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

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

WRITTEN SUBMISSIONS OF PATHLIGHT CAPITAL LP
(Motion – March 26, 2025)

March 26, 2025

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman
Tel: 416.862.4908
Email: mwasserman@osler.com

Dave Rosenblat
Tel: 416.862.5673
Email: drosenblat@osler.com

Justin Kanji
Tel: 416.862.6642
Email: jkanji@osler.com

Lawyers for Pathlight Capital LP

PART I - OVERVIEW

1. On March 7, 2025, the Applicants (also referred to below as the "**Company**") sought and obtained an initial order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* ("**CCAA**"), together with certain related relief.

2. Specifically, this Court approved a Junior DIP Term Sheet (the "**Term Sheet**"), pursuant to which certain lenders (the "**DIP Lenders**") agreed to advance interim financing in the amount of up to $16 million (the "**Interim DIP Facility**") to fund the Applicants' operations between the date of the Initial Order and the comeback hearing (the "**Comeback Hearing**"). The Interim DIP Facility was secured by a charge over the property of the Loan Parties (as defined in the Term Sheet) that ranked junior to the security interests of the Pathlight Lenders and the ABL Lenders.[1]

3. At the Comeback Hearing, the Applicants, with the support of the Monitor, sought, among other things: (i) approval of the SISP, Lease Monetization Process and Liquidation Process (collectively, the "**Collateral Marketing Processes**"), which each set forth terms on which collateral that is secured on a priority basis in favour of the ABL Lenders and the Pathlight Lenders would be marketed and monetized by the Applicants; (ii) approval of the repayment of the Interim DIP Facility notwithstanding the priority waterfall established by the Initial Order and as set forth in the Term Sheet (the "**Priority Waterfall**"); and (iii) approval of the restructuring support agreement ("**RSA**") entered into among the Company, the Pathlight Lenders and the ABL Lenders. These prongs of relief do not stand on their own – they are all interdependent. The Pathlight Lenders' and the ABL Lenders' support and consent to the monetization of their collateral by way of the Applicants' Collateral Marketing Processes and the repayment of the Interim DIP Facility

[1] Defined terms in these submissions, unless otherwise specified, have the same meaning as in the Affidavit of Jennifer Bewley, sworn March 7, 2025 (the "Initial Order Affidavit").

notwithstanding the Priority Waterfall was predicated on the reasonable protections afforded by the RSA, which ought to be approved without delay.

4. Notwithstanding the foregoing, certain of the Company's landlords oppose the approval of the RSA on the basis that it restricts the Company's ability to advance a going-concern solution. Such a view disregards the fact that the Company, with the support of the Monitor, concluded that the terms of the RSA – including those with respect to sales processes and liquidation – were appropriate. The Company is not asking for more flexibility, nor is the Monitor. However, the landlords now suggest it is necessary. These landlords have failed to offer any rent or other lease concessions or restructuring solutions in this case. These landlords also stand to benefit from a potentially prolonged process where their rent is paid from proceeds of the Pathlight Lenders' and the ABL Lenders' collateral – a prolonged process that is not supported by the Company, the Monitor, or the Company's cash flow projections.

5. These submissions are filed in support of the request by the Company to approve the RSA. Failure to approve the RSA would disregard the basis on which the Pathlight Lenders and ABL Lenders agreed to support the Applicants' Collateral Marketing Processes and ignore the Priority Waterfall. Giving effect to the landlords' objections would serve to effectively prefer unsecured landlords' interests to those of the interests of the Company's secured creditors (while disregarding the business judgment of the Company and the Monitor).

PART II - SUBMISSIONS

A. Pathlight is at the Top of the Capital Structure

6. The outstanding principal amount under the Pathlight Credit Agreement as of March 7, 2025 was approximately US$65.6 million.[2] The outstanding amounts under the Revolving Credit

[2] Further detail regarding the Pathlight Credit Facility are set out at paras. 144 to 152 of the Initial Order Affidavit.

Facility and the FILO Credit Facility as of March 7, 2025 were approximately $136,847,000 and $22,398,622, respectively.

7. Amounts owed to the Pathlight Lenders are secured by a first-priority lien over the Pathlight Priority Collateral and a second-priority lien on the ABL Priority Collateral. The ABL Lenders are secured by a first-priority lien over the ABL Collateral and a second-priority lien on the Pathlight Priority Collateral.

B. Interim DIP Facility and DIP Charge

8. At the time the Initial Order was obtained, the Company was in critical need of interim financing, including during the period prior to the Comeback Hearing. The DIP Lenders, which include certain pre-existing secured creditors of the Applicants (i.e. certain ABL Lenders), proposed interim financing in an amount sufficient to allow the Company to operate until the Comeback Hearing. The Interim DIP Facility contemplated an advance of $16 million during the period between the date of the Initial Order and the date of the Comeback Hearing.[3] The Interim DIP Facility was fully advanced.

9. Clause 6(1)(a)(1) of the Intercreditor Agreement provides that the ABL Lenders and the Pathlight Lenders will not object to DIP financing, provided that the priorities over the Collateral are preserved.[4] The ranking of the DIP Charge was expressly established in recognition of the pre-existing priority rights of the Pathlight Lenders and the ABL Lenders in the Collateral. Accordingly, pursuant to the Initial Order, the DIP Charge ranked behind the amounts owing to

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3 Initial Order Affidavit, para. 206.

4 Initial Order Affidavit, Exhibit "C"

the ABL Lenders in relation to the ABL Priority Collateral and behind the amounts owing to the Pathlight Lenders and the ABL Lenders, in relation to the Pathlight Priority Collateral.[5]

C. Comeback Hearing Relief

10. On March 21, 2025, the Company returned to this Court for the Comeback Hearing following its adjournments from March 17, 2025 and March 19, 2025. Although the Company had initially requested a further $7 million of DIP financing to be approved at the Comeback Hearing, by the time the issue came before this Court, the Company instead sought this Court's approval to repay the Interim DIP Facility on the basis that sales had exceeded expectations during the period between the date of the Initial Order and the date of the Comeback Hearing. It had become clear that there was no longer a need for any further DIP financing to complete the Applicants' proposed Collateral Marketing Processes and that the Company had sufficient funds to repay the Interim DIP Facility, if such repayment was agreed to by the priority secured creditors.[6]

11. In seeking this relief, the Company recognized that it was proposing to repay the Interim DIP Facility using the proceeds from the sale of inventory, all of which is subject to the Priority Waterfall established in the Initial Order and the security of the Pathlight Lenders and the ABL Lenders. Furthermore, and in connection therewith, the Company sought to monetize the Pathlight Lenders' and the ABL Lenders' collateral on the Applicants' proposed terms. As the *quid pro quo* for the agreement of these secured parties to the repayment of the Interim DIP Facility contrary to the terms of the Priority Waterfall and for their support of the Applicants' Collateral Marketing

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5 Initial Order Affidavit, paras. 207, 235-236. See also Junior DIP Term Sheet, Exhibit "E" to Initial Order Affidavit, para. 14, "Permitted Liens and Priority" and para. 41, "Intercreditor Agreement"; Initial Order, para. 40, 42.

6 Affidavit of Jennifer Bewley, sworn March 21, 2025 (the "Comeback Affidavit"), para. 9.

Processes, the Company, with the support of the Monitor, agreed to enter into the RSA with the ABL Agent and the Pathlight Agent.[7] Put another way, the Pathlight Lenders and the ABL Lenders consented to the Company controlling their collateral pursuant to the Collateral Marketing Processes on the basis of the protections afforded under the RSA. A liquidation, even if combined with a going concern sale of a portion of the business, could easily and efficiently be administered by way of a receivership; however, the Pathlight Lenders and ABL Lenders agreed to support this debtor-in-possession process provided they have the reasonable protections negotiated in the RSA.

D. Landlord Objections to the RSA

12. Several landlords have suggested that the RSA provides protections similar to those afforded under a DIP loan and that they are therefore inappropriate in the circumstances. This disregards the fact that the Company's current cash position results solely from the monetization of the Pathlight Lenders' and the ABL Lenders' collateral – monetization by way of processes that these secured creditors have and will support only so long as they have the reasonable protections contemplated in the RSA.

13. In addition, the landlord objections have largely centered on the theme that the RSA constrains the Company's ability to restructure and therefore should not be approved. However, neither the Company nor the Monitor is seeking further flexibility. Unless the landlords are prepared to offer lease concessions – which they have not offered to date – they have no better insight into the prospects or requirements for a restructuring than the Company or the Monitor. They are simply advancing a thinly disguised agenda to fund their own interests out of the secured creditors' collateral.

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7 Comeback Affidavit, para. 10.

E. This Court Has Jurisdiction to Approve the RSA

14. Section 11 of the CCAA provides this Court with broad jurisdiction to make any order it thinks fit, including the approval of a support agreement. There is no fixed formula for what such an agreement is required to contain. For example, the agreements approved in *US Steel* related to future support by key stakeholders.[8] This Court has also approved support agreements in connection with a sale process. For example, in *Just Energy*, McEwen J. approved a SISP support agreement designed to facilitate a sale transaction, noting that the Court's authority to do so derived from the Court's powers under section 11 of the CCAA. The agreement was a critical component of the applicants' exit transaction, including allowing them to market their assets.[9]

15. The same test applies regardless of the purpose of the agreement. This Court must consider the appropriateness of the particular agreement – in this case, the RSA – within the context of the CCAA, the rights of stakeholders, and the type of proceeding at issue.

16. In *Stelco*, the Court of Appeal affirmed the CCAA Court's authority to approve support agreements. In making this determination, the Court of Appeal further noted that the CCAA Court's jurisdiction is not limited to preserving the *status quo* but also extends to making orders with a view to facilitating a restructuring.[10] In this case, the RSA will facilitate the marketing of the business as contemplated by the SISP, concurrent with the Lease Monetization Process and the Liquidation Process.

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8 *U.S. Steel (Re)*, 2016 ONSC 7899 at para. 39. See also *Stelco Inc., (Re)* (2005) 78 OR (3d) 254 (CA) at paras. 18 and 19.

9 *Just Energy (Re)*, Written Endorsement of McEwen J., dated August 18, 2022 (Unofficial transcript).

17. The proposed RSA provides appropriate and reasonable benefits to the Pathlight Lenders and the ABL Lenders that recognize their priority status as the Collateral Marketing Processes are administered by the Company. Of note is that all remedies thereunder are subject to Court approval.

F. Pathlight Lenders Should Not be Prejudiced by Delayed RSA Approval Hearing

18. Due to the tight timelines for this Court and for affected parties to review the RSA, which was only concluded shortly before the Comeback Hearing, this Court considered it necessary to defer its determination regarding the approval of the RSA. At the same time, however, this Court appeared to authorize the repayment of the Interim DIP Facility, without express recognition of the interconnection between the authority of the Company to repay the Interim DIP Facility under the negotiated terms of the Term Sheet and the approval of the RSA.

19. To the extent that this Court intended to permit the repayment of the Interim DIP Facility without at the same time approving the RSA, the Pathlight Lenders submit that this has the effect of altering the *status quo* among the priority creditors of the Company and contravening the Priority Waterfall. Further, without the RSA, the Pathlight Lenders and the ABL Lenders are deprived of the basis on which they agreed to support the Collateral Marketing Processes.

20. The RSA is a negotiated solution that is the basis on which the ABL Lenders and the Pathlight Lenders are not insisting on their right to require the Company to repay the ABL Credit Facility and the Pathlight Credit Facility ahead of the DIP Lenders and agreeing to support a debtor-in-possession sales process. In other words, the ABL Lenders and the Pathlight Lenders, by agreeing to enter into the RSA, are giving up clear priority rights that they bargained for and supporting the administration of their Collateral by means of the Applicants' Collateral Marketing

Processes. In exchange, they are seeking reasonable information and other rights, consistent with their status at the top of the Company's capital structure and with no detriment to the Company.

21. For all of the reasons submitted above, the RSA should therefore be approved on the basis that it is fair and reasonable, and appropriate within the context of this insolvency proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2025.

LIST OF AUTHORITIES

Case Law	
1.	*Just Energy (Re)*, Written Endorsement of McEwen J., dated August 18, 2022 (Unofficial transcript)
2.	*Stelco Inc., (Re)* (2005) 78 OR (3d) 254 (CA)
3.	*U.S. Steel (Re)*, 2016 ONSC 7899

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PROCEEDING COMMENCED AT TORONTO

WRITTEN SUBMISSIONS OF PATHLIGHT CAPITAL LP

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman
Tel: 416.862.4908
Email: mwasserman@osler.com

Dave Rosenblat
Tel: 416.862.5673
Email: drosenblat@osler.com

Justin Kanji
Tel: 416.862.6642
Email: jkanji@osler.com

Lawyers for Pathlight Capital LP