

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
1242939 B.C. UNLIMITED LIABILITY COMPANY, 1241423 B.C. LTD., 1330096 B.C.
LTD., 1330094 B.C. LTD., 1330092 B.C. UNLIMITED LIABILITY COMPANY, 1329608
B.C. UNLIMITED LIABILITY COMPANY, 2745263 ONTARIO INC., HBC YSS 1 LP
INC., HBC YSS 2 LP INC., 2745270 ONTARIO INC., SNOSPMIS LIMITED, 2472596
ONTARIO INC., AND 2472598 ONTARIO INC.**

Applicants

REPLY FACTUM OF THE FILO AGENT
(FILO AGENT'S MOTION: RETURNABLE AUGUST 28, 2025)

August 27, 2025

LENCZNER SLAGHT LLP
Barristers
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897

Email: bkolenda@litigate.com

Christopher Yung (62082I)

Tel: (416) 865-2976

Email: cyung@litigate.com

Julien Sicco (82939D)

Tel: (416) 640-7983

Email: jsicco@litigate.com

Lawyers for ReStore Capital, LLC,
in its capacity as FILO Agent

TO: **SERVICE LIST**

TABLE OF CONTENTS

PART I - OVERVIEW	1
PART II - REPLY.....	3
The proposed expansion of the Monitor’s powers is appropriate.....	3
A. The Court need only be satisfied that the proposed expanded powers are “appropriate” under CCAA sections 11 and 23(k).....	3
B. There is no legitimate concern with the Monitor’s independence or neutrality	5
C. The current rate of spending on this CCAA proceeding risks bringing the administration of justice into disrepute	6
D. There remains a strong objective basis for the FILO Agent’s loss of confidence in the Applicants’ management and their advisors.....	7
The Court should allocate the costs of the Central Walk Transaction taking into account those whom it did, or could have, benefitted	8
A. The Court has the jurisdiction to allocate costs at this stage in the CCAA proceedings	8
B. The FILO Agent is not in breach of the Intercreditor Agreement, and that agreement does not preclude the order sought in any event.....	10
The Court should take urgent action to prevent further erosion of the FILO Lenders’ priority collateral	12
A. The Landlords misunderstand the position of the FILO Agent, which does not seek to require them to make the Leases available	12
B. Central Walk can be made to bear responsibility for the Central Walk Costs in certain circumstances	15
C. FF&E removal issues are no bar to the relief sought	16
SCHEDULE “A”.....	1
LIST OF AUTHORITIES.....	1
SCHEDULE “B”	2
TEXT OF STATUTES, REGULATIONS & BY - LAWS.....	2

PART I - OVERVIEW

1. In a liquidating CCAA, the Court should be concerned primarily with the interests of the creditors likely to recover in the proceeding.¹ ReStore Capital LLC (“**ReStore**”), as FILO Agent, provided \$151.4 million in financing to HBC months before its insolvency. It is the largest in-the-money creditor of the Applicants and has the most at risk. The relief it seeks is aimed at preserving what value is left in this liquidating estate; in particular, to ensure that value is not lost on \$3.3 million per month to the Applicants’ lawyers and financial advisor,² in addition to \$3.9 million per month in dead rent.³

2. The FILO Agent offers the following reply to the main positions taken by the Applicants, Pathlight and the Landlords, some of which are addressed in detail, below:

- (a) There is nothing improper about the relief the FILO Agent seeks now, as implied by its opponents.⁴ The evolution of its position reflected in its July 26 amended Notice of Motion was required due to the Court’s adjournment of the motion, which rendered the primary relief sought moot. The positions advanced by the FILO Agent are no surprise to all parties, who have had every opportunity to lead evidence in response.

¹ 9354-9186 *Quebec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#), at [para 46](#); *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at [para 73](#) (Cote J., concurring)

² This value represents the average monthly fees from June to August per the Updated Fifth Cash Flow model. Average monthly cost for September and October is forecasted to decrease to \$1.7 million.

³ Moving Factum of the FILO Agent, dated August 22, 2025 (the “**FILO Agent Factum**”), at Schedule “C”, Case Center Master Page (“CC”) [p. F9140](#)

⁴ See, for example, the Responding Factum of the Applicants, dated August 25, 2025 (the “**Applicants Factum**”), at para 3; CC, [p A9001](#); the Responding Factum of Pathlight, dated August 25, 2025 (the “**Pathlight Factum**”), at para 34, [CC p F17032](#); and the Responding Factum of Cadillac Fairview, dated August 25, 2025 (the “**Cadillac Fairview Factum**”), at para 2, [CC p F16504](#).

See, for example, the Applicants Factum, at paras 1-4, [CC pp A9001-A9002](#) and the Pathlight Factum, at para 34, [CC p F17032](#).

- (b) Despite the Applicants' effort to obscure the matter, neither the FILO Agent, nor the FILO Lenders, were the Liquidator.⁵ The Liquidator provided a service to the Applicants, which they sought in a competitive process, and earned fees as a result.⁶ Those fees were earned on sales made, under supervision of the Monitor and the Court, and do not amount to repayment of any of the \$136,847,000 principal owed to the FILO Lenders as the Applicants' largest secured creditors at the outset of these CCAA proceedings.⁷
- (c) The Applicants misstate the test for enhanced Monitor's powers. The FILO Agent does not seek the removal of directors at this time. The cash burn arising from professionals, and other costs at the Company level alone, justifies the relief sought. There is no legitimate concern with jeopardizing the Monitor's independence here any more than there is in any proceeding with a receiver, trustee or other court officer; this is now unquestionably just a liquidating CCAA to maximize value of assets for the benefit of creditors.
- (d) No party seriously challenges the jurisdiction of the Court to order the allocation sought. That issue should not be deferred. The stakeholders would now benefit from the certainty of the Court's clear direction that Pathlight must bear the costs of the Central Walk Transaction, at least since July 5, even if this direction is subject to

⁵ Applicants Factum, at paras 11-20, CC [pp A9003-A9007](#); Reply Affidavit of the FILO Agent, dated August 12, 2025, Reply Affidavit of Ian Fredericks, sworn August 12, 2025 ("**Fredericks Reply Affidavit**"), at para 18, CC [p F5038](#).

⁶ Fredericks Reply Affidavit, at para 18, CC [p F5038](#).

⁷ Application Record of the Applicants, dated March 7, 2025, Affidavit of Jennifer Bewley, sworn March 7, 2025, at para 143, CC [p D1474](#).

further allocation issues being resolved. The agreements between Pathlight and the FILO Agent support and do not bar the relief sought.

- (e) At a minimum, the FILO Agent asks the Court to protect it from further prejudice arising from the Central Walk Transaction hereafter. The termination of rent payments funded by the Applicants from the FILO Lenders' cash collateral is a matter of first impression, but the Court has ample jurisdictional basis to grant the relief, which is fair and equitable.

PART II - REPLY

The proposed expansion of the Monitor's powers is appropriate

A. The Court need only be satisfied that the proposed expanded powers are "appropriate" under CCAA sections 11 and 23(k)

3. The FILO Agent does not seek the removal of the Applicants' directors at this time – only that the Monitor be granted expanded powers to manage the business and finish what work is needed to liquidate HBC's remaining assets. The test for removal of directors does not apply. While the Court can have regard to some of the same considerations that apply to appointment of a receiver,⁸ the test that governs is that under section 11: the order must be "appropriate" in all of the circumstances.

4. None of the cases cited by the Applicants regarding section 11.5 of the CCAA concern the test for the expansion of the Monitor's powers. *Unique Broadband* concerned a motion to stay an oppression action against directors.⁹ *Quest University* concerned a motion under section 11.5 to

⁸ *JBT Transport Inc. (Re)*, [2025 ONSC 1436](#) at [para 38](#).

⁹ *Unique Broadband Systems (Re)*, Endorsement dated January 25, 2012, CV-11-9283-00CL at paras 1, 21-27, Schedule "C" to Applicants Factum, CC pp [A9029](#), [A9032-A9033](#).

replace the private university's board with a secured creditor's preferred nominees, and approve that creditor's preferred financing plan, where the intention was to restructure and "continue with its operations and complete at least the existing academic year".¹⁰

5. Unlike those cases, this is a liquidating CCAA which the Supreme Court of Canada has said "often aim[s] to maximize returns for creditors,"¹¹ and "where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage."¹² Now, the need to retain a prominent role for management or directors for expertise or knowledge of the affairs of the enterprise is minimal.

6. Had the FILO Agent moved to appoint a receiver, that relief would have been justified on the very grounds the Applicants cite, i.e. "any potential restructuring path available ... [is] doomed to fail" – indeed, the restructuring path has long been over.¹³ It is now accepted in practice and case law that expanding the monitor powers is appropriate in the context of liquidating CCAAs.¹⁴

7. The FILO Agent is content that the directors remain. They do not earn anything and their role is naturally quite limited.¹⁵ Indeed, even other managers or personnel may remain involved in a part-time capacity, to the extent the Monitor is of the view that their knowledge or expertise is critical to support the very limited activities that remain. But ultimate decision-making should reside with the Monitor, who has more than adequate expertise to function in a receiver-like role,¹⁶

¹⁰ *Quest University Canada (Re)*, [2020 BCSC 318](#) at [paras 29-31](#).

¹¹ *Canada v. Canada North Group Inc.*, [2021 SCC 30](#) at [para 73](#) (Cote J., concurring)

¹² *9354-9186 Québec inc. v. Callidus Capital Corp.*, [2020 SCC 10](#) at [para 46](#).

¹³ Applicants Factum at para 79, [CC pp A9024-A9025](#).

¹⁴ *Arrangement relatif à Bloom Lake General* [2021 QCCS 2946](#), at [para 93](#).

¹⁵ Responding Motion Record of the Applicants, dated July 13, 2025, Affidavit of Michael Culhane, dated July 13, 2025, at para 67, [CC p D1763](#).

¹⁶ This very court has appointed the Alvarez & Marsal firm to act as receiver, manager or in similar roles in numerous proceedings. E.g. *WestLB AG v. Rosseau Resort Developments Inc.*, [2009 CanLII 55120](#), *Urbancorp Cumberland 2 GP Inc., (Re)*, [2017 ONSC 7649](#), *Mizrahi Commercial (The One) LP et al.*, [2025 ONSC 2672](#)

which will eliminate the very expensive layer of lawyers and financial advisors as remaining assets are sold.

B. There is no legitimate concern with the Monitor’s independence or neutrality

8. The Applicants’ contention that the Monitor must remain “neutral” and so should not have expanded powers to be in charge of the remnants of wind-down¹⁷ is a red herring. The Monitor, consistent with its role, has expressed its view of various steps in these proceedings, including the now-pending motions.¹⁸ The Monitor will continue to do so and, if the relief is granted, make the decisions for the Applicants, without the need for two sets of professionals.

9. Nor is there anything inappropriate with the FILO Agent, or any other stakeholder, taking a position adverse to the Monitor or any other stakeholder. Whatever the Monitor’s scope of powers, it is accountable to the Court, the creditors and the stakeholders. As long as the Monitor is objective and not biased, and takes positions based on reasoned criteria to further legitimate CCAA purposes, the obligations of neutrality are met.¹⁹

10. This Court has previously granted Alvarez & Marsal expanded powers as Monitor to oversee realization and distribution of a pension surplus. A&M as Monitor oversaw negotiation of a settlement agreement regarding surplus sharing, which this Court approved only two days ago.²⁰ Notably, that process took over two years. It makes no sense for the Applicants to continue to incur

¹⁷ Applicants Factum at paras 71-77, [CC pp A9022-A9023](#).

¹⁸ See, for example, the Sixth Report of the Monitor, dated July 14, 2025 (“**Sixth Report**”), at paras 5.27-5.34, [CC pp D716-D719](#).

¹⁹ *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, [2020 QCCA 659](#), at [para 73](#).

²⁰ Endorsement of Osborne, J. in *In Re: 1000156489 Ontario Inc.*

expenses at the current level as they embark on a substantively similar, multi-year process to realize on the few assets left.

11. There is no evidence of any ulterior motive as baldly suggested by the Applicants,²¹ or any kind of “leverage”. The FILO Agent’s motive in seeking relief on this motion has been explicit on several occasions: to eliminate unnecessary spending on professionals and maximize value. Expansion of the Monitor’s powers would ensure that a Court officer has direct control of that value maximization process, without the added cost and complexity of a layer of management and their professional advisors, paid for at the expense of the FILO Agent.

C. The current rate of spending on this CCAA proceeding risks bringing the administration of justice into disrepute

12. The position of the Applicants appears to be that, unless a forensic accounting exercise can demonstrate exactly the source and extent of waste of the FILO Agent’s collateral, the Court should be prepared to accept the status quo.²² Such an exercise may become necessary, including in any efforts by the FILO Agent or other creditors to recover or resist payment of funds that have been misspent. But in the interim, the evidence demonstrates that the status quo is leading to spending of \$3.3 million per month on the Applicants’ professionals, in addition to the \$1.8 million per month on the Monitor and its counsel.²³ The value generated for creditors, primarily the FILO Lenders, cannot justify that status quo, where the trend is of recoveries being reduced and not enhanced.

²¹ It would be particularly improper for the Court to accede to the Applicants submission at paragraph 68 of its factum because the Applicants elected not to cross-examine Mr. Fredericks of the FILO Agent, and so that proposition was not put to him.

²² Applicants Factum at paras 44-47, [CC pp A9012-9013](#).

²³ These values represent average monthly fees from June to August per the Updated Fifth Cash Flow model.

D. There remains a strong objective basis for the FILO Agent's loss of confidence in the Applicants' management and their advisors

13. The Applicants offer no serious response to the FILO Agent's criticism of their handling of the Central Walk Transaction. The FILO Agent does not maintain that there should have necessarily been a disclaimer of the Subject Leases under section 12 of the ARIO,²⁴ but instead that that the Applicants should have invoked that section to shift costs to Pathlight. Had Pathlight refused to pay the costs of maintaining the leases, disclaimer would then have been the only appropriate course.

14. The Monitor's answers to interrogatories delivered yesterday, August 26, 2025, only strengthen the objective basis for loss of confidence in the Applicants' conduct, including in the pursuit of the Central Walk Transaction:

- (a) The Applicants did not consult the Monitor in choosing amended Target Closing Date or Outside Date, both on June 13, 2025²⁵ and on July 29, 2025;²⁶ and
- (b) The Monitor knows nothing about any requests for consideration by the Applicants for these extensions²⁷ notwithstanding the FILO Agent's demands that such requests be made.²⁸

15. Further, the Applicants' assertions regarding its disclosure of pension information to the FILO Lenders are inaccurate.²⁹ After weeks of pressing for information, some disclosure was

²⁴ Applicants Factum at paras 48-49, [CC p A9014-A9015](#)

²⁵ Written Interrogatories of the Monitor, dated August 26, 2025 ("Written Interrogatories"), at Q7a.

²⁶ Written Interrogatories, Q14.

²⁷ Written Interrogatories, Q7b, 13.

²⁸ Fredericks Reply Affidavit, Exhibit "5", Letter from counsel to the FILO Agent to counsel to the Applicants, dated July 23, 2025, [CC p F5183](#) and Exhibit "6", Letter from counsel to the FILO Agent to counsel to the Applicants, dated July 27, 2025, [CC p F5186](#).

²⁹ Applicants Factum at para. 53, [CC p A9016](#).

made on the eve of the cross-examinations. But some of the information sought was not disclosed until the past few days, with the Applicants' insisting that the information be confidential, which undermined the FILO Agent's ability to test that information on cross-examination. Moreover, the Monitor now confirms it has faced the same refusals or delays in access to information as the FILO Agent.³⁰

The Court should allocate the costs of the Central Walk Transaction taking into account those whom it did, or could have, benefitted

A. The Court has the jurisdiction to allocate costs at this stage in the CCAA proceedings

16. Neither the Applicants nor Pathlight challenge the fact that the costs of the Central Walk Transaction have been borne exclusively by the FILO Lenders for the primary benefit of the Pathlight Lenders, which the Monitor has acknowledged is unfair.³¹

17. No party challenges the Court's jurisdiction to allocate the costs of the Central Walk Transaction pursuant to section 11 of the CCAA. Pathlight only claims a final re-allocation is "premature".³² In fact, the cases Pathlight does cite confirm that allocation is a matter of discretion for the Court, to be adjudged on the facts of the case, and which must be fair and equitable.³³

18. Pathlight emphasizes that the aim of the CCAA is "collective good and the benefit to all stakeholders governs" and that "who benefitted more" is not the correct approach, citing *Winnipeg Motors*.³⁴ But that was a case in which all creditors at issue actually did benefit from the

³⁰ Written Interrogatories, Q.11a, 11b

³¹ Sixth Report, at para 5.30, [CC p D717](#).

³² Pathlight Factum, at para 25, [CC p F17029](#).

³³ *Winnipeg Motor Express Inc. et al*, [2009 MBQB 204](#), at [para 41](#), see also *Royal Bank of Canada v. Atlas Block Co.* [2014 ONSC 1531](#), at [para 43](#).

³⁴ Pathlight Factum, at paras 31-33, [CC pp F16377-16378](#); *Winnipeg Motor Express Inc. et al*, [2009 MBQB 204](#), at [paras 45, 52](#).

proceeding, and reflects (as Pathlight concedes) that the Court should consider the relative benefits and detriments to particular creditors.³⁵ Left unstated is the fact that, without an allocation of the Central Walk Transaction costs, there will effectively be no “benefit to all stakeholders”, as any benefit of the transaction to the FILO Lenders will be entirely eroded by the first week of September. If the Court refuses to approve the transaction, the FILO Lenders will have lost at least \$7.5 million in recovery arising from dead rent payments for the 25 Central Walk Leases from July 6 through August 31, in addition to any amounts in rent that will be paid through the disclaimer period, and Pathlight will have lost nothing.

19. Nor is the relief sought premature.³⁶ The FILO Agent seeks an order that the allocation process, which will take some effort and time, begin now, with the Monitor facilitating the process. If the Court determines definitively that a “fair and equitable” reallocation of the Central Walk Transaction costs must occur, the relevant parties will be forced or at least incentivized to address the issue efficiently and responsibly, and to minimize the time and cost associated with any allocation exercise.

20. Without that direction, the FILO Lenders will be left with even more uncertainty as to their recovery, which is likely to impact the approach that the parties take to any future disputes about allocations or otherwise. In any case, the FILO Agent accepts that any order the Court makes now regarding the Central Walk Transaction will be subject to a final allocation as to the costs of the CCAA proceeding as a whole, if necessary.

³⁵ Pathlight Factum, at para 30, [CC pp F17030-F17031](#); *Winnipeg Motor Express Inc. et al*, [2009 MBQB 204](#), at [para 41](#).

³⁶ Applicants Factum at para 80, [CC p A9025](#).

B. The FILO Agent is not in breach of the Intercreditor Agreement, and that agreement does not preclude the order sought in any event

21. Contrary to Pathlight’s submission, the FILO Agent’s motion is not a “thinly-disguised” attempt to oppose the Central Walk Transaction.³⁷ The FILO Agent expressly withdrew any opposition by July 26, 2025, after its motion to terminate the transaction was rendered moot by the adjournment sought by the Applicants and Pathlight.

22. The allocation of costs here is not an intercreditor issue, and the Court can grant the relief sought without determining any rights between the creditors. The relief sought concerns how and the extent to which the Applicants as debtors can use the collateral of the FILO Lenders. The Monitor has said that the current state of affairs – with the FILO Lenders bearing all the cost and risk of the CCAA Transaction – is unfair.³⁸ A delay in repayment of the outstanding debt to the FILO Lenders will only saddle the estate with more interest. These are issues that squarely engage this Court’s statutory jurisdiction to supervise this CCAA proceeding.

23. It is Pathlight that seeks to improperly make this an intercreditor dispute by claiming an alleged “clear breach of the Intercreditor Agreement”.³⁹ The FILO Agent denies any breach, as set out in its initial factum,⁴⁰ and does not seek any determination of the parties’ rights under the Intercreditor Agreement.

24. Pathlight cannot at one and the same time:

³⁷ Pathlight Factum, at para 36, [CC F17032](#)

³⁸ Sixth Report, at para 5.30, [CC p D717](#).

³⁹ Pathlight Factum at para 36, [CC p F17032](#)

⁴⁰ Moving Factum of the FILO Agent, dated August 21, 2025 (“**FILO Agent Factum**”), at paras 8-10, [CC F9112-F9113](#).

- (a) set up the Intercreditor Agreement as a bar to the Court granting discretionary relief sought by the FILO Agent in this proceeding, which would invoke the Court's residual common law and equitable jurisdiction,⁴¹ and leave it open for the Court to determine that issue against Pathlight; and
- (b) ask this Court to avoid making any final determinations of rights under the Intercreditor Agreement,⁴² no doubt because it hopes to avoid any *res judicata* and seeks to preserve its ability to litigate these issues in New York.

25. Pathlight's arguments concerning the Consent to Intercreditor Agreement⁴³ also miss the point. The FILO Agent raises the Consent not to allege a breach any of its terms, which focused on the mechanics of the DIP budget. Instead, it is evidence of the parties' expectations about the essential business terms of their arrangement, as Mr. Fredericks testified.⁴⁴ Pathlight did not challenge or lead evidence to contradict Mr. Fredericks on this evidence, and cannot now claim that he is wrong. Those expectations are relevant to the Court's determination of a fair and equitable allocation of costs.

26. Taken to its logical conclusion, Pathlight's argument that the Court should disregard the Consent because it was conditional would indicate that the original arrangement that Mr.

⁴¹ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at [para 65](#); *U.S. Steel Canada Inc. (Re)*, [2016 ONCA 662](#) at paras [18](#), [74](#) and [102](#) aff'g (on different grounds) *U.S. Steel Canada Inc. (Re)*, 2015 ONSC 5103; See also *Alderbridge Way GP Ltd. (Re)*, [2023 BCSC 1718](#).

⁴² Pathlight said as much, though obliquely, in its July 15, 2025 submissions ("To the extent intercreditor arrangements are relevant, the proper interpretation would need to be brought at a different motion, with proper legal and evidentiary support, in the context of the Intercreditor Agreement being governed by New York law.").

⁴³ Pathlight Factum at paras 37-39, [CC p F17033](#).

⁴⁴ Fredericks Reply Affidavit, at paras 10-13, [CC pp F5035-F5037](#).

Fredericks testified to remained intact: that the FILO Agent would not be required to fund the maintenance of the Pathlight Leases at all.⁴⁵

27. The FILO Agent did not and does not resile from the essential business understanding reached and reflected in the Consent, namely that its priority cash collateral be used to fund the Pathlight Leases until only the first week of July. The Court should ensure that Pathlight cannot resile from its end of that bargain, and saddle the FILO Lenders with the costs of collecting on its collateral.

The Court should take urgent action to prevent further erosion of the FILO Lenders' priority collateral

A. The Landlords misunderstand the position of the FILO Agent, which does not seek to require them to make the Leases available

28. Cadillac Fairview misunderstands the FILO Agent's position. It argues that the Court does not have jurisdiction to "order Cadillac Fairview to lease to the Applicants the properties under the CF Leases without being rightfully paid for them" based on section 11.01(a).⁴⁶

29. In this regard, the FILO Agent merely seeks an end to the Applicants funding rent payments:

- (a) After any order, unless another party puts them in funds to do so, to ensure that the FILO Lenders' priority collateral is not used to fund the payments; and
- (b) Immediately after any disclaimer.

⁴⁵ Fredericks Reply Affidavit, at para 11, [CC p F5036](#); Fredericks Affidavit, Exhibit "E" (the "Intercreditor Agreement"), at para 3.3(j), [CC p D518](#).

⁴⁶ Cadillac Fairview Factum, dated August 25, 2025, at para 17, [CC p F16509](#).

30. Section 11.01 does not guarantee continuing payment of rent or any other post-filing suppliers. Rather it is a prohibition against requiring the provision of leased property (or other supply), rent-free. The Landlords can continue to “require[e] immediate payment for ... leased ...property” and withdraw the supply (subject to the terms of the Leases) upon non-payment. But section 11.01(b) does not, itself, provide any independent justification for the Applicants bearing the cost of those leases, if those with an economic interest in them wish for them to remain in good standing.

31. Post-filing suppliers, like the Landlords, are unsecured creditors whose claims rank behind those of secured creditors absent an order to the contrary,⁴⁷ including an order designating the post-filing suppliers as “critical suppliers” under section 11.4.⁴⁸ For this reason, the Court in *Razor Energy* denied approval of an RVO because it concluded that the payment of unsecured post-filing suppliers to the detriment of secured creditors was inequitable.⁴⁹

32. In the present case, the only positive obligation for the Applicants to pay rent arises out of section 10(a) of the ARIO which the FILO Agent has expressly sought to vary since its Amended Notice of Motion was served on July 26, 2025.⁵⁰ The Landlords are not surprised by this position, and indeed raised objections to it at the July 31, 2025 hearing.

⁴⁷ *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, [2025 ABKB 30](#) at [para 68](#) (“Although it is expected that amounts owing for post-filing goods and services will be paid on an ongoing basis, and will be kept current, post-filing creditors do not enjoy any priority to secured creditors if their claims are not paid when due, unless the court has granted a charge to secure those amounts.”)

⁴⁸ Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36 (“CCAA”), at [s.11.4](#).

⁴⁹ *Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)*, [2025 ABKB 30](#) at [paras 88-89](#).

⁵⁰ Amended and Restated Initial Order, dated March 21, 2025 (“ARIO”), at para 10(a), [CC p D615](#); Amended Notice of Motion of the FILO Agent, dated July 25, 2025, [CC F16983](#).

33. There is no statutory basis for requiring the Applicants to pay for premises they will not longer need as of the date of disclaimer of the leases. Continued use of the premises was the determining factor in the case cited by the Landlords, *Cosgrove-Moore Bindery Services Ltd (Re)*⁵¹, as it was in *Quest University Canada (Re)*⁵². In this case the Landlords can and should be handed back the keys on the disclaimer date.

34. The lifting of the requirement for payment, and the conditionality sought by the FILO Agent on any payment, does not prejudice the Landlords. If the FILO Agent's submissions are accepted, any of the other parties with the economic interests who wish to use (or preserve for future use) the Subject Leases are free to advance funds to make those payments. If they choose not to do so, any failure to pay rent will trigger consequences that may include an unsecured post-filing claim, and, potentially, justification for lifting of the stay of proceedings under sections 18 to 20 of the ARIO, the exercise of remedies for late or non-payment of rent under the relevant Leases, and re-entry by the Landlords.

35. Section 10(a) of the ARIO is based on the Model Order, but it is just that: an order that can be varied. There is no other source of obligation to pay rent during any CCAA proceeding, including during the 30-day disclaimer period, and certainly not sections 32(1) and 32(5)(a) of the CCAA.⁵³ Non-payment during the 30-day disclaimer period is an ordinary risk that any unsecured post-filing supplier faces. Moreover, the requirement to pay in section 10(a) of the ARIO was justified when the leases were integral to the business of the debtors, and all parties could be certain that the leases would not be breached or terminated. But that justification has fallen away now that

⁵¹ *Cosgrove-Moore Bindery Services Ltd (Re)*, [2000 CanLII 22377](#) (ON SC) at [para 7](#).

⁵² *Quest University Canada (Re)*, [2020 BCSC 921](#) at [para 90](#).

⁵³ Cadillac Fairview Factum, at paras 22-23, [CC p F16510](#); CCAA, at [ss.32\(1\)](#) and [32\(5\)\(a\)](#).

the Leases will either be assigned or disclaimed, this latter result being one that the Landlords have sought for months.

B. Central Walk can be made to bear responsibility for the Central Walk Costs in certain circumstances

36. The FILO Agent does not seek to saddle the Purchaser with responsibility for the Central Walk Transaction costs at large, as Pathlight⁵⁴ claims.

37. Instead, the FILO Agent is only seeking that the Purchaser bear such costs, as the party with an economic interest in the transaction, and as a party who has contributed to those costs, if:

- (a) Central Walk seeks to maintain the Leases in good order pending any appeal; or
- (b) there is a basis for the forfeit of Central Walk's deposit based on the Applicants' allegation that the APA was breached, which issue would be determined at a later time.⁵⁵

38. The purported chilling effect on purchasers is a bogeyman that the Court can safely ignore. The Purchaser is a sophisticated, well-capitalized enterprise. The Central Walk APA was negotiated by sophisticated lawyers, and the Purchaser agreed to expose itself to liability if it did not perform its end of the bargain. It cannot be surprised by any risk that it may bear such costs, and certainly not from its deposit. Nor could it have had any expectation that it is the FILO Lenders who would fund costs to preserve the Subject Leases. The Purchaser was aware of section 12 of the ARIIO, which expressly permitted disclaimer (or passing of costs to Pathlight) by the

⁵⁴ Pathlight Factum, at paras 42-45, [CC p F17034-F17035](#).

⁵⁵ FILO Agent Factum, Exhibit "D", Draft Order, [CC p F9142](#).

Applicants,⁵⁶ and agreed to an express term that permitted the Applicants to exercise that remedy.⁵⁷

39. In these circumstances, there is nothing unfair or inequitable about requiring the Purchaser (or any other party) to bear whatever costs come from its choices to prolong this proceeding by any appeals, or because its own conduct will have justified the forfeit of its deposit.

C. FF&E removal issues are no bar to the relief sought

40. Cadillac Fairview expresses its concern, without seeking any associated relief, that the FILO Agent will seek to indirectly curtail or extinguish FF&E removal.⁵⁸ FF&E removal is not an issue in this motion or in the approval motion, and to the extent that it becomes an issue at a later date, the Court should deal with it at that time.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August, 2025.



Matthew B. Lerner / Brian Kolenda /
Christopher Yung / Julien Sicco

⁵⁶ ARIO, para 12, [CC p D616](#); Motion Record of the Applicants, dated July 29, 2025, Affidavit of Franco Perugini, sworn July 29, 2025, Exhibit “B” (the “**Central Walk APA**”), Recitals, [CC p A6135](#).

⁵⁷ Central Walk APA, at para 5.3(1), [CC p A6156](#).

⁵⁸ Cadillac Fairview Factum, at paras 25-26, [CC p F16511](#).

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897

Email: bkolenda@litigate.com

Christopher Yung (62082I)

Tel: (416) 865-2976

Email: cyung@litigate.com

Julien Sicco (82939D)

Tel: (416) 640-7983

Email: jsicco@litigate.com

Lawyers for ReStore Capital, LLC,
in its capacity as FILO Agent

**SCHEDULE “A”
LIST OF AUTHORITIES**

Item	Authority
1.	<i>9354-9186 Quebec inc. v. Callidus Capital Corp.</i> , 2020 SCC 10
2.	<i>Alderbridge Way GP Ltd. (Re)</i> , 2023 BCSC 1718
3.	<i>Arrangement relatif à Bloom Lake General</i> 2021 QCCS 2946
4.	<i>Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)</i> , 2020 QCCA 659
5.	<i>Canada v. Canada North Group Inc.</i> , 2021 SCC 30
6.	<i>Century Services Inc. v. Canada (Attorney General)</i> , 2010 SCC 60
7.	<i>Cosgrove-Moore Bindery Services Ltd (Re)</i> , 2000 CanLII 22377 (ON SC)
8.	<i>JBT Transport Inc. (Re)</i> , 2025 ONSC 1436
9.	<i>Mizrahi Commercial (The One) LP et al.</i> , 2025 ONSC 2672
10.	<i>Quest University Canada (Re)</i> , 2020 BCSC 318
11.	<i>Quest University Canada (Re)</i> , 2020 BCSC 921
12.	<i>Razor Energy Corp, Razor Holdings Gp Corp., and Blade Energy Services Corp (Re)</i> , 2025 ABKB 30
13.	<i>Royal Bank of Canada v. Atlas Block Co.</i> 2014 ONSC 1531
14.	<i>Urbancorp Cumberland 2 GP Inc., (Re)</i> , 2017 ONSC 7649
15.	<i>U.S.Steel Canada Inc. (Re)</i> , 2015 ONSC 5103
16.	<i>U.S. Steel Canada Inc. (Re)</i> , 2016 ONCA 662
17.	<i>WestLB AG v. Rosseau Resort Developments Inc.</i> , 2009 CanLII 55120
18.	<i>Winnipeg Motor Express Inc. et al</i> , 2009 MBQB 204

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date August 27, 2025


Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36 (“CCAA”), [at s.11.4](#)

Critical supplier

11.4 (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 a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company’s continued operation.

Obligation to supply

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

Priority

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

Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [ss.32\(1\)](#)

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Companies’ Creditors Arrangement Act (R.S.C., 1985, c. C-36), [32\(5\)\(a\)](#)

Date of disclaimer or resiliation

(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 1242939 B.C. UNLIMITED LIABILITY COMPANY et al

Court File No. CV-25-00738613-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**REPLY FACTUM OF THE FILO AGENT
(FILO AGENT'S MOTION: RETURNABLE AUGUST 28, 2025)**

LENCZNER SLAGHT LLP

Barristers

130 Adelaide Street West, Suite 2600

Toronto, ON M5H 3P5

Matthew B. Lerner (55085W)

Tel: (416) 865-2940

Email: mlerner@litigate.com

Brian Kolenda (60153N)

Tel: (416) 865-2897

Email: bkolenda@litigate.com

Christopher Yung (62082I)

Tel: (416) 865-2976

Email: cyung@litigate.com

Julien Sicco (82939D)

Tel: (416) 640-7983

Email: jsicco@litigate.com

Lawyers for ReStore Capital, LLC,
in its capacity as FILO Agent