applicant could previously purchase gift cards (“**Gift Cards**”) in store or online, as well as through third parties, to be redeemed for merchandise. Recently, the Applicant discontinued selling new Gift Cards. The Applicant currently anticipates honouring its previously-issued Gift Cards for 14 days after filing, following which it plans to stop accepting Gift Cards as a form of payment.<sup>24</sup>

22. The Applicant intends to honour its existing return policy for merchandise purchased prior to the date of the CCAA Proceedings.<sup>25</sup>

**(d) Cash Management System**

23. The Applicant maintains a centralized cash management system (the “**Cash Management System**”) to deal with cash management, collections, disbursements and transfers. This allows the Applicant to facilitate cash forecasting and reporting and to monitor the collection and disbursement of funds.<sup>26</sup>

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<sup>23</sup> Taylor Affidavit at para 41.

<sup>24</sup> Taylor Affidavit at para 42.

<sup>25</sup> Taylor Affidavit at para 43.

<sup>26</sup> Taylor Affidavit at para 44.

24. The Applicant currently has thirteen bank accounts with Royal Bank of Canada, of which eleven are Canadian dollar bank accounts and two are U.S. dollar accounts (collectively, the “**Bank Accounts**”). The Applicant’s Bank Accounts are particularized in the Taylor Affidavit.<sup>27</sup>

25. Cash activity in the Master Account is reviewed and reconciled by the Applicant’s banking associates, under the supervision and oversight of management. The Applicant’s accounting department then reviews and reconciles all other Bank Accounts.<sup>28</sup>

26. The Applicant seeks approval of its continued use of the Cash Management System in substantially the same manner as before the commencement of the CCAA Proceedings. Given the scale and nature of the Applicant’s operations and the volume of transactions that are processed daily within the Cash Management System, the proposed Monitor is of the view that the continued use of the existing Cash Management System is required and appropriate during the CCAA Proceedings.<sup>29</sup>

27. As part of its monitoring procedures, the proposed Monitor will: (a) review receipts and disbursements processed through the Bank Accounts; (b) review weekly receipts and disbursements summaries, compare the summaries to the corresponding cash flow forecasts and review variances with management; and (c) review disbursements, as reasonably appropriate, for compliance with provisions of the proposed Initial Order.<sup>30</sup>

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<sup>27</sup> Taylor Affidavit at para 45.

<sup>28</sup> Taylor Affidavit at para 46.

<sup>29</sup> Taylor Affidavit at para 47.

<sup>30</sup> Taylor Affidavit at para 58.

**(e) Outstanding Litigation**

28. The Applicant is subject to various ongoing litigation matters. The vast majority of the active litigation proceedings relate to claims for breach of contract or breach of lease. A chart summarizing substantially all of the active litigation proceedings to which the Applicant is a named party in the Province of Ontario is appended as Exhibit “B” to the Taylor Affidavit, and details the date each claim was issued, the relief claimed, the quantum of alleged damages, and the status of the pleadings.<sup>31</sup>

**Financial Position of the Applicant**

29. During the ten-month period ended November 29, 2025, the Applicant experienced a net loss of approximately \$170,402,000, a working capital deficiency of approximately \$315,593,000 and a shareholder’s deficiency of approximately \$369,927,000. These figures can be compared to the Applicant’s 2024 performance, during which it experienced a net loss of approximately \$54,720,000, a working capital deficiency of approximately \$50,280,000 and a shareholder’s deficiency of approximately \$110,036,000. These numbers reflect the material downturn of business operations and the Applicant’s financial wherewithal, which circumstances have contributed to the filing of this Application.<sup>32</sup>

30. As at November 29, 2025, the assets of the Applicant had a book value of approximately \$126,850,000.<sup>33</sup>

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<sup>31</sup> Taylor Affidavit at para 49.

<sup>32</sup> Taylor Affidavit at para 53.

<sup>33</sup> Taylor Affidavit at para 51.

## Debt and Credit Facilities

31. On January 27, 2025, the Applicant executed a general security agreement (the “**262 GSA**”) in favour 262, securing liabilities owing under certain term promissory notes dated January 24, 2025 and January 31, 2025 in the original aggregate principal amount of \$13,000,000 (the “**Promissory Notes**”), which was advanced to help stabilize the business of the Applicant.<sup>34</sup> The 262 GSA grants 262 a continuing interest in all of the present and future undertaking and personal property of the Applicant.<sup>35</sup>

32. The Promissory Notes were amended and restated on June 6, 2025, and mature on April 30, 2028.<sup>36</sup>

33. As of the date hereof, approximately \$17,000,000 is outstanding under the Promissory Notes.<sup>37</sup> The Applicant does not have sufficient funds to pay these outstanding amounts.<sup>38</sup>

34. On August 19, 2021, all of the issued and outstanding shares of the Applicant were purchased by 285 (one of the pre-amalgamation entities of the Applicant), as purchaser (the “**Purchaser**”), from Fairfax, Odyssey Reinsurance Company, United States Fire Insurance Company and Zenith Insurance Company, as vendors (collectively, the “**Vendors**”), by way of a share purchase agreement (the “**SPA**”).<sup>39</sup>

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<sup>34</sup> Taylor Affidavit at para 55.

<sup>35</sup> Taylor Affidavit at para 55.

<sup>36</sup> Taylor Affidavit at para 56.

<sup>37</sup> Taylor Affidavit at para 58.

<sup>38</sup> Taylor Affidavit at para 17.

<sup>39</sup> Taylor Affidavit at para 59.

35. As of the date hereof, approximately \$142,000,000 is outstanding under the SPA, which obligations are secured by an intellectual property security agreement dated August 19, 2021 (the “**IP Security Agreement**”).<sup>40</sup>

36. On or around February 2, 2026, pursuant to a Contingent Additional Consideration Right and IP Security Purchase Agreement (the “**CACR**”), 1001485743 Ontario Inc. (“**1001**”), an entity owned by Putman, purchased the remaining payment obligations owing to Fairfax, and Fairfax absolutely assigned all of its right, title and interest in the Fairfax Security Documents to 1001.<sup>41</sup>

37. The Applicant is concerned that the disclosure of the financial terms of the CACR will negatively impact the Applicant’s ability to maximize value for the Applicant’s Property pursuant to the contemplated SISP for which the Applicant intends to seek approval after the Comeback Hearing. Accordingly, the Applicant is of the view that the unredacted CACR should remain sealed until the completion of any restructuring transaction in accordance with the contemplated SISP, or further Order of the Court.

38. The Applicant’s cash flow and liquidity constraints have also resulted in significant arrears owing to creditors, with approximately \$120,000,000 owing to trade vendors, approximately \$25,000,000 owing to non-trade vendors, and significant amounts owing to landlords in respect of outstanding rent.<sup>42</sup>

39. In light of its current financial situation, the Applicant requires a stay of proceedings granted under the CCAA and other related relief. Without CCAA protection, vendors may take

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<sup>40</sup> Taylor Affidavit at para 61.

<sup>41</sup> Taylor Affidavit at para 62.

<sup>42</sup> Taylor Affidavit at para 18.

potentially damaging enforcement steps, including the termination of agreements which are vital to the Applicant's continued operations. The Applicant seeks to use the breathing room provided by the CCAA to engage with key stakeholders and to implement a sale and investment solicitation process (the "SISP") to solicit offers (i) to acquire all, substantially all, or a portion of the Applicant's Business and/or Property; (ii) to make an investment in, reorganize or refinance the Applicant; or (iii) for the orderly liquidation of the Property, including inventory and furniture, fixtures and equipment of the Applicant.<sup>43</sup>

### **Urgent Need for Relief Under the CCAA**

40. The Applicant has been adversely affected by broader challenges in the Canadian retail sector, which have contributed to sustained financial pressure on its business. Despite efforts to reduce costs, preserve liquidity, and improve profitability, the Applicant's financial position has continued to deteriorate, and in the absence of additional funding it is unable to meet its obligations as they come due. The Applicant is therefore insolvent.<sup>44</sup>

41. Following a review of the Applicant's performance described above, the evaluation of the impact on the Applicant, and the careful consideration of all options and alternatives, the Applicant and its advisors, in their business judgement, determined that it is in the best interest of the Applicant's business and its stakeholders to file for CCAA protection.<sup>45</sup>

### **PART III - ISSUES**

42. The issues to be determined on this application are whether:

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<sup>43</sup> Taylor Affidavit at para 22.

<sup>44</sup> Taylor Affidavit at para 70.

<sup>45</sup> Taylor Affidavit at para 71.

- (a) the Applicant is entitled to seek protection under the CCAA;
- (b) this Court should grant the Stay of Proceedings;
- (c) this Court should authorize the Interim Borrowings and DIP Lender's Charge;
- (d) this Court should approve the Administration Charge and the Directors' Charge;  
and
- (e) this Court should grant a sealing Order in respect of the unredacted CACR.

## **PART IV - LAW AND ANALYSIS**

### **The Applicant is Entitled to Seek Protection under the CCAA**

43. The CCAA applies to a “debtor company” or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds five million dollars. The Applicant is a “company” for the purposes of s. 2 of the CCAA because it does business in or has assets in Canada.<sup>46</sup> A “debtor company” means, *inter alia*, a company that is insolvent.<sup>47</sup> Whether a company is insolvent for the purposes of this definition is evaluated by reference to the definition of “insolvent person” in the *Bankruptcy and Insolvency Act* (“BIA”),<sup>48</sup> and the expanded concept of insolvency adopted by this Court in *Stelco*.<sup>49</sup>

44. The Applicant is either insolvent under the BIA test for solvency, or facing the kind of imminent liquidity crisis that clearly satisfies the expanded *Stelco* test. As discussed above, the

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<sup>46</sup> *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras 35-36, citing *Cinram International (Re)*, [2012 ONSC 3767](#); *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 2.

<sup>47</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 3(1).

<sup>48</sup> *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s. 2.

<sup>49</sup> *Stelco Inc. (Re)* (March 22, 2004), [2004 CanLII 24933](#) at para 26 (ONSC). This approach to the insolvency criterion has been applied in *Target Canada Co. (Re)*, [2015 ONSC 303](#) at para 26; *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) at paras 48-51; *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#).

Applicant is unable to meet its obligations as they come due, including its obligations under the 262 GSA. Moreover, notwithstanding its best efforts to reduce expenses, preserve capital and improve profitability, the Applicant's liquidity position continues to rapidly deteriorate.<sup>50</sup>

### **The Stay of Proceedings Should be Granted**

45. Subsection 9(1) of the CCAA provides that an application for a stay of proceedings under the CCAA may be made to the court that has jurisdiction in the province in which the chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.<sup>51</sup>

46. Ontario is the proper forum for the restructuring. The chief place of business of the Applicant is Ontario. The largest number of the Applicant's stores under both the Toys "R" Us and Babies "R" Us banners are in Ontario and the largest number of the Applicant's employees are located in Ontario. Further, the Ontario-based stores generate the largest number of sales.<sup>52</sup>

47. Section 11.02(1) of the CCAA permits the Court to grant an initial stay of up to 10 days on an application for an initial order, provided such a stay is appropriate and the Applicant has acted in good faith and with due diligence.<sup>53</sup> Under s. 11.001, other relief granted pursuant to this Court's powers under s. 11 of the CCAA at the same time as an order under s. 11.02(1) must be limited "to relief that is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period."<sup>54</sup>

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<sup>50</sup> Taylor Affidavit at para 69.

<sup>51</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 9\(1\)](#); *Target Canada Co. (Re)*, [2015 ONSC 303](#) at paras [29-30](#); *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#) at para 25.

<sup>52</sup> Taylor Affidavit at para 26.

<sup>53</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.02\(1\)](#).

<sup>54</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.001](#).

48. In *Lydian*, Morawetz C.J. stated that the Initial Stay Period preserves the status quo and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.<sup>55</sup> Whether particular relief is necessary to stabilize a debtor company's operations during the Initial Stay Period is an inherently factual determination, based on all of the circumstances of the particular debtor.<sup>56</sup>

49. Here, the Applicant urgently requires a broad stay of proceedings to obtain the breathing space and emergency funding required to determine next steps. At the present time, the next steps will likely consist of, among other things, (i) conducting liquidation and storefront right-sizing by disclaiming certain leases, and (ii) a potential sale or restructuring of the remaining business or assets of the Applicant through a court-supervised sale process.<sup>57</sup>

50. All of the relief requested in this first-day application meets the required criteria. Each aspect of the relief sought by the Applicant in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicant to properly respond to the circumstances in which it finds itself. All of the requested relief consists of exactly the type of essential "keep the lights on" measures contemplated by s. 11.001 of the CCAA.

### **The Interim Borrowings and DIP Lender's Charge Should be Approved**

51. Interim financing is needed on an urgent basis during the Initial Stay Period to provide stability and fund operations for a limited period of time and preserve the Applicant's business

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<sup>55</sup> *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras [26](#) and [30](#); see also *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) at para [56](#).

<sup>56</sup> See for example *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#), in which the CCAA Court granted a variety of relief during the Initial Stay Period that was particular to the debtor company's factual circumstances. See also *Just Energy Corp. (Re)*, [2021 ONSC 1793](#), *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at para [16](#).

<sup>57</sup> Taylor Affidavit at para 72.

while it considers next steps in these proceedings. This interim financing is necessary and designed explicitly to preserve value to the benefit of the Applicant's stakeholders.<sup>58</sup>

52. In order to avoid an abrupt shutdown of the Applicant's business, 262, the proposed DIP Lender, has agreed to make the Interim Borrowings available.<sup>59</sup> Pursuant to s. 11.2 of the CCAA, the Applicant seeks an interim financing charge to secure the Interim Borrowings (the "**DIP Lender's Charge**").<sup>60</sup>

53. The DIP Lender's Charge is proposed to be secured by all of the present and future assets, property, and undertaking of the Applicant (the "**Property**"), and to rank behind the Administration Charge, but ahead of the Directors' Charge and all other security interests, charges and liens.<sup>61</sup>

54. Section 11.2(1) of the CCAA provides the court with the authority to grant an interim financing charge "in an amount the court considers appropriate," subject to the limitation that the security or charge may not secure an obligation that exists before the order is made.<sup>62</sup> This limitation ensures that proposed financing upholds the relative pre-filing priority of each secured creditor.<sup>63</sup>

55. Under section 11.2(5) of the CCAA, the Court may not make an order under 11.2(1) at the initial application unless the Court is "satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of

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<sup>58</sup> Taylor Affidavit at para 76.

<sup>59</sup> Taylor Affidavit at para 4.

<sup>60</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.2\(1\)](#).

<sup>61</sup> Taylor Affidavit at para 84.

<sup>62</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.2\(1\)](#).

<sup>63</sup> *BZAM Ltd. (Re)* (February 28, 2024), ONSC (Commercial List), Court File No. CV- 24-00715773-00CL ([Endorsement of Justice Osborne](#)) at para 56.

business during that period.”<sup>64</sup> What is considered to be “reasonably necessary” depends on the facts of the case<sup>65</sup> and involves an assessment of the following factors:

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company’s business and financial affairs are to be managed during the proceedings;
- (c) whether the company’s management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company’s property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor’s report, if any.<sup>66</sup>

56. The proposed quantum of the Interim Borrowings was sized in consultation with the proposed Monitor and appropriately responds to the Applicant’s needs, does not secure the DIP Lender’s pre-filing obligations, and is consistent with pre-filing priorities.<sup>67</sup>

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<sup>64</sup> *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.2\(5\)](#).

<sup>65</sup> *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#) at para [51](#).

<sup>66</sup> *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, [s. 11.2\(4\)](#).

<sup>67</sup> Taylor Affidavit at para 74.

57. The Cash Flow Forecast demonstrates that interim financing is urgently required to provide the Applicant with the required liquidity for continued operations in the ordinary course. Ordinary course operations will preserve the value and going concern operations of the Applicant's Business, which is in the best interests of the Applicant and its stakeholders.<sup>68</sup>

58. The Interim Borrowings arrangement is the only available option for the Applicant to fund operations for a temporary period and preserve the Applicant's business while it considers next steps in these proceedings.

59. The proposed Monitor supports this relief and believes the economic terms of the DIP Agreement are comparable to other related-party DIP financing facilities in CCAA proceedings.

#### **The Administration Charge Should be Granted**

60. Pursuant to s. 11.52 of the CCAA, the Applicant is requesting an Administration Charge in favour of the proposed Monitor, its counsel, and counsel to the Applicant, as security for their respective fees and disbursements up to a maximum of \$600,000 (the "**Administration Charge**"). The quantum of the Administration Charge is proposed to be secured by the Property and to have first priority over all other charges and security interests.<sup>69</sup>

61. The Applicant proposes that the Administration Charge ranks first, followed by the DIP Lender's Charge and the Directors' Charge.

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<sup>68</sup> Taylor Affidavit at para 75.

<sup>69</sup> Taylor Affidavit at para 81.

62. This Court has commented that for a CCAA restructuring to succeed, it is essential “to order a super-priority in respect of charges securing professional fees and disbursements”.<sup>70</sup>

63. The requested Administration Charge satisfies the well-accepted factors originally established by Pepall J. in *Canwest Publishing Inc./Publications Canwest Inc., Re*:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.<sup>71</sup>

64. While estimating the quantum of an administration charge is “an inexact exercise”,<sup>72</sup> the quantum of the administration charge sought is reasonable and commensurate with the size and complexity of the Applicant’s business and anticipated restructuring.<sup>73</sup>

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<sup>70</sup> *US Steel Canada Inc. (Re)*, [2014 ONSC 6145](#), at paras [20](#) and [22](#); *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#) at para [57](#).

<sup>71</sup> *Canwest Publishing Inc./Publications Canwest Inc., Re*, [2010 ONSC 222](#) at para [54](#).

<sup>72</sup> *Springer Aerospace Holdings Limited*, [2022 ONSC 6581](#) at para [19](#).

<sup>73</sup> See, for example, *Target Canada Co. (Re)*, [2015 ONSC 303](#) at para [74](#), citing *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#) at para [54](#); *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) at paras [112-113](#); *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#) at paras [54-55](#).

## **The Directors' Charge Should be Granted**

65. In accordance with s. 11.51 of the CCAA, the Applicant also seeks a directors and officers charge in the initial amount of \$3,200,000 (the “**Directors' Charge**”).<sup>74</sup> The Directors' Charge is proposed to be subordinate to the proposed Administration Charge, and the DIP Lender's Charge.

66. The purpose of a directors and officers charge was described in *Canwest Global Communications Corp. (Re)*:

The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring [...]. Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.<sup>75</sup>

67. The Directors' Charge is necessary so that the Applicant may benefit from the experience of the Applicant's director and officers in the retail industry, who will guide the Applicant's restructuring efforts during these CCAA proceedings.<sup>76</sup>

68. Notwithstanding the existence of a directors' and officers' liability insurance policy, the Applicant's ordinary course operations may give rise to potential director or officer liability, including with respect to payroll and sales tax. To address legitimate concerns expressed with respect to their potential exposure if they continue to act, the Applicant's director and officers have requested reasonable protection against personal liability that might arise during the post-filing period.

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<sup>74</sup> *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 11.51.

<sup>75</sup> *Canwest Global Communications Corp. (Re)* (October 13, 2009), [59 CBR \(5th\) 72, 2009 CanLII 55114](#) at para 48 (ONSC).

<sup>76</sup> Taylor Affidavit at para 84.

69. The quantum of the Directors' Charge was developed with the assistance and support of the proposed Monitor. The Applicant's director and officers will only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under the existing directors' and officers' insurance policy or to the extent that such coverage is insufficient to pay an indemnified amount.

70. The Applicant is of the view that the charge is necessary to address circumstances that could lead to potential liability for the director and officers prior to the Comeback Hearing. The director and officers' continued involvement in these CCAA Proceedings is conditional upon the granting of the Directors' Charge. The continued participation of the director and officers is critical to the Applicant's ability to successfully restructure.

### **The Sealing Order Should be Granted**

71. The Applicant is seeking a sealing order, until the completion of any restructuring transaction in accordance with the contemplated SISP, or further Order of the Court, in respect of the unredacted CACR.

72. The sealing order is sought pursuant to subsection 137(2) of the CJA.<sup>77</sup> Subsection 137(2) of the CJA provides this Court with the statutory jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

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<sup>77</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.4, s. 137(2).

73. The test for a sealing order was established by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,<sup>78</sup> and subsequently recast in *Sherman Estate v. Donovan*.<sup>79</sup> The test requires the court to consider whether:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>80</sup>

74. All three elements are prerequisites for a sealing order to be granted.<sup>81</sup>

75. At the second step of the test, courts must consider whether any alternative measures, short of a sealing order, can reasonably protect the interest at stake and, if not, how the court may limit the scope of the sealing order to only the specific information that is necessary to be sealed.<sup>82</sup>

76. The impact on public interest in the open-court system and public confidence in the administration of justice must be weighed against the commercial benefits of sealing the information.<sup>83</sup> Where the sealing order is restricted to a few technical documents that the public is unlikely to be interested in, the negative effects regarding the open-court system will be reduced.<sup>84</sup>

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<sup>78</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

<sup>79</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#).

<sup>80</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

<sup>81</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

<sup>82</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 62](#).

<sup>83</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [paras 74-76](#).

<sup>84</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 78](#).

77. It is common practice in the insolvency context for information impacting the sale of the assets of an insolvent corporation to be kept confidential until after the sale is completed pursuant to a Court order. In *Look Communications Inc. v. Look Mobile Corporation*,<sup>85</sup> Justice Newbould explained the reasons for such confidentiality:

It is common when assets are being sold pursuant to a court process to seal the Monitor's report disclosing all of the various bids in case a further bidding process is required if the transaction being approved falls through. Invariably, no one comes back asking that the sealing order be set aside. That is because ordinarily all of the assets that were bid on during the court sale process end up being sold and approved by court order, and so long as the sale transaction or transactions closed, no one has any further interest in the information. In *8857574 Ontario Inc. v. Pizza Pizza Ltd*, (1994), 23 B.L.R. (2nd) 239, Farley J. discussed the fact that valuations submitted by a Receiver for the purpose of obtaining court approval are normally sealed. He pointed out that the purpose of that was to maintain fair play so that competitors or potential bidders do not obtain an unfair advantage by obtaining such information while others have to rely on their own resources. In that context, he stated that he thought the most appropriate sealing order in a court approval sale situation would be that the supporting valuation materials remain sealed until such time as the sale transaction had closed.<sup>86</sup>

78. The Applicant submits that the test is satisfied in this case. The CACR contains commercially sensitive information relating to the value of certain Property of the Applicant, which, if publicly disclosed, could materially and negatively impair the ability of the Applicant to obtain the highest and best price for such Property pursuant to the contemplated SISP, for which the Applicant intends to seek approval shortly after the Comeback Hearing.

79. Granting a time-limited sealing order maintains public confidence in the efficacy of the insolvency regime, which is an important public interest to protect.

80. The proposed sealing order is the least restrictive and prejudicial alternative to prevent the dissemination of commercially sensitive information. There is no reasonable alternative to the

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<sup>85</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J).

<sup>86</sup> *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) at [para 17](#) (Ont Sup Ct J).

sealing order that would adequately protect the confidentiality of the information that is sought to be kept confidential.

81. Overall, the salutary effects of the sealing order, which will maintain confidentiality over the Applicant's legitimate commercial interests, outweigh the deleterious effects of restricting the accessibility of court proceedings.

82. The Applicant submits that the sealing order is appropriate in the circumstances and ought to be granted.

#### **PART V - RELIEF REQUESTED**

83. The Applicant therefore requests an Order substantially in the form of the draft Order attached as Tab 3 of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 2<sup>nd</sup> day of February 2026.



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Ian Aversa / Matilda Lici / Samantha Hans

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)

Tel: (416) 865-3082

Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**Samantha Hans** (LSO #84737H)

Tel: (437) 880-6105

Email: [shans@airdberlis.com](mailto:shans@airdberlis.com)

Lawyers for the Applicant

**SCHEDULE “A”  
LIST OF AUTHORITIES**

1. *Bed Bath & Beyond Canada Limited (Re)*, [2023 ONSC 1014](#);
2. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#);
3. *BZAM Ltd. (Re)* (February 28, 2024), ONSC (Commercial List), Court File No. CV-24-00715773-00CL ([Endorsement of Justice Osborne](#));
4. *Canwest Publishing Inc. / Publications Canwest Inc. (Re)*, [2010 ONSC 222](#);
5. *Cinram International (Re)*, [2012 ONSC 3767](#);
6. *In Re a Plan of Compromise or Arrangement of Comark Holdings Inc. et al*, [Court File No. CV-25-00734339-00CL](#), Initial Order of Justice Cavanagh dated January 7, 2025;
7. *Just Energy Corp. (Re)*, [2021 ONSC 1793](#);
8. *Laurentian University of Sudbury (Re)*, [2021 ONSC 659](#);
9. *Look Communications Inc. v. Look Mobile Corporation* (2009), [2009 CanLII 71005](#) (Ont Sup Ct J);
10. *Lydian International Limited (Re)*, [2019 ONSC 7473](#);
11. *Nordstrom Canada Retail, Inc. (Re)*, [2023 ONSC 1422](#);
12. *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#);
13. *Sherman Estate v. Donovan*, [2021 SCC 25](#);
14. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#);
15. *Springer Aerospace Holdings Limited*, [2022 ONSC 6581](#);
16. *Stelco Inc. (Re)* (March 22, 2004), [2004 CanLII 24933](#) (ONSC);
17. *Target Canada Co. (Re)*, [2015 ONSC 303](#); and
18. *US Steel Canada Inc. (Re)*, [2014 ONSC 6145](#).

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

Date:

A handwritten signature in blue ink, appearing to read 'Matilda Lici', is positioned above a horizontal line.

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Matilda Lici

**SCHEDULE “B”  
RELEVANT STATUTES AND RULES**

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

**Interpretation**

**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.

[...]

**Jurisdiction of court to receive applications**

**9** (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

[...]

**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.

[...]

### **Relief reasonably necessary**

**11.001** An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### **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.

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

**11.02** (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.

[...]

### **Burden of proof on application**

**11.02** (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.

[...]

### **Stays — directors**

**11.03** (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose

before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

[...]

### **Interim financing**

**11.2 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

### **Priority — secured creditors**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

### **Priority — other orders**

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

### **Factors to be considered**

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

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

### **Additional factor — initial application**

**(5)** When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the

terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

[...]

### **Security or charge relating to director's indemnification**

**11.51 (1)** On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

[...]

### **Court may order security or charge to cover certain costs**

**11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate

— in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

### **Priority**

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

*Courts of Justice Act, R.S.O. 1990, c. C.4*

**Documents public**

**137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

**Sealing documents**

**(2)** A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**SCHEDULE “C”**  
**Blacklines to Relief Granted in Recent Retail CCAA Initial Orders**

### Hudson's Bay Company

Blackline from Model Order to HBC Initial Order:

9. THIS COURT ORDERS that until a real property lease, including a sublease, and related documentation (each a "Lease") to which any Applicant is a party is disclaimed ~~for~~ resiliated in accordance with the CCAA, ~~the or otherwise consensually terminated, such~~ Applicant shall pay all amounts constituting rent or payable as rent under ~~real property leases~~ Leases (including, for greater certainty, common area maintenance charges, utilities and ~~realty taxes and~~ any other amounts payable to the ~~landlord under the lease~~ applicable landlord (each a "Landlord") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between the Applicant and the ~~landlord~~ Landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid. Without prejudice to the rights and claims of the Non-Applicant Stay Parties, any Rent payable by Hudson's Bay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, under a Lease shall be stayed and suspended pending further Order of this Court, provided that Hudson's Bay shall be required to pay to RioCan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, that amount of Rent payable by Riocan-Hudson's Bay JV, YSS 1, or YSS 2, as applicable, to its Landlord under the JV Head Lease until such JV Head Lease is disclaimed in accordance with the CCAA or otherwise consensually terminated.

**Blackline from HBC Initial Order to proposed Initial Order:**

98. **THIS COURT ORDERS** that, until ~~any~~ real property lease, ~~including a sublease, and related documentation~~ (each, a “**Lease**”) to which ~~any~~the Applicant is a party in respect of a store with active operations is disclaimed in accordance with the CCAA, or otherwise consensually terminated, ~~such~~the Applicant shall pay all amounts constituting rent or payable as rent under ~~Leases~~such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under such Lease, but for greater certainty, excluding amounts owing which are stayed by this Order, accelerated rent or penalties, fees or other charges arising as a result of any default that is stayed by this Order, the insolvency of the ~~Applicants~~Applicant or the making of this Order) or as otherwise may be negotiated between the Applicant and ~~the~~a Landlord from time to time (“**Rent**”), ~~for~~(a) incurred and relating solely to the period commencing from and including the date of this Order until and including the date of the Comeback Hearing, as a single payment made forthwith following issuance of this Order, (b) incurred and relating solely to the period commencing from and including the date of the Comeback Hearing until and including February 28, 2026, as a single payment made forthwith following issuance of an amended and restated Initial Order in these CCAA proceedings, and (c) thereafter, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). ~~On the date of the first of such payments, any Rent relating to the period, in each case save and except for any component of Rent which is percentage rent which, commencing from and including the date of this Order shall also be paid. Without prejudice to the rights and claims of the Non-Applicant Stay Parties, any Rent payable by Hudson’s Bay to RioCan-Hudson’s Bay JV, YSS 1, or YSS 2, under a Lease shall be stayed and suspended pending further Order of this Court, provided that Hudson’s Bay shall be required to pay to RioCan-Hudson’s Bay JV, YSS 1, or YSS 2, as applicable, that amount of Rent payable by RioCan-Hudson’s Bay JV, YSS 1, or YSS 2, as applicable, to its Landlord under the JV Head Lease until such JV Head Lease is disclaimed~~be calculated and paid in respect of revenues incurred from and including the date of this Order, in accordance with the ~~CCAA or otherwise consensually terminated~~terms of such Lease.

## Comark Holdings Inc.

Blackline from Model Order to Comark Holdings Inc. Initial Order:

8. THIS COURT ORDERS that, until a real property lease (each, a "Lease") to which any Applicant is a party is disclaimed ~~{or resiliated}~~<sup>2</sup> in accordance with the CCAA, ~~the~~ or otherwise consensually terminated, the applicable Applicant that is party to such Lease shall pay, without duplication, all amounts constituting rent or payable as rent under ~~real property leases~~ such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the ~~landlord under the lease~~ applicable landlord (each, a "Landlord") under such Lease, but for greater certainty, excluding amounts owing which are stayed by this Order, accelerated rent or penalties, fees or other charges arising as a result of any default that is stayed by this Order, the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between ~~the~~ such Applicant and the ~~landlord~~ Landlord from time to time ("Rent"), ~~for~~ (a) incurred and relating solely to the period commencing from and including the date of this Order until and including January 17, 2025, as a single payment made forthwith following issuance of this Order, (b) incurred and relating solely to the period commencing from and including January 18, 2025, until and including January 31, 2025, as a single payment made forthwith following issuance of an amended and restated Initial Order in these CCAA proceedings, and (c) thereafter, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). ~~On the date of the first of such payments, any Rent relating to the period, in each case save and except for any component of Rent which is percentage rent which, shall also be paid,~~ shall be calculated and paid regarding revenues incurred during the period from and including the date of this Order in accordance with the terms of such Lease.

**Blackline from Comark Holdings Inc. Initial Order to proposed Initial Order:**

8. **THIS COURT ORDERS** that, until ~~any~~the real property lease (each, a “**Lease**”) to which ~~any~~the Applicant is a party in respect of a store with active operations is disclaimed in accordance with the CCAA, or otherwise consensually terminated, the ~~applicable~~ Applicant ~~that is party to such Lease~~ shall pay, ~~without duplication,~~ all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a “**Landlord**”) under such Lease, but for greater certainty, excluding amounts owing which are stayed by this Order, accelerated rent or penalties, fees or other charges arising as a result of any default that is stayed by this Order, the insolvency of the ~~Applicants~~Applicant or the making of this Order) or as otherwise may be negotiated between ~~such~~the Applicant and ~~the~~a Landlord from time to time (“**Rent**”), (a) incurred and relating solely to the period commencing from and including the date of this Order until and including ~~January 17, 2025~~the date of the Comeback Hearing, as a single payment made forthwith following issuance of this Order, (b) incurred and relating solely to the period commencing from and including ~~January 18, 2025~~the date of the Comeback Hearing until and including ~~January 31, 2025~~February 28, 2026, as a single payment made forthwith following issuance of an amended and restated Initial Order in these CCAA proceedings, and (c) thereafter, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears), in each case save and except for any component of Rent which is percentage rent which, commencing from and including the date of this Order, ~~shall be calculated and paid regarding~~in respect of revenues incurred ~~during the period~~ from and including the date of this Order, in accordance with the terms of such Lease.

### Ted Baker Limited

#### Blackline from Model Order to Ted Baker Limited Initial Order:

9. THIS COURT ORDERS that, until a real property lease, including a sublease and related documentation (each, a "Lease") to which any Applicant is a party is disclaimed ~~{or resiliated}~~<sup>+</sup> in accordance with the CCAA, ~~the or otherwise consensually terminated, such~~ Applicant shall pay, without duplication, all amounts constituting rent or payable as rent under ~~real property leases~~ such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the ~~landlord under the lease~~ applicable landlord (each, a "Landlord") under such Lease, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Applicants or the making of this Order) or as otherwise may be negotiated between ~~the~~ such Applicant and the ~~landlord~~ Landlord from time to time ("~~Rent~~"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

#### Blackline from Ted Baker Limited Initial Order to proposed Initial Order:

98. THIS COURT ORDERS that, until ~~a~~ any real property lease, ~~including a sublease and related documentation~~ (each, a "Lease") to which ~~any~~ the Applicant is a party in respect of a store with active operations is disclaimed ~~or resiliated~~ in accordance with the CCAA, or otherwise consensually terminated, ~~such~~ the Applicant shall pay, ~~without duplication,~~ all amounts constituting rent or payable as rent under such Lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the applicable landlord (each, a "Landlord") under such Lease, but for greater certainty, excluding amounts owing which are stayed by this Order, accelerated rent or penalties, fees or other charges arising as a result of any default that is stayed by this Order, the insolvency of the ~~Applicants~~ Applicant or the making of this Order) or as otherwise may be negotiated between ~~such~~ the Applicant and ~~the~~ a Landlord from time to time ("~~Rent~~"), ~~for~~ (a) incurred and relating solely to the period commencing from and including the date of this Order until and including the date of the Comeback Hearing, as a single payment made forthwith following issuance of this Order, (b) incurred and relating solely to the period commencing from and including the date of the Comeback Hearing until and including February 28, 2026, as a single payment made forthwith following issuance of an amended and restated Initial Order in these CCAA proceedings, and (c) thereafter, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). ~~On the date of the first of such payments, any Rent relating to the period,~~ in each case save and except for any component of Rent which is percentage rent which, commencing from and including the date of this Order shall ~~also be paid~~ be calculated and paid in respect of revenues incurred from and including the date of this Order, in accordance with the terms of such Lease.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TOYS “R” US (CANADA) LTD. / TOYS “R” US (CANADA) LTEE (the “Applicant”)

Court File No. CL-26-00000042-0000

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT**

**AIRD & BERLIS LLP**

Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**Ian Aversa** (LSO #55449N)

Tel: (416) 865-3082

Email: [iaversa@airdberlis.com](mailto:iaversa@airdberlis.com)

**Matilda Lici** (LSO #79621D)

Tel: (416) 865-3428

Email: [mlici@airdberlis.com](mailto:mlici@airdberlis.com)

**Samantha Hans** (LSO #84737H)

Tel: (437) 880-6105

Email: [shans@airdberlis.com](mailto:shans@airdberlis.com)

*Counsel for the Applicant, Toys “R” Us (Canada) Ltd. / Toys  
“R” Us (Canada) Ltee*