

**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
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY
HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC
CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP
INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.**

(Applicants)

**FACTUM OF THE APPLICANTS
(RE: Stay Extension and Distributions)
(Returnable May 13, 2025)**

May 9, 2025

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TO: THE SERVICE LIST

PART I – OVERVIEW¹

1. This factum is filed in support of the Applicants' motion for an Order (the "**Stay Extension and Distributions Order**"), among other things: (a) extending the Stay Period until and including July 31, 2025; and (b) authorizing the Applicants to make certain distributions to the ABL Agent and the FILO Agent.

PART II – THE FACTS

2. The facts with respect to this motion are more fully set out in the Fourth Bewley Affidavit sworn May 7, 2025.

A. Background

3. Facing a liquidity crisis, the Applicants sought and obtained protection under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to the Initial Order on March 7, 2025. Among other things, the Initial Order (a) appointed Alvarez and Marsal Canada Inc. as the Monitor of the Applicants in these CCAA Proceedings; and (b) granted a stay of proceedings in respect of the Applicants, certain Non-Applicant Stay Parties and third-party tenants of commercial shopping centres or other properties where premises operated by Hudson's Bay are located (the "**Co-Tenant Stay**"), until and including March 17, 2025 (the "**Stay Period**").²

4. At the Comeback Hearing, the Court eventually extended the Stay Period until and including May 15, 2025 (excluding the Co-Tenancy Stay) pursuant to the ARIO (as further amended) dated March 21 2025.³

5. On that same date, the Applicants also received Court approval to: (a) commence the Liquidation Sale in all but six of its 96 stores across Canada; (b) conduct the Lease Monetization

¹ Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the affidavits of Jennifer Bewley sworn March 7, 2025, March 14, 2025, March 21, 2025, April 17, 2025 and May 7, 2025 (the "**Fourth Bewley Affidavit**").

² Fourth Bewley Affidavit at paras 5 and 39, Motion Record of the Applicants dated May 7, 2025 ("**MR**") at Tab 2.

³ *Ibid* at para 39.

Process; and (c) conduct the SISP, in furtherance of the Applicants' efforts to identify a going-concern solution for all or a portion of their businesses while maximizing value for the Applicants and their stakeholders.⁴

B. Lease Monetization

6. The Phase 2 deadline to submit a binding bid to be considered for the sale of leases pursuant to the Lease Monetization Process was May 1, 2025.⁵

7. As at that date, the Applicants received numerous bids, and are working diligently with Oberfeld, Reflect and the Monitor to review and consider the bids received to determine if they constitute Qualified Bids.⁶

C. SISP

8. As mentioned above, in furtherance of the Applicants' efforts to identify a potential going-concern solution for all or a portion of the Business, the Applicants sought and obtained the SISP Order on March 21, 2025. Among other things, the SISP Order approved the SISP and authorized Reflect to conduct the SISP under the Monitor's supervision.⁷

9. As the Company, Reflect, and the Monitor considered the cultural and historical significance of the Art Collection and the need to maximize value while balancing various public interests, on April 24, 2025, the Company sought and obtained an order amending and restating the SISP, which among other things: (a) removed the Art Collection from the Property available for sale pursuant to the SISP; and (b) approved the engagement of Heffel Gallery Limited as Auctioneer to conduct the Art Collection Auction, subject to appropriate protocols to be approved by the Court after consultation with relevant stakeholders.⁸

⁴ *Ibid* at para 6.

⁵ *Ibid* at para 17.

⁶ *Ibid* at paras 19-22

⁷ *Ibid* at para 23.

⁸ *Ibid* at para 24.

10. Since that date, the Company and Reflect, in consultation with the Monitor, have engaged with governmental bodies, First Nations and other Indigenous groups, and various other stakeholders to discuss their perspectives and interests in the historical and/or cultural significance of the Art Collection and identify other parties who might share similar interests.⁹

11. The Applicants, Reflect and the Monitor are also in the process of determining whether the bids received as at the date of the Bid Deadline for the Property available for sale pursuant to the SISP constitute Final Qualifying Bids.¹⁰

D. Appointment of Employee Representative Counsel

12. On April 24, 2025, the Applicants brought a motion seeking the appointment of Ursel Phillips Fellows Hopkinson LLP ("**Ursel Phillips**") as Employee Representative Counsel.¹¹

13. At the conclusion of the hearing, the Court dismissed the motion and appointed the Honourable Herman Wilton-Siegel as an independent third party (the "**ITP**") to evaluate the representative counsel proposals and make a recommendation to the Court.¹²

14. On May 5, 2025, the ITP recommended the appointment of Ursel Phillips as Employee Representative Counsel to the Court, which was accepted by the Court.¹³

15. As Employee Representative Counsel, Ursel Phillips will represent the interests of the current and former employees with continuing entitlements from the Applicants or any of them as at the date of the Initial Order, and retirees of the Applicants, who are not represented by a union, or were not represented by a union at the time of their separation from employment (the "**Current and Former Employees**"), or any person claiming an interest under or on behalf of a current or former employee of the Applicants including beneficiaries and surviving spouses but excluding

⁹ *Ibid* at para 25.

¹⁰ *Ibid* at para 30.

¹¹ *Ibid* at para 7.

¹² *Ibid* at para 33.

¹³ *Ibid* at para 35.

directors and officers of the Applicants (collectively, the “**Represented Employees**”) in these CCAA proceedings, in any proceeding under the BIA or in any other proceeding respecting the insolvency of the Applicants which may be brought before this Court (collectively, the “Insolvency Proceedings”), with respect to:

- (a) representing the Represented Employees in the Insolvency Proceedings;
- (b) communicating with the Applicants, the Monitor and other stakeholders on behalf of the Represented Employees generally, and in respect of future motions and orders to be sought in the Insolvency Proceedings;
- (c) advising the Represented Employees in respect of employment or other workplace matters arising within the Insolvency Proceedings;
- (d) filing claims in any claims process that may be approved within the Insolvency proceedings;
- (e) advising the Represented Employees in respect of matters involving their other post employment benefits entitlements;
- (f) participating on behalf of the Represented Employees with the settlement or compromise of any rights, entitlements or claims of the Represented Employees; and
- (g) participating in and assisting with, on behalf of the Represented Employees, claims filed under the Wage Earner Protection Program Act, if applicable; (collectively, the “**Purpose**”).¹⁴

Which Purpose for greater certainty shall not include assisting with any entitlements of Current and Former Employees under the Pension Plans.

E. Liquidation Sale

16. At the time of the commencement of the SISF, the Company excluded six stores from the

¹⁴ Third Report of the Monitor Alvarez & Marsal Canada Inc. dated May 9, 2025 (“**Third Monitor Report**”) at para 3.6.

Liquidation Sale in the hopes of attracting a potential going concern bid for the Company's business to be operated out of at least those six locations.¹⁵

17. Reflect, in consultation with the Company and the Monitor, concluded that the Excluded Stores were unlikely to receive a viable going concern bid and were negatively impacting the Applicants' realization efforts. As such, on April 24, 2025, the Applicants advised the Court that the Excluded Stores were being added to the Liquidation Sale.¹⁶

18. While it is currently anticipated that the Liquidation Sale will continue until the end of May, to date, the Applicants are in the process of completing the Liquidation Sale and exiting certain "Saks OFF 5TH" locations given their smaller size. With approximately nine of the Saks OFF 5TH stores already closed to date, the Applicants, in consultation with the Monitor have begun to issue lease disclaimers in accordance with those stores that did not receive a bid pursuant to the SISP or Lease Monetization Process.¹⁷

19. With the Liquidation Sale generating cash in excess of the Applicants' operating needs, the Applicants are seeking this Court's authorization to repay or cash collateralize all Revolving Obligations (as defined in the Amended ABL Credit Agreement) owing to the ABL Agent in full and make distributions to the FILO Agent from time to time to repay the FILO Obligations (as defined in the Amended ABL Credit Agreement) owing to the FILO Lenders, other than the Make-Whole (as defined in the Third Monitor's Report) asserted by the FILO Lenders.

20. Moreover, given the ongoing processes described above, the Applicants are also seeking an extension of the Stay Period until and including July 31, 2025.

PART III – ISSUES

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

¹⁵ Fourth Bewley Affidavit at para 11, MR at Tab 2.

¹⁶ *Ibid* at para 12.

¹⁷ *Ibid* at paras 14-16.

- (a) extend the Stay Period until and including July 31, 2025; and
- (b) authorize the Applicants to make certain distributions to the ABL Agent and the FILO Agent.

PART IV – LAW & ARGUMENT

A. The Stay Extension Should be Granted

22. The current Stay Period expires on May 15, 2025. Pursuant to s. 11.02 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.¹⁸

23. The Applicants are seeking to extend the Stay Period from May 16, 2025, to and including July 31, 2025. The Stay Extension is appropriate in the circumstances. An extension of the Stay Period will allow the Applicants to complete the Liquidation Process, Lease Monetization Process and SISP Process to maximize value for the benefit of the Applicants and their stakeholders.¹⁹

24. The Applicants have also acted in good faith and with due diligence. Among other things the Applicants have:

- (a) continued to conduct the Liquidation Sale;²⁰
- (b) worked with Landlords in respect of the conduct of the Liquidation Sales;²¹
- (c) in consultation with the Monitor, continued to review bids received as part of the SISP and Lease Monetization Process;²²

¹⁸ CCAA, s. 11.02(2) and (3).

¹⁹ Fourth Bewley Affidavit at para 40, MR at Tab 2.

²⁰ *Ibid* at para 14.

²¹ *Ibid* at para 38.

²² *Ibid* at paras 22 and 30.

- (d) limited their cash burn by issuing disclaimer notices in respect of certain “Saks OFF 5TH” leases that did not receive bids from either the SISP or Lease Monetization Process;²³
- (e) communicated and updated employees, former employees, vendors and suppliers in respect of the CCAA Proceedings and the status of sales and operations during the Liquidation Sale;²⁴
- (f) removed the Art Collection from the Property available for sale pursuant to the SISP in consideration of its cultural and historical significance;²⁵
- (g) engaged in numerous discussions with governmental bodies, First Nations and other indigenous groups, and various other stakeholders who have expressed an interest in the Art Collection from a cultural and/or historical perspective;²⁶
- (h) engaged with the Pension Administrator appointed by FSRA in respect of the Pension Plans;²⁷ and
- (i) responded to numerous creditor and stakeholder enquiries regarding these CCAA Proceedings.²⁸

25. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to July 31, 2025.²⁹

26. The Monitor supports the proposed extension of the Stay Period to and including July 31, 2025, and has filed an Updated Cash Flow Forecast showing the Applicants have sufficient liquidity to operate through the proposed extension.³⁰

²³ *Ibid* at para 16.

²⁴ *Ibid* at para 38.

²⁵ *Ibid* at para 24.

²⁶ *Ibid* at para 25.

²⁷ *Ibid* at para 38.

²⁸ *Ibid*.

²⁹ *Ibid* at para 43.

³⁰ Third Monitor Report at paras 10.3, 13.4 and Appendix E.

B. The Distributions to the ABL and FILO Credit Facilities Should be Approved

25. Section 11 of the CCAA provides this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”³¹ There is nothing in the CCAA that precludes a distribution of cash to creditors of the debtor during the pendency of CCAA proceedings.³² In *Nortel*, Justice Newbould states the following:

“I see no difference between an interim distribution, as in the case of *AbitibiBowater*, or a final distribution, as in the case of *Timminco*, or a distribution to an unsecured or secured creditor, so far as a jurisdiction to make the order is concerned without any plan of arrangement.”³³

27. In fact, it is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. This Court has noted that courts often order payments to creditors outside of a CCAA plan.³⁴

28. In this case, it is reasonable and appropriate for the Court to exercise its discretion and authorize the Applicants to repay all Revolving Obligations (as defined in the Amended ABL Credit Agreement) owing to the ABL Agent in full and make distributions to the FILO Agent from time to time to repay the FILO Obligations (as defined in the Amended ABL Credit Agreement) owing to the FILO Lenders, other than the Make-Whole asserted by the FILO Lenders.

29. The amount outstanding under the Revolving Credit Facility and related bank products is approximately \$25 million, which principally relate to letter of credit and payment card liabilities, and the amount outstanding under the FILO Credit Facility is approximately \$140 million.³⁵

30. As set out in the Second Report, the Monitor’s counsel and its local provincial agents have reviewed the loan and security documents relating to the Revolving Credit Facility and FILO Credit Facility and, subject to customary qualifications and assumptions, has concluded that, with the

³¹ CCAA, s. 11.

³² *AbitibiBowater Inc.*, 2009 QCCS 6461 at para 71.

³³ *Nortel Networks Corp. Re*, 2014 ONSC 4777 [**Nortel**] at para 58.

³⁴ *Nortel* at paras. 53-55.

³⁵ Fourth Bewley Affidavit at para 45, MR at Tab 2.

exception of certain equitable leasehold mortgages, (a) each of the security documents constitute a legal, valid and binding obligation of each of the debtor parties thereto, enforceable against such debtors in accordance with the terms thereof; and (b) each of the security documents has been perfected by registration in the applicable provinces to the extent capable under applicable law.³⁶

31. The obligations under the Revolving Credit Facility and the FILO Credit Facility continue to accrue interest.³⁷ Further as set out in the Updated Cash Flow Forecast, the Company is expected to have sufficient liquidity to pay the distribution.³⁸

32. The Monitor is supportive of the relief sought by the Applicants and believes that the Distributions are appropriate in the circumstances.³⁹

PART V – ORDER SOUGHT

33. The Applicants therefore request that the Court grant the Stay Extension and Distributions Order substantially in the form included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9 day of May 2025.

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicants

³⁶ Third Monitor Report at para 11.6; Fourth Bewley Affidavit at para 46, MR at Tab 2.

³⁷ Fourth Bewley Affidavit at para 8, MR at Tab 2.

³⁸ Third Monitor Report at para 11.8.

³⁹ *Ibid* at para 11.9.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *AbitibiBowater Inc.*, 2009 QCCS 6461
2. *Nortel Networks Corp, Re*, 2014 ONSC 4777

SCHEDULE "B"
TEXT OF STATUTES AND REGULATIONS

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.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED, AND IN THE MATTER OF HUDSON'S BAY COMPANY
ULC et al.

Court File No: Court File No. CV-25-738613-00CL

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

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(RE: Stay Extension & Distributions)**

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