

**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

June 17, 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

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

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

Lawyers for the Applicant

TABLE OF CONTENTS

	Page No.
PART I - INTRODUCTION.....	3
PART II - FACTS.....	7
PART III - ISSUES.....	12
PART IV - LAW AND ANALYSIS	13
PART V - RELIEF REQUESTED.....	23

PART I - INTRODUCTION

1. On February 3, 2026 (the “**Filing Date**”), Toys “R” Us (Canada) Ltd. / Toys “R” Us (Canada) Ltee (the “**Applicant**”) was granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985 c. C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), which was subsequently amended and restated on February 13, 2026 (the “**ARIO**”).¹

2. The Applicant commenced these CCAA proceedings to, among other things, preserve the value of the Applicant’s business while developing and implementing a Sale and Investment Solicitation Process (the “**SISP**”) to identify and evaluate interest in, and opportunities for, a sale of, investment in, or recapitalization of all or part of the Applicant’s Business or Property.²

3. On April 1, 2026, the Court granted an Order (the “**SISP Order**”), which, among other things, approved the SISP, authorized the Monitor (as defined below) to implement the SISP in accordance with its terms, and extended the Stay Period (as defined below) to and including July 13, 2026.³

4. Since the granting of the SISP Order, the Monitor has conducted the SISP, which has resulted in the selection of three successful bids and the Applicant entering into the 262 Agreement, the Fox Jumbo Agreement and the AP Agreement (each as defined below).⁴

5. This factum is filed in support of a motion by the Applicant for four Orders, including, among other things:

¹ Affidavit of Neil Taylor sworn June 11, 2026 at [para 4](#) [“**Fourth Taylor Affidavit**”].

² Fourth Taylor Affidavit at [para 6](#).

³ Fourth Taylor Affidavit at [para 7](#); [Exhibit “B”](#) to the Fourth Taylor Affidavit.

⁴ Fourth Taylor Affidavit at [para 9](#); [Exhibits “D”, “E”, and “F”](#) to the Fourth Taylor Affidavit.

- (a) an Approval and Vesting Order (the “**AP AVO**”), substantially in the form attached at Tab 3 of the Motion Record, among other things:
- (i) approving the sale transaction (the “**AP Transaction**”) contemplated by an asset purchase agreement (the “**AP Agreement**”) between the Applicant, as vendor, and Ad Populum, LLC, as purchaser (the “**AP Purchaser**”), dated June 4, 2026, and authorizing the Applicant to complete the AP Transaction;
 - (ii) upon execution and delivery of a certificate by Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicant (in such capacity, the “**Monitor**”) containing confirmation of the closing of the AP Transaction, vesting in the AP Purchaser all of the Applicant’s right, title, benefit, and interest in and to the Purchased Assets (as defined in the AP Agreement) free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims;
- (b) an Approval and Vesting Order (the “**Fox Jumbo AVO**”), substantially in the form attached at Tab 4 of the Motion Record, among other things:
- (i) approving the transaction (the “**Fox Jumbo Transaction**”) contemplated by an assignment and assumption of lease (the “**Fox Jumbo Agreement**”) between the Applicant, as assignor, and Fox Group Jumbo Canada Inc., as assignee (the “**Fox Jumbo Assignee**”), dated June 10, 2026, and authorizing the Applicant to complete the Fox Jumbo Transaction;

- (ii) upon execution and delivery of a certificate by the Monitor containing confirmation of the closing of the Fox Jumbo Transaction, vesting in the Fox Jumbo Assignee all of the Applicant's right, title, benefit, and interest in and to the Assigned Interest (as defined in the Fox Jumbo Agreement) free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims;
- (c) an Approval and Vesting Order (the "**262 AVO**"), substantially in the form attached at Tab 5 of the Applicant's Motion Record, among other things:
 - (i) approving the sale transaction (the "**262 Transaction**" and, together with the AP Transaction and the Fox Jumbo Transaction, the "**Transactions**") contemplated by an asset purchase agreement (the "**262 Agreement**") between the Applicant, as vendor, and 2625229 Ontario Inc., as purchaser (the "**262 Purchaser**"), dated June 11, 2026, and authorizing the Applicant to complete the 262 Transaction;
 - (ii) upon execution and delivery of a certificate by the Monitor containing confirmation of the closing of the 262 Transaction, vesting in the 262 Purchaser all of the Applicant's right, title, benefit, and interest in and to the Purchased Assets (as defined in the 262 Agreement) free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims; and
- (d) an Order, substantially in the form of the draft contained at Tab 6 of the Applicant's Motion Record (the "**Stay and Distribution Order**"), among other things:

(i) approving and authorizing distributions from the sale proceeds of the Fox Jumbo Transaction:

- (1) first, to satisfy any and all amounts payable under the Administration Charge, including the reasonable fees and disbursements of the Monitor, the Monitor's counsel, and counsel to the Applicant, to the extent not previously paid;
- (2) second, the balance of said proceeds to 2625229 Ontario Inc. (the "**DIP Lender**") in partial satisfaction of amounts owing by the Applicant under the DIP Loan Agreement and secured by the DIP Lender's Charge;

(ii) approving and authorizing distributions from the sale proceeds of the AP Transaction:

- (1) first, from the cash portion of the proceeds, to satisfy any and all amounts payable under the Administration Charge, including the reasonable fees and disbursements of the Monitor, the Monitor's counsel, and counsel to the Applicant, to the extent not previously paid; and
- (2) second, to 1001485743 Ontario Inc. ("**1001 Ontario**") by way of (i) a distribution of the remaining cash portion of the proceeds to 1001 Ontario; and (ii) the assignment of the promissory note portion of the proceeds to 1001 Ontario, to partially satisfy amounts owing by

the Applicant to 1001 Ontario under the Contingent Additional Consideration Right and IP Security Purchase Agreement dated February 2, 2026;

- (iii) approving the Pre-Filing Report of the Monitor dated February 2, 2026 (the “**Pre-Filing Report**”), the First Report of the Monitor dated February 11, 2026 (the “**First Report**”), the Second Report of the Monitor dated March 27, 2026 (the “**Second Report**”), the Third Report of the Monitor dated June 12, 2026 (the “**Third Report**”), and the Report of the Monitor on Related Party Transactions dated June 12, 2026 (the “**Related Party Transactions Report**” and, together with the Pre-Filing Report, the First Report, the Second Report, and the Third Report, the “**Reports**”), and the actions, conduct and activities of the Monitor described therein;
- (iv) extending the Stay Period to and including August 31, 2026; and
- (v) sealing the confidential appendices to the Third Report (the “**Confidential Appendices**”) until the closing of the AP Transaction, the Fox Jumbo Transaction, and the 262 Transaction, or further Order of this Court.

PART II - FACTS

6. The facts underlying this motion are more fully set out in the affidavit of Neil Taylor sworn June 11, 2026 (the “**Fourth Taylor Affidavit**”) and the Third Report. Additional background regarding the Applicant and the circumstances giving rise to these CCAA proceedings are more fully set out in the affidavits of Neil Taylor sworn February 2, 2026 (the “**First Taylor Affidavit**”) and February 10, 2026 (the “**Second Taylor Affidavit**”).

A. The SISP

7. On April 1, 2026, the Applicant sought and obtained the SISP Order, following which, the Monitor immediately commenced Phase 1 of the SISP. The Monitor distributed a teaser letter and a non-disclosure agreement (“NDA”) to 90 parties.⁵ 19 parties executed NDAs (each a “Participant”) and were provided with a Confidential Information Memorandum, as well as access to an electronic data room containing additional due diligence information regarding the Applicant and its business.

8. On April 12, 2026, the Monitor distributed a Phase 1 process letter to each Participant, describing the requirements for submitting a qualified bid and confirming the bid deadline of May 1, 2026 (the “Phase 1 Bid Deadline”).⁶

9. On or before the Phase 1 Bid Deadline, 11 Participants submitted a bid in the form of a non-binding letter of intent, including the DIP Lender.⁷ The Monitor reviewed and evaluated the bids in accordance with the SISP, and, in accordance with the SISP procedures, did not consult with the Applicant in conducting its assessment.⁸

10. On May 5, 2026, the Monitor notified 5 of the bidders that they had been selected as a “Phase 2 Qualified Bidder”. The Phase 2 Qualified Bidders were invited to participate in Phase 2 of the SISP and were comprised of:

⁵ Third Report of Alvarez & Marsal Canada Inc. dated June 12, 2026 [“Third Report”] at [para 5.3](#).

⁶ Third Report at [para 5.3](#).

⁷ Third Report at [para 5.4](#).

⁸ Third Report at [para 5.5](#).

- (a) two parties, including the DIP Lender, that submitted a bid for substantially all of the Applicant's assets;
- (b) two parties that submitted a bid for the Applicant's intellectual property (the "**Intellectual Property**"), only; and
- (c) one party that submitted a bid to acquire the Applicant's interest in a single lease.⁹

11. On or around May 20, 2026, the Monitor distributed a Phase 2 process letter to the Phase 2 Qualified Bidders, which outlined the requirements for submitting a binding offer and confirmed the Phase 2 Bid Deadline of May 29, 2026 (the "**Phase 2 Bid Deadline**"). The Monitor also provided a form of asset purchase agreement (the "**IP APA**") to the two parties who submitted a bid for the Intellectual Property.¹⁰

12. On May 26, 2026, the Monitor was advised that an interested party that had not participated in the SISP had contacted the DIP Lender and expressed interest in purchasing the Intellectual Property. The Monitor provided the interested party with an NDA and, following discussions with the interested party and its legal counsel, the Monitor determined that the party should be accepted as a Phase 2 Qualified Bidder. Accordingly, the Monitor provided the interested party with a copy of the Phase 2 process letter and form of IP APA.¹¹

13. Four of the Phase 2 Qualified Bidders submitted a binding offer by the Phase 2 Bid Deadline, including, (i) a binding offer from the DIP Lender for all of the Applicant's business and assets, excluding certain assets that may be sold to third-party bidders, particularly the

⁹ Third Report at [paras 5.6-5.7](#).

¹⁰ Third Report at [para 5.9](#).

¹¹ Third Report at [para 5.10](#).

Intellectual Property; (ii) binding offers from two parties for the Intellectual Property in the form of a marked-up IP APA; and (iii) a binding offer to acquire the Applicant's interest in a single lease (collectively, the "**Binding Offers**").¹²

14. Following the Monitor's review of the Binding Offers, none provided sufficient cash consideration to indefeasibly repay: (i) the amounts outstanding to the DIP Lender; (ii) the secured intellectual property claim of 1001 Ontario (the "**Secured IP Claim**"), which is secured against the Applicant's deferred royalty obligations (the "**IP Royalty Payments**") due under, and calculated in accordance with, the formula set out in the Share Purchase Agreement dated August 19, 2021 (the "**SPA**").¹³ Accordingly, pursuant to the terms of the SISP, the Monitor consulted with the DIP Lender and 1001 Ontario and determined that a combination of the Binding Offers would result in the greatest recovery for the Applicant and its stakeholders.¹⁴

15. In light of this determination, the Applicant and the Monitor engaged in further discussions with the Phase 2 Qualified Bidders to enhance the terms of their respective bids and finalize definitive documentation, following which the Monitor, in consultation with the Applicant, selected the following three Binding Offers as the Successful Bids (as defined in the SISP):

- (a) the Binding Offer of the AP Purchaser for the acquisition of the Intellectual Property;
- (b) the Binding Offer of the Fox Jumbo Purchaser for the assignment of the Vaughan Mills Lease (as defined below); and

¹² Third Report at [para 5.11](#).

¹³ Third Report at [para 5.12](#) and [7.3](#).

¹⁴ Third Report at [paras 5.13-5.14](#).

- (c) the Binding Offer of the DIP Lender for the acquisition of the majority of the Applicant's remaining assets, excluding the Intellectual Property and the Vaughan Mills Lease, by way of a credit bid for 100% of the remaining outstanding obligations under the DIP Facility.

B. Proposed Transactions

16. The Successful Bids contemplate the following proposed Transactions:

- (a) the acquisition of all of the Applicant's Intellectual Property (the "**Purchased IP**") by the AP Purchaser, to be implemented pursuant to an approval and vesting order;
- (b) the assignment of the Vaughan Mills Lease to the Fox Jumbo Purchaser, to be implemented through an assignment order; and
- (c) the acquisition of the majority of the Applicant's remaining business and assets, excluding the Purchased IP and the Vaughan Mills Lease, by the DIP Lender, pursuant to an approval and vesting order.¹⁵

17. The AP Transaction contemplates a Post-Closing License permitting the Applicant and, subsequently, the purchaser under the 262 Transaction, to use the Purchased IP until January 15, 2027 to wind down the existing retail footprint. As a result, the 262 Transaction is not a traditional going-concern transaction, as the business will not be able to continue operating under the Toys "R" Us and Babies "R" Us banners beyond that date.¹⁶

¹⁵ Third Report at [para 6.1](#).

¹⁶ Third Report at [para 6.6](#).

18. The 262 Transaction is structured as a credit bid, pursuant to which the DIP Lender, as purchaser, will apply the indebtedness outstanding under the DIP Facility toward satisfaction of the purchase price.¹⁷

C. Proposed Distributions

19. Following the respective closings of the Transactions, the sale proceeds are to be paid to the Monitor, for and on behalf of the Applicant.¹⁸ The Applicant is seeking the proposed Stay and Distribution Order to, among other things, distribute the proceeds from the Fox Jumbo Transaction and the AP Transaction in the manner set out at paragraph 5 above.

20. The amount estimated to be outstanding under the DIP Facility on closing of the Transactions is approximately \$14.2 million.¹⁹ Additionally, the Monitor has estimated the amount of the Secured IP Claim to be between \$20 million and \$40 million by calculating the present value of the future cash flows associated with the IP Royalty Payments under the SPA.²⁰

PART III - ISSUES

21. The issues to be determined on this motion are whether this Court should:

- (a) approve the Transactions and grant the AP AVO, the Fox Jumbo AVO, and the 262 AVO;
- (b) approve and authorize the Proposed Distributions;

¹⁷ Third Report at [para 6.7](#).

¹⁸ Fourth Taylor Affidavit at [para 10](#).

¹⁹ Third Report at [para 7.2](#).

²⁰ Third Report at [para 7.4](#); Confidential Appendix “G” to the Third Report.

- (c) approve the Reports and the actions, conduct, and activities of the Monitor described therein;
- (d) approve the extension of the Stay Period up to and including August 31, 2026;
- (e) seal the Confidential Appendices to the Third Report until the closing of the Transactions or further Order of the Court.

PART IV - LAW AND ANALYSIS

The Transactions and the AP AVO, the Fox Jumbo AVO, and the 262 AVO Should be Approved

22. It is well recognized that a CCAA court has jurisdiction to approve a sale of all or substantially all of a CCAA debtor's business and assets. Section 36 of the CCAA sets out the legal test for obtaining court approval, and requires the court to consider, among other things: (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.²¹

23. The factors outlined in s. 36(3) are not intended to be exhaustive, nor are they intended to be a formulaic check-list that must be followed in every sale transaction under the CCAA.²² The factors also overlap with the factors set out in *Royal Bank v. Soundair Corp.*, which were applied in approving sale transactions prior to the enactment of s. 36²³ and comprise the following: (i) whether the [debtor company] has made a sufficient effort to get the best price and has not acted

²¹ *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 36(3).

²² *Target Canada Co. (Re)*, 2015 ONSC 2066, [2015 CarswellOnt 5211](#) at para 15.

²³ *Target Canada Co. (Re)*, 2015 ONSC 2066, [2015 CarswellOnt 5211](#) at para 15.

improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and (iv) the interests of all parties.²⁴

24. The Applicant submits that both the s. 36(3) factors and the *Soundair* criteria are satisfied in the circumstances, and that each of the AP Transaction, the Fox Jumbo Transaction and the 262 Transaction should be approved.

25. Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.²⁵ In determining whether to approve a proposed transaction, the court will not lightly second-guess or interfere with the commercial and business judgment of an applicant, especially where that business judgment is supported by the advice and consent of the monitor.²⁶

26. In this case, the SISP was reasonable in the circumstances and conducted in accordance with the terms as approved by the Court pursuant to the SISP Order. The SISP was designed to solicit one or more offers for a sale, recapitalization, restructuring or other strategic transactions in respect of, all or part of the Company, its assets, shares and business operations. The SISP was robust, spanning from April 1, 2026 to May 29, 2026, and engaged over 90 potential bidders.²⁷ This effort generated interest from multiple parties and resulted in the three Transactions. The Monitor is of the view that the SISP canvassed the market broadly and effectively, and that further

²⁴ *Royal Bank of Canada v. Soundair Corp.* (1991), 1991 CanLII 2727 at para 16 (ONCA).

²⁵ See *White Birch Paper Holding Co. (Re)*, 2010 QCCS 4915 at para 49.

²⁶ *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742 at paras 70-72.

²⁷ Third Report at para 5.3.

time and expense marketing the Applicant's business and assets would not result in superior transactions being identified.²⁸

27. The recommendation of the Monitor carries significant weight with the Court in any approval process.²⁹ The Monitor states that the Transactions, in combination, will result in a value-maximizing transaction for the Applicant, including the preservation of at least 10 retail stores for a period of time, which will result in the continued employment of approximately 200 employees during that period.³⁰

28. The Monitor has considered the interests of all stakeholders, and engaged in appropriate consultation with certain stakeholders. The Monitor is of the view that the proposed Transactions are the best alternatives available to the Applicant, and are superior to a wind-down and/or liquidation of the Applicant's business. Notwithstanding that the proposed Transactions are not anticipated to provide any recovery to the Affected Creditor Group (as defined in the Third Report), the Monitor notes that the Transactions are estimated to provide a similar or higher economic recovery to the Affected Creditor Group than they would receive in bankruptcy or liquidation. The Monitor also notes the Transactions also provide incremental going-concern benefits to certain employees and stakeholders in connection with any period that the 10 retail stores continue to operate.³¹

29. The DIP Lender and 1001 Ontario are supportive of the Transactions.³²

²⁸ Third Report at [para 6.14](#).

²⁹ *Bloom Lake, g.p.l., (Re)*, [2015 QCCS 1920](#) at [para 28](#).

³⁰ Third Report at [para 6.14\(ii\)](#).

³¹ Third Report at [para 6.14\(iii\)](#).

³² Third Report at [para 6.14 \(v\)](#).

30. The Applicant seeks approval and vesting orders to implement the Transactions. The Applicant seeks the AP AVO and the 262 AVO to convey the respective Purchased Assets free and clear of any claims and encumbrances, other than the respective permitted encumbrances, as set out in each of these AVOs. The Applicant seeks the Fox Jumbo AVO to vest in the Fox Jumbo Assignee all of the Applicant's right, title, benefit, and interest in and to the Assigned Interest free and clear of and from any and all security interests, liens, executions, levies, charges, or other financial or monetary claims.

31. Vesting orders are a routine part of insolvency practice. As set out by the Court of Appeal for Ontario in *Third Eye Capital*,³³ the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court can also consider if the parties have consented to the vesting of the interest at the time of sale before the court, or through prior agreement. If these factors prove inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.³⁴

32. The proposed AVOs are appropriate in the circumstances. Each of the applicable agreements requires Court approval and an order vesting the applicable assets or interests in the purchaser free and clear of encumbrances. The vesting relief sought is necessary to implement the Transactions approved through the SISP, provide purchasers with the certainty required to close, and allow claims and encumbrances to attach to the proceeds of sale or otherwise be dealt with in accordance with the proposed orders and applicable priorities.

³³ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#).

³⁴ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [paras 103-110](#).

33. Accordingly, the Applicant submits that the proposed AVOs are necessary, appropriate and consistent with established insolvency practice.

The Proposed Distributions Should be Approved

34. Section 11 of the CCAA provides this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”³⁵ There is nothing in the CCAA that precludes a distribution of cash to creditors of the debtor during the pendency of CCAA proceedings.³⁶ This Court has noted that courts often order payments to creditors outside of a CCAA plan.³⁷

35. In *AbitibiBowater*, the court approved the distribution of proceeds from sale proceeds generated from a CCAA sale process on, among other grounds, the basis that: (i) the distributions were made in accordance with a valid and enforceable security interest; and (ii) the distributions would leave the debtor with sufficient liquidity.³⁸

36. The Applicant seeks authorization and direction to make certain distributions from the sale proceeds of the Fox Jumbo Transaction and the AP Transaction, as set out in the Stay and Distribution Order.³⁹

37. The proposed distributions are fair and commercially reasonable, and reflect the intended operation of the DIP structure approved by this Court and the secured obligations of the Applicant to 1001 Ontario, as independently verified by the Monitor.

³⁵ *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s. 11.

³⁶ *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at para 71.

³⁷ *Nortel Networks Corp., Re*, 2014 ONSC 4777 at paras. 53-55; See also *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at paras 76-80.

³⁸ *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 at para 75.

³⁹ Fourth Taylor Affidavit at para 13.

38. The approximate amount expected to be outstanding under the DIP Facility as of closing of the Transactions is \$14.2 million. The DIP Facility is secured by the DIP Lender's Charge, which has a first-ranking interest in respect of all of the Property, including all proceeds from the Transactions. 1001 Ontario holds the Secured IP Claim, which secures the IP Royalty Payments.⁴⁰ As referenced above, the Monitor estimated the Secured IP Claim to be between \$20 million and \$40 million.⁴¹ The estimated range consists of the current IP Royalties arrears which are due and owing of approximately \$2.8 million and an estimated present value of the future IP Royalty Payments.⁴²

39. The Monitor obtained a written opinion from its independent legal counsel, Stikeman Elliott LLP, that, subject to the qualifications, assumptions, limitations and discussions therein, the IP Security Agreement (as defined in the Pre-Filing Report), which secures the IP Royalty Payments, constitutes valid and enforceable security and creates a valid security interest, and that the necessary registrations have been made under the *Personal Property Security Act* (Ontario) in order to perfect or evidence such security.⁴³

40. The Monitor believes it is appropriate to distribute the proceeds from the AP Transaction and the Fox Jumbo Transaction in the manner requested by the Applicant.⁴⁴ Based on the anticipated shortfall on the DIP Facility that would occur in a liquidation scenario, the Monitor believes it is appropriate that the proceeds of the Fox Jumbo Transaction are applied towards repayment of the DIP Facility. After accounting for a distribution to the DIP Facility from the AP Transaction proceeds on account of the shortfall, the remaining proceeds from the AP Transaction

⁴⁰ Third Report at [paras 7.2-7.3](#).

⁴¹ Third Report at [para 7.4](#).

⁴² Third Report at [para 7.4](#).

⁴³ Third Report at [para 7.5](#).

⁴⁴ Third Report at [para 7.11](#).

would then be paid towards the Secured IP Claim, with such remaining proceeds estimated to be between \$17.2 million and \$22.1 million.⁴⁵

The Reports and the Conduct and Activities of the Monitor Should be Approved

41. The Court has previously observed that periodic requests to approve reports of a monitor appointed pursuant to the CCAA are appropriate as there are good policy and practical reasons to grant such approvals.⁴⁶ Such reasons include permitting the Court officer to bring its activities before the Court, address concerns of stakeholders, and move forward with the next steps in the proceeding.⁴⁷

42. The Applicant seeks this Court's approval of the activities and conduct of the Monitor, as set out in the Pre-Filing Report, the First Report, the Second Report, the Third Report, and the Related Party Transactions Report.

43. The activities of the Monitor were reasonable and appropriate in the circumstances, and should be approved. The Monitor has carried out its activities in a manner consistent with the CCAA and in compliance with the ARIO.

44. The approval language in the proposed draft Order makes clear that the approval is only for the Monitor personally and is not intended to create rights or impose obligations for any other party.⁴⁸

⁴⁵ Third Report at [para 7.10](#).

⁴⁶ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 12](#) and [22](#).

⁴⁷ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 2](#) and [23](#); *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#) at [para 45](#).

⁴⁸ Draft Stay and Distribution Order at [para 9](#), Motion Record at Tab 6.

45. The Applicant respectfully submits that the Pre-Filing Report, the First Report, the Second Report, the Third Report, and the Related Party Transactions Report and the activities described therein should be approved.

The Extension of the Stay Period Should be Approved

46. Pursuant to subsections 11.02(2) and 11.02(3) of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence.⁴⁹ The Court may also extend the stay in favour of the directors and officers of the Applicant under section 11.03 of the CCAA in the same circumstances.⁵⁰ There is no statutory time limit on how long a stay of proceedings can be extended.

47. The authority conferred upon the courts to stay proceedings under section 11.02 “should be broadly construed to accomplish the legislative purpose of the CCAA”.⁵¹ These purposes include, *inter alia*, supporting the continuation of the applicant’s business, mitigating the social and economic consequences of liquidation and facilitating a value-maximizing restructuring.⁵²

48. The Applicant asks that the Stay Period be further extended to and including August 31, 2026. Extending the Stay Period is necessary and appropriate to permit the Applicant, the CRO and the Monitor to, among other things, close the AP Transaction, the Fox Jumbo Transaction and

⁴⁹ *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s.11.02(2); *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at para 87.

⁵⁰ *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36, s.11.03(1).

⁵¹ *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at para 24.

⁵² *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at para 24; *Century Services Inc v Attorney General (Canada)*, [2010 SCC 60](#) at para 15; *Timminco Limited (Re)*, [2012 ONSC 2515](#) at para 15; *Target Canada Co. (Re)*, [2015 ONSC 303](#) at para 8.

the 262 Transaction.⁵³ The requested extension accords with the anticipated timelines to close these transactions.

49. The Applicant has acted in good faith and with due diligence in these CCAA Proceedings. The Applicant's cash flow projections demonstrate that the Applicant will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.⁵⁴

50. The Monitor supports the extension of the Stay Period to August 31, 2026.⁵⁵

51. The Applicant submits that the proposed extension of the Stay Period is in the best interests of both the Applicant and its stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances.

The Confidential Appendices Should be Sealed

52. Section 137(2) of the CJA provides authority to grant a sealing order.⁵⁶ The test for a sealing order was established by the Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,⁵⁷ and subsequently recast in *Sherman Estate v Donovan*.⁵⁸ 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 reasonable alternative measures will not prevent this risk; and

⁵³ Fourth Taylor Affidavit at [para 17](#).

⁵⁴ Fourth Taylor Affidavit at [para 19](#).

⁵⁵ Fourth Taylor Affidavit at [para 20](#).

⁵⁶ *Courts of Justice Act*, [R.S.O. 1990, c. C.43, s. 137\(2\)](#).

⁵⁷ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

⁵⁸ *Sherman Estate v. Donovan*, [2021 SCC 25](#).

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁵⁹

53. All three elements are prerequisites for a sealing order to be granted.⁶⁰

54. The term “important interest” can capture a broad array of public objectives, including commercial interests.⁶¹

55. 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.⁶²

56. At the third step of the test, 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.⁶³ Where the sealing order is restricted to a small number of technical documents that the public is unlikely to be interested in, the negative effects regarding the open court system will be reduced.⁶⁴

57. This Court has granted sealing orders in respect of commercial information that could negatively impact any sale process in the event that the proposed transaction does not close and the property must undergo another marketing process.⁶⁵ This Court has further held that, in such circumstances, there is no reasonable alternative to a sealing order; stakeholders will not be

⁵⁹ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para 38.

⁶⁰ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para 38.

⁶¹ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para 41.


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

⁶³ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at paras 74-76.

⁶⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at para 78.

⁶⁵ *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#) at paras 104-107; *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#) at paras 50-53.

materially prejudiced; and any deleterious effects are outweighed by the benefits of granting such relief.⁶⁶

58. The Applicant submits that the commercially sensitive information contained in the Confidential Appendices to the public, could have a material and negative impact on any 1  the assets of the Applicant in a manner that maximizes realization for stakeholders. The Confidential Appendices contain commercially sensitive, non-public information relating to the AP Transaction, the Fox Jumbo Transaction and the 262 Transaction, including the respective purchase prices of those transactions.⁶⁷

59. 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 sealing order which would adequately protect the confidentiality of the information that is sought to be kept confidential. For that reason, the salutary effects of the sealing order outweigh any deleterious effects of the public not knowing the confidential information until the closing of the applicable Transaction or further Order of the Court.

PART V - RELIEF REQUESTED

60. For the above reasons, the Applicant respectfully requests that this Court grant the Approval and Vesting Orders and the Stay and Distribution Order in the forms requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of June, 2026.



Ian Aversa / Matilda Lici / Samantha Hans

⁶⁶ *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at [paras 50-53](#).

⁶⁷ Fourth Taylor Affidavit at [para 22](#).

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

Matilda Lici (LSO #79621D)

Tel: (416) 865-3428

Email: mlici@airdberlis.com

Samantha Hans (LSO #84737H)

Tel: (437) 880-6105

Email: shans@airdberlis.com

Lawyers for the Applicant

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6461](#);
2. *AbitibiBowater inc. (Arrangement relatif à)*, [2010 QCCS 1742](#);
3. *Bloom Lake, g.p.l., (Re)*, [2015 QCCS 1920](#);
4. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#);
5. *Century Services Inc v Attorney General (Canada)*, [2010 SCC 60](#);
6. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#);
7. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, [2024 ONSC 7127](#);
8. *Nortel Networks Corp., Re*, [2014 ONSC 4777](#);
9. *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#);
10. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#);
11. *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CanLII 2727](#) (ONCA);
12. *Sherman Estate v. Donovan*, [2021 SCC 25](#);
13. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#);
14. *Target Canada Co. (Re)*, [2015 ONSC 303](#);
15. *Target Canada Co. (Re)*, 2015 ONSC 2066, [2015 CarswellOnt 5211](#);
16. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#);
17. *Timminco Limited (Re)*, [2012 ONSC 2515](#);
18. *White Birch Paper Holding Co. (Re)*, [2010 QCCS 4915](#).

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

Date: June 17, 2026



Matilda Lici

CITATION: Target Canada Co. (Re), 2015 ONSC 2066
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-04-02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 TARGET CANADA CO., TARGET CANADA
HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA
PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO)
CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA
PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC.

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Shawn Irving and Robert Carson*, for the Target Canada Co., Target Canada
Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp.,
Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy Corp., Target
Canada Pharmacy (SK) Corp., and Target Canada Property LLC (the
"Applicants")

Jay Swartz, for Target Corporation

Harvey Chaiton, for the Directors and Officers

Alan Mark and Melaney Wagner, for the Monitor, Alvarez & Marsal Inc.,
Monitor

Lad Kucis, Agent for Sutts, Strosberg, for Pharmacy Franchisee Association
Canada

HEARD and

ENDORSED: March 30, 2015

RELEASED: April 2, 2015

ENDORSEMENT

[1] The Applicants bring this motion for approval of the Asset Purchase Agreement (the "APA") among Target Canada Co. ("TCC"), Target Brands, Inc. ("Target Brands") and Target Corporation, and vesting TCC's right, title and interest in and to the Purchased Assets (as defined in the APA) in Target Corporation.

[2] The requested relief was not opposed.

[3] The Purchased Assets consist of certain goods bearing the Target logos, trademarks and other proprietary elements. The Applicants take the position that the Purchased Assets cannot be sold by the Agent in the Inventory Liquidation Process unless expressly designated by TCC, because of the rights of Target Brands (a subsidiary of Target Corporation) to control the use of the intellectual property (the "Target IP").

[4] The criteria for approval of the Purchased Assets to Target Corporation, a related party, is set out in sections 36(3) and (4) of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (CCAA).

36(3) Factors to be considered – In deciding whether to grant authorization, the court is to consider, among other things,

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

36(4) Additional Factors – related persons – If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

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

[5] All of the Purchased Assets represent various categories of Target Branded items, such as shopping carts, shopping baskets and the exterior signage on TCC stores. The Purchased Assets are unique in that they incorporate logos, trademarks or other indicia of TCC or its affiliates.

[6] Target Brands views the Purchased Assets as using or displaying IP that is proprietary to Target Brands. Target Brands has not agreed to allow the Purchased Assets to be sold by the Agent. The Applicants are of the view that Target Brands would also likely contest any sale of the Purchased Assets to a third party purchaser.

[7] The record establishes that the Applicants requested bids for the Purchased Assets from the liquidation firms which applied to be selected as agent. By following this process, the Applicants submit they sought good faith offers by which TCC could sell the assets to an unrelated third party. Only one bidder included some of the items in its bid.

[8] Separately from the auction process, Target Corporation submitted an offer to purchase a number of the assets.

[9] The Applicants and the Monitor formed the view that if a third party purchaser for the items could be found, such purchaser would likely discount its price to take into account the impact of the IP. That impact included the cost to remove brand or other IP elements and/or the litigation risks associated with a potential challenge by Target Brands to any unauthorized use of its IP.

[10] The Applicants and the Monitor submit that it would not be beneficial to stakeholders as a whole to incur additional costs in seeking to market these unique assets. Instead, the Applicants and the Monitor sought to establish objective benchmarks to ensure that the price offered by Target Corporation was reasonable and fair, and exceeded any third party offer that might be made.

[11] The Applicants have established that the price offered by Target Corporation, viewed in isolation, exceeds all three independent valuations of the Purchased Assets obtained by the Applicants and the Monitor. In addition, Target Corporation will assume the substantial costs associated with removing the exterior signage on TCC stores.

[12] TCC, Target Brands and Target Corporation entered into the APA as of March 23, 2015. Under the Agreement, Target Corporation has agreed to purchase the Purchased Assets for U.S. \$2,215,020.

[13] The Applicants are of the view that Target Corporation is effectively the only logical purchaser for the Purchased Assets due to their unique nature.

[14] The Applicants submit that, taking into account the factors listed in section 36(3) of the CCAA, the test set out in section 36(4) of the CCAA, and the general interpretative principles underlying the CCAA, the Court should grant the approval and vesting order. Further, the Applicants submit that in the absence of any indication that the Applicants have acted improvidently, the informed business judgment of the Applicants – which is supported by the

advice and the consent of the Monitor, that the APA is in the best interests of the Applicants and their stakeholders and is entitled to deference by the Court.

[15] I note that the factors listed in section 36(3) are not intended to be exhaustive, nor are they intended to be a formulaic check-list that must be followed in every sale transaction under the CCAA. Further, I also note that the factors overlap, to a certain degree, with the factors set out in *Royal Bank of Canada v. Soundair Corp.*, [1991] O.J. No. 1137 (C.A.) ("*Soundair*"). The *Soundair* factors were applied in approving sale transactions under pre-amendment CCAA case law. Under section 36(4) of the CCAA, the Court must be satisfied, overall, that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated.

[16] I am satisfied that the risk theoretically associated with a related party transaction has been satisfactorily addressed through the efforts of the Applicants and the Monitor to evaluate the salability of the Purchased Assets to an unrelated party.

[17] I am also satisfied that the process was reasonable in light of the unique assets involved. Whether or not a legal challenge by Target Brands would ultimately be successful, the litigation risks would, in my view, be expected to materially affect the value of the Purchased Assets to an unrelated third party. Further, the uniqueness of the Purchased Assets makes Target Corporation the only realistic purchaser. Only Hilco Global ("*Hilco*") submitted a bid with respect to some, but not all, of the assets included in the Initial Offer. None of the remaining bidders elected to submit an offer. Given that only one of the liquidation firms submitted a bid, the Applicants and the Monitor considered whether the proposed sale to Target Corporation was fair and reasonable. They came to the conclusion that the likely price to be obtained by an unrelated third party did not support the sale of the Purchased Assets to an unrelated third party.

[18] As required by section 36 of the CCAA, the Monitor has been involved throughout the proposed transaction. The Monitor's Seventh Report comments at length on the transaction, and specifically whether it would be fair and reasonable to accept the offer from Target Corporation. The Monitor supports the conclusion that the purchase price offered by Target Corporation far exceeds the estimated liquidation values obtained. The Monitor is of the opinion that the APA benefits the creditors of the Applicants. The Monitor supports the motion for approval of the APA.

[19] I am satisfied that the transaction is in the best interests of stakeholders. The transaction does provide some enhanced economic value to the estate. Further, the APA Agreement allows the Monitor, TCC and Target Corporation to agree upon the timetable for delivery of the Purchased Assets. This flexibility is of assistance to TCC and its Inventory Liquidation Process. In addition, there are no fees or commission payable on the transaction and the Agreement does provide certain guaranteed value to TCC.

[20] The Applicants submit that all of the other statutory requirements for obtaining relief under section 36 have been satisfied. In particular, no parties have registered security interests against the Purchased Assets.

[21] I am also satisfied that the requirements of section 36(7) have been satisfied. This section provides a degree of protection to employees and former employees for unpaid wages the employees would have been entitled to receive under the *Bankruptcy and Insolvency Act*, in addition to amounts that are owing for post-filing services to a debtor company. I also accept the Applicants' submissions that because they have been paying employees for all post-filing services and the Employee Trust will satisfy claims arising from any early termination of eligible employees, the requirements of section 36(7) have been satisfied.

[22] For the foregoing reasons, the Asset Purchase Agreement is approved and the Approval and Vesting Order is granted.



Regional Senior Justice G.B. Morawetz

Date: April 2, 2015

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

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

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.

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.

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.

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.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

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

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
 - (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (5) For the purpose of subsection (4), a person who is related to the company includes
- (a) a director or officer of the company;
 - (b) a person who has or has had, directly or indirectly, control in fact of the company; and
 - (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

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

Restriction — employers

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

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company

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

Courts of Justice Act, [R.S.O. 1990, c. C.43](#)

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.

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. 26-00000042-0000

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT
(Returnable June 22, 2026)**

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

Matilda Lici (LSO #79621D)

Tel: (416) 865-3428
Email: mlici@airdberlis.com

Samantha Hans (LSO #84737H)

Tel: (437) 880-6105
Email: shans@airdberlis.com

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