

**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  
CLOVER LEAF HOLDINGS COMPANY, CONNORS BROS. CLOVER LEAF  
SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA LIMITED,  
CONNORS BROS. HOLDING COMPANY AND CONNOR BROS. SEAFOODS  
COMPANY**

Applicants

**FACTUM OF THE APPLICANTS**

**January 27, 2020**

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## FACTUM OF THE APPLICANTS

### PART I: INTRODUCTION

1. On November 22, 2019, Clover Leaf Holdings Company, Connors Bros. Clover Leaf Seafoods Company, K.C.R. Fisheries Ltd., 6162410 Canada Limited, Connors. Bros. Holding Company and Connor Bros. Seafoods Company (the “**Applicants**”) obtained an Initial Order under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) which, among other things, granted a stay of proceedings in favour of the Applicants and their directors and officers and appointed Alvarez & Marsal Canada Inc. as the monitor (the “**Monitor**”).
2. On November 25, 2019, the Applicants obtained an Amended and Restated Initial Order, approving, among other things, terms for debtor-in-possession financing and various charges over the property of the Applicants.
3. On December 20, 2019, the Applicants obtained a Bidding Procedures and Stay Extension Order, which, among other things, approved the Applicants entering into a Stalking Horse APA.
4. As further described herein, the Applicants are now seeking the following relief:
  - (a) a Stalking Horse Approval and Vesting Order which will, among other things, approve the Stalking Horse APA, vest the assets free and clear, and approve a Credit Bid Backup APA in the event the transaction contemplated under the Stalking Horse APA does not close; and
  - (b) a Monitor’s Expansion of Powers and Stay Extension Order which will, among other things, grant the Monitor expanded powers upon the closing of the sale transaction, establish a wind-down reserve and extend the stay of proceedings.

5. The Applicants, which carry on business in Canada and internationally through distributors in the Caribbean, specialize in the production and sale of shelf-stable seafood products and employ approximately 650 workers in Canada. The U.S. affiliates of the Applicants are referred to herein as “**Bumble Bee**” (and together with the Applicants, the “**Bumble Bee Group**”). Bumble Bee has obtained similar relief in the U.S. to that granted to, and sought by, the Applicants in Canada. Specifically, on January 23, 2020, the Stalking Horse APA was approved by the U.S. Court in Bumble Bee’s Chapter 11 proceeding.

6. The Applicants believe that the relief sought on this motion is appropriate in the circumstances, is in accordance with the CCAA, and will effect the sale of their business as a going concern, maximizing its value in the best interests of all of their stakeholders. The Monitor and the Applicants’ secured lenders are supportive of the relief being sought.

## **PART II: FACTS**

7. The facts with respect to this motion are more fully set out in the affidavit of Gary Ware sworn January 21, 2020 (the “**Fourth Ware Affidavit**”) and the affidavit of Aiden Nelms sworn January 27, 2020. Capitalized terms not defined herein have the meaning ascribed to them in the Fourth Ware Affidavit.

### **A. Overview of the Insolvency Proceedings**

8. On November 22, 2019, the Applicants sought and obtained an Initial Order under the CCAA for limited relief including a stay of proceedings in favour of the Applicants and their directors and officers until and including December 2, 2019 (the “**Stay Period**”) and the appointment of the Monitor.

9. On November 21, 2019, certain of the Applicant’s U.S. affiliates (collectively, the “**U.S. Debtors**”)<sup>1</sup> filed voluntary petitions for relief pursuant to title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”). Concurrently, the U.S. Debtors filed several “first day motions” with the U.S. Bankruptcy Court. On November 22, 2019, the U.S. Bankruptcy Court heard such first day motions and substantially all of the relief sought by the U.S. Debtors was granted by the U.S. Bankruptcy Court between November 22 and 25, 2019.

10. While the U.S. Debtors have been granted relief similar to that granted to the Applicants, as there are separate CCAA and Chapter 11 proceedings in place for entirely distinct groups of companies (i.e. no Bumble Bee Group company has filed in both jurisdictions), each Court is acting as the sole and exclusive authority with respect to the entities before it and will be considering the relief sought in accordance with its own laws and procedures – even though the effectiveness of many relevant agreements, including the Stalking Horse APA, is conditioned on approval from both Courts.

11. On November 25, 2019, the Applicants obtained an Amended and Restated Initial Order, among other things, extending the Stay Period, and approving debtor-in-possession financing, various charges over the property of the Applicants and a key employee incentive plan.

12. On December 20, 2019, the Applicants obtained a Second Amended and Restated Initial Order and a Bidding Procedures and Stay Extension Order which, among other things, extended the Stay Period until and including January 31, 2020, authorized the Applicants to execute the Stalking Horse

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<sup>1</sup> The U.S. Debtors are Bumble Bee Parent, Inc., Bumble Bee Holdings, Inc., Bumble Bee Foods, LLC, Anova Food, LLC and Bumble Bee Capital Corp.

APA being considered on this motion, and approved the Bidding Procedures (as discussed further below).

13. On January 23, 2020, the U.S. Debtors sought and obtained approval of the Stalking Horse Transaction from the U.S. Bankruptcy Court. On January 24, 2020, the U.S. Bankruptcy Court issued and entered an order approving the Stalking Horse Transaction.<sup>2</sup>

#### **B. Pre-Filing Restructuring Efforts**

14. Prior to filing for protection under the CCAA and Chapter 11, the Bumble Bee Group engaged in a number of different restructuring efforts. In or around December 2018, a sale of the Applicants' business in Canada was explored, as well as a potential recapitalization of the Bumble Bee Group's global business, with interested parties contacted and indications of interest received.<sup>3</sup> Houlihan Lokey Capital Inc. ("**Houlihan**"), the Bumble Bee Group's investment banker, conducted this initial sale process (the "**First Sale Process**"). In connection with the First Sale Process, Houlihan contacted nine potentially interested parties, all of which were strategic buyers. Four interested parties executed non-disclosure agreements and received a confidential information memorandum that provided a comprehensive overview of the Applicants' business.<sup>4</sup>

15. It was ultimately determined that it would not be feasible to implement a global recapitalization in the absence of settling the pending litigation against Bumble Bee in the U.S. The First Sale Process was then terminated.

16. The Bumble Bee Group entered into an amendment of its credit facilities, culminating in a Restructuring Support Agreement on July 10, 2019, which outlined the support of a restructuring of

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<sup>2</sup> Affidavit of Aiden Nelms sworn January 27, 2020 at para 15 [Supplemental Affidavit].

<sup>3</sup> Affidavit of Gary Ware sworn January 21, 2020 at paras 11-12 [Fourth Ware Affidavit]; Affidavit of Gary Ware sworn November 24, 2019 at paras 95-99 [Second Ware Affidavit].

<sup>4</sup> Affidavit of Gary Ware sworn December 11, 2019 at para 22 [Third Ware Affidavit].

the Bumble Bee Group, in connection with obtaining junior financing and settling litigation claims. Despite significant efforts, the Bumble Bee Group was unable to raise junior financing and settle the pending litigation in the U.S. with a sufficient threshold of plaintiffs.<sup>5</sup>

17. In September 2019, a second more comprehensive sale process was undertaken (the “**Second Sale Process**”). In connection with the Second Sale Process, Houlihan contacted approximately 190 potentially interested parties, comprised of 66 strategic buyers and 124 financial buyers. Certain of the parties contacted as part of the Second Sale Process were already familiar with the Bumble Bee Group Business based on Houlihan’s previous efforts to raise financing. Approximately 65 parties executed non-disclosure agreements and received a confidential information memorandum that provided a comprehensive overview of the Bumble Bee Group Business.<sup>6</sup>

18. The Second Sale Process culminated in the Applicants and certain other Bumble Bee Group entities executing an asset purchase agreement dated November 21, 2019 (the “**Stalking Horse APA**”), with certain affiliates of FCF Co., Ltd (“**FCF**”), including Tonos US LLC as U.S. Buyer (the “**U.S. Buyer**”), Tonos 1 Operating Corp as Canadian Buyer (the “**Canadian Buyer**”), and Melissi 4 Inc. as Equity Buyer (the “**Equity Buyer**”, and together with FCF, the U.S. Buyer, and the Canadian Buyer, the “**FCF Buyers**”), for the sale of substantially all of the Bumble Bee Group Business.<sup>7</sup>

### **C. The Stalking Horse APA**

19. On December 20, 2020, the Court authorized the Applicants to enter into the Stalking Horse APA.

20. Pursuant to the Stalking Horse APA, the FCF Buyers intend to acquire the Bumble Bee Group Business (including the Applicants’ business) on a going concern basis for a purchase price of

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<sup>5</sup> Second Ware Affidavit, *supra* note 3 at paras 100-106.

<sup>6</sup> *Ibid* at para 113; Third Ware Affidavit, *supra* note 4 at para 23; Fourth Ware Affidavit, *supra* note 2 at para 12.

<sup>7</sup> Fourth Ware Affidavit, *ibid* at para 13.

USD\$925.6 to USD\$930.6 million. The FCF Buyers will acquire substantially all of the assets and business of both Bumble Bee and the Applicants, and the equity interests of certain foreign affiliates. The purchase price is comprised of a cash payment of USD\$275 million, assumption of the outstanding U.S. Department of Justice fine of USD\$17 million, and new senior secured financing in the approximate amount of USD\$638.6 million.<sup>8</sup>

21. The Stalking Horse APA preserves the Bumble Bee Group Business as a going concern (including the Applicants' business), contemplates the continued employment of nearly all of the Bumble Bee Group's employees, preserves the continuation of a strategic employer in the town of Blacks Harbour, and maintains a business partner to a significant number of vendors and customers who have conducted business with the Bumble Bee Group for decades.<sup>9</sup>

22. The Stalking Horse APA also contains a form of transition services agreement to be entered into among the U.S. Buyer, the Canadian Buyer and the Sellers under the Stalking Horse APA, pursuant to which the U.S. Buyer and the Canadian Buyer will provide the Sellers with certain transition services in connection with the wind-down of the Sellers upon closing of the transaction contemplated under the Stalking Horse APA (the "**Stalking Horse Transaction**").<sup>10</sup>

23. The consideration provided by the FCF Buyers under the Stalking Horse APA for the acquisition of substantially all of the Bumble Bee Group Business is both fair and reasonable to the Bumble Bee Group's stakeholders, including its Canadian stakeholders, and is the result of extensive arm's-length, good faith negotiations among the relevant parties with the assistance of their respective financial and legal advisors. Allocation of the proceeds is not relevant because the secured debt,

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<sup>8</sup> *Ibid* at para 15.

<sup>9</sup> *Ibid* at para 16.

<sup>10</sup> *Ibid* at para 17.

jointly owing by the Applicants and the U.S. Debtors, is greater than the purchase price and the Term Secured Parties and the ABL Secured Parties have security over all or substantially all of the Applicants' and the U.S. Debtors' assets.<sup>11</sup> The Term Secured Parties are supportive of the Stalking Horse Transaction, notwithstanding that they will not be repaid in full.

#### **D. The FCF Buyers**

24. FCF is a global fisheries enterprise based in Taiwan and is a current supplier of seafood inputs to U.S. Bumble Bee (but not the Applicants). The FCF Buyers intend to acquire the Bumble Bee Group Business, including the Applicants' business, on a going concern basis. The FCF Buyers intend to operate the business consistent with past practice.<sup>12</sup>

25. FCF indirectly holds a passive, minority equity interest in the Bumble Bee Group. Through certain of its affiliates, FCF owns an approximately 23% limited partnership interest in Big Catch 1 L.P., a limited partnership that is four tiers above CLSS, the Applicants' direct parent company.<sup>13</sup>

26. FCF has not been actively participating in the restructuring other than as the stalking horse bidder and does not have any designees on the Special Restructuring Committees formed by the boards of CLHC, Bumble Bee Parent Inc. and Bumble Bee Foods or on the boards of directors of any of the Applicants, the U.S. Debtors, their direct or indirect parent entities, or any other entity in the Bumble Bee Group. Bumble Bee and FCF have transacted business for many years, and continue to do so, on a strictly arm's-length basis.<sup>14</sup>

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<sup>11</sup> *Ibid* at para 19.

<sup>12</sup> *Ibid* at para 20

<sup>13</sup> *Ibid* at para 21.

<sup>14</sup> *Ibid* at para 22.



**E. The Stalking Horse Sale Process**

27. On December 20, 2020, the Applicants obtained approval of the Bidding Procedures, which set forth the process by which the Applicants and the U.S. Debtors, in consultation with certain Consultation Parties (as defined in the Bidding Procedures), and which includes the Monitor, conducted a process for the sale of all or substantially all of the Bumble Bee Group Business (the “**Stalking Horse Sale Process**”). The Stalking Horse APA acted as the stalking horse bid in the Stalking Horse Sale Process and was subject to higher or otherwise better offers.<sup>15</sup>

28. Houlihan contacted, or attempted to contact, each party that executed a non-disclosure agreement in connection with the First Sale Process and the Second Sale Process to advise them about the Stalking Horse Sale Process.<sup>16</sup>

29. No additional “Qualified Bids” were received in the Stalking Horse Sale Process.<sup>17</sup>

**F. Stalking Horse Transaction Approval and Vesting Order**

30. As the Stalking Horse APA remains the highest and best offer received for the Bumble Bee Group Business, the Applicants are now seeking approval of the Stalking Horse Transaction and approval to vest the Canadian Assets in the Canadian Buyer free and clear of any security, charge or other restriction other than Permitted Encumbrances. Such vesting will be effective with respect to the Canadian Assets upon the delivery by the Monitor to the Canadian Buyer of a certificate confirming that the Monitor has received written confirmation from the Applicants and the Canadian

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<sup>15</sup> *Ibid* at paras 24-25.

<sup>16</sup> *Ibid* at para 26

<sup>17</sup> *Ibid* at para 27.

Buyer that the conditions to closing the Stalking Horse Transaction have been satisfied or waived by the applicable parties.<sup>18</sup>

31. The parties intend to close the Stalking Horse Transaction on January 31, 2020, subject to approval by this Honourable Court and the U.S. Bankruptcy Court.<sup>19</sup>

32. The Monitor is supportive of the Stalking Horse Transaction. As the FCF Buyers intend to operate the business consistent with past practice, the Stalking Horse Transaction will result in an outcome for the Applicants' suppliers and employees that is far better than what would have been achieved in a sale of the Applicants' assets in a bankruptcy or liquidation. In addition, the DIP Agents (as defined in the Stalking Horse Approval and Vesting Order) and the Applicants' pre-filing Term Loan Lenders and ABL Loan Lenders were consulted in respect of the Stalking Horse Sale Process and have expressed their support for the Stalking Horse Transaction, despite the fact that the Term Secured Parties will not be repaid in full.<sup>20</sup>

#### **G. Credit Bid Backup APA**

33. The Bidding Procedures contemplate that the Term Agents, on behalf of the Term Loan Lenders, are permitted to submit a Credit Bid Backup Bid. In the event the Stalking Horse Transaction fails to close for any reason, the Applicants and certain other Bumble Bee Group entities are negotiating an asset purchase agreement (the "**Credit Bid Backup APA**") with certain affiliates of the Term Agents (the "**Backup Canadian Buyer**") for the sale of substantially all of the Bumble Bee Group Business. The Credit Bid Backup APA would assume substantially the same liabilities in

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<sup>18</sup> *Ibid* at para 29.

<sup>19</sup> *Ibid* at para 30.

<sup>20</sup> *Ibid* at para 31; Third Report of the Monitor Alvarez & Marsal Canada Inc, at para 9.1 [Third Monitor's Report].

respect of the Applicants' employees as those that are contemplated to be assumed pursuant to the Stalking Horse Transaction.<sup>21</sup>

34. At this time, the Applicants are seeking authorization to enter into and consummate the transactions contemplated under the Credit Bid Backup APA should the Stalking Horse Transaction fail to close.

#### **H. Expansion of the Monitor's Powers**

35. Either upon or shortly following closing of the Stalking Horse Transaction or the Credit Bid Backup APA, as applicable, each member of the boards of directors of each of the Applicants is expected to resign. In addition, the Applicants' employees will cease to be employed by the Applicants and substantially all of them will become employees of the Canadian Buyer or Backup Canadian Buyer, as applicable.<sup>22</sup>

36. As such, the Applicants are seeking to expand the current powers of the Monitor to, among other things, oversee the remaining business and wind-down activities of the Applicants, including post-closing matters contemplated by the Stalking Horse APA. The proposed expanded powers of the Monitor are more fully described in the Fourth Ware Affidavit at paragraph 40. Such expanded powers will only be effective upon the closing of the Stalking Horse Transaction or the Credit Bid Backup APA, as applicable.<sup>23</sup>

37. The Monitor believes these expanded powers are reasonable in the circumstances.<sup>24</sup>

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<sup>21</sup> Third Monitor's Report, *ibid* at para 5.15; Supplemental Affidavit, *supra* note 2 at paras 7-8.

<sup>22</sup> Fourth Ware Affidavit, *supra* note 2 at para 39.

<sup>23</sup> *Ibid*.

<sup>24</sup> *Ibid* at para 42; Third Monitor's Report, *supra* note 20 at paras 6.6, 9.2.

**I. Extension of the Stay Period**

38. The Applicants are seeking an extension of the Stay Period until and including April 3, 2020, which will allow the Bumble Bee Group, including the Applicants, to complete the Stalking Horse Transaction (or the Credit Bid Backup APA), and will also allow the Monitor to oversee additional required wind-down activities.<sup>25</sup>

39. The Monitor expects there to be sufficient liquidity to manage the Applicants and fund their obligations until April 3, 2020.<sup>26</sup>

**PART III: ISSUES**

40. The issues to be considered on this motion are whether the Court should:

- (a) approve the Stalking Horse Transaction and the vesting of the assets free and clear;
- (b) approve the Credit Bid Backup APA in the event the Stalking Horse Transaction does not close;
- (c) approve the expanded powers of the Monitor; and
- (d) extend the Stay Period.

**A. The Stalking Horse Approval and Vesting Order**

**1. Factors for Approval**

41. Pursuant to section 36 of the CCAA, this Court has the jurisdiction to approve a sale of assets outside of the ordinary course of business. Subsection 36(3) sets out the following list of non-

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<sup>25</sup> Fourth Ware Affidavit, *ibid* at paras 44-45.

<sup>26</sup> *Ibid* at para 46; Third Monitor's Report, *supra* note 20 at para 4.2-4.4.

exhaustive factors for the Court to consider in determining whether to approve a debtor's sale of assets outside the ordinary course:

- (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.<sup>27</sup>

42. CCAA courts have also considered the *Soundair* principles for approval of a sale of assets, which largely correspond with the subsection 36(3) criteria:

- (a) Whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) The interests of all parties;

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<sup>27</sup> *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, s 36 [CCAA].

- (c) The efficacy and integrity of the process by which offers have been obtained; and
- (d) Whether there has been unfairness in the working out of the process.<sup>28</sup>

43. In this case, the Stalking Horse Sale Process occurred within the CCAA proceedings and was approved by the Court, but the First Sale Process and Second Sale Process, which lead to the Stalking Horse APA, were conducted prior to the Applicants filing under the CCAA. CCAA courts have previously approved sales procured in sale processes conducted outside of the CCAA, noting that “it is the specific details of the [sale process] as conducted that will be scrutinized” to ensure the process and ultimate sale meets “the principles and requirements of section 36 of the CCAA.”<sup>29</sup>

44. The Applicants submit that the Stalking Horse Transaction, which follows two non-CCAA sale processes and one Court-approved CCAA sale process, and the Court approval of the Applicants entering into the Stalking Horse APA, satisfies the criteria in subsection 36(3) and the *Soundair* principles:

- (a) The proposed approval of the Stalking Horse Transaction follows significant discussions and negotiations with respect to potential alternatives, the First Sale Process, the Second Sale Process and the Stalking Horse Sale Process, the latter of which was approved by the Court concurrently with the Bidding Procedures. Houlihan contacted, or attempted to contact, interested parties to advise them about the Stalking Horse Sale Process. The process was open, transparent and comprehensive. Accordingly, the process leading to the Stalking Horse Transaction was reasonable in

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<sup>28</sup> *Re Canwest Publishing Inc*, 2010 ONSC 2870 at para 13, Applicants' Book of Authorities Tab 1; *Eddie Bauer of Canada Inc, Re* (2009), OJ No. 3784 at para 21, Applicants' Book of Authorities Tab 2; *Royal Bank v Soundair Corp*, [1991] 4 OR (3d) 1 at para 16, Applicants' Book of Authorities Tab 3.

<sup>29</sup> *Re Sanjel Corp*, 2016 ABQB 257 at paras 70-71, Applicants' Book of Authorities Tab 4; *Re Nelson Education Ltd*, 2015 ONSC 5557 at paras 31-33, Applicants' Book of Authorities Tab 5.

the circumstances, and evidences significant efforts by the Applicants and their U.S. affiliates to obtain the best offer for the Bumble Bee Group Business.

- (b) The Monitor was involved in the Stalking Horse Sale Process and is supportive of the relief being sought on this motion.<sup>30</sup>
- (c) As the FCF Buyers intend to operate the Bumble Bee Group Business consistent with past practice, the Stalking Horse Transaction will result in an outcome for the Applicants' stakeholders (in particular, its employees and suppliers) that is far better than what would have been obtained in a liquidation or bankruptcy, and the report of the Monitor states that the Stalking Horse Transaction would be more beneficial to creditors than a sale in a bankruptcy proceeding.<sup>31</sup>
- (d) The DIP Agents and the Applicants' pre-filing Term Loan Lenders and ABL Loan Lenders were consulted in respect of the Stalking Horse Sale Process and have expressed their support for approval of the Stalking Horse Transaction.<sup>32</sup>
- (e) The Stalking Horse Transaction will preserve the Bumble Bee Group Business as a going concern and contemplates the continued employment of nearly all of the Bumble Bee Group's employees.<sup>33</sup> The vast majority of the Applicants' unsecured creditors are expected to be paid in full as a result of the Stalking Horse Transaction.
- (f) The consideration provided by the Stalking Horse APA is fair and reasonable in the circumstances in light of the extensive arm's-length, good faith negotiations among

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<sup>30</sup> Fourth Ware Affidavit, *supra* note 3 at para 25; Third Monitor's Report, *supra* note 20 at paras 9.1-9.2.

<sup>31</sup> Fourth Ware Affidavit, *ibid* at para 31; Third Monitor's Report, *ibid* at para 9.1(iii).

<sup>32</sup> Fourth Ware Affidavit, *ibid*.

<sup>33</sup> *Ibid* at para 16.

the relevant parties with the assistance of their respective financial and legal advisor<sup>34</sup> and the lack of other bids received in the Stalking Horse Sale Process.<sup>35</sup> In the circumstances, the Stalking Horse Transaction represents the best transaction available to the Applicants and their stakeholders.<sup>36</sup>

## **2. Related Party Considerations**

45. Subsection 36(4) of the CCAA provides that if the proposed sale is to a person who is related to the company, in addition to considering the factors in subsection 36(3), the court must also be 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.

46. As described above, FCF indirectly holds a passive, minority equity interest in the Bumble Bee Group. Through certain of its affiliates, FCF owns an approximately 23% limited partnership interest in Big Catch 1 L.P., a limited partnership that is four layers above the Applicants' direct parent company, Clover Leaf Seafood S.à.r.l. The Applicants have therefore considered whether FCF is a related person in the context of subsection 36(4) of the CCAA. Subsection 36(5) provides that a person who is related to the company includes:

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<sup>34</sup> *Ibid* at para 19.

<sup>35</sup> *Ibid* at para 34.

<sup>36</sup> *Ibid*.



- (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).

47. FCF is not a director or officer of any of the Applicants, and does not have any designees on the Special Restructuring Committees or on the boards of directors of any entity in the Bumble Bee Group, including the Applicants.<sup>37</sup> As such, the Applicants do not believe that FCF is a related person to the Applicants in the context of the above provision. Therefore, the additional considerations in subsection 36(4) do not apply.

48. However, even if subsection 36(4) did apply, the requirements under that provision are satisfied:

- (a) The Applicants, under the Court-approved Stalking Horse Sale Process, the First Sale Process and the Second Sale Process, made good faith efforts to sell their business to unrelated parties.<sup>38</sup>
- (b) In light of the extensive arm's-length, good faith negotiations among the relevant parties with the assistance of their respective financial and legal advisors<sup>39</sup> and the lack of other bids received in the Stalking Horse Sale Process,<sup>40</sup> 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 Stalking Horse Transaction.

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<sup>37</sup> *Ibid* at para 22.

<sup>38</sup> *Ibid* at paras 12, 24-25.

<sup>39</sup> *Ibid* at para 19.

<sup>40</sup> *Ibid* at para 34.

### **3. Vesting Order**

49. In connection with the Stalking Horse Transaction, the Applicants are seeking a vesting order pursuant to subsection 36(6) of the CCAA:

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.

50. The vesting order is required by the FCF Buyers as part of the Stalking Horse APA, and is necessary to effect a proper sale transaction. Such vesting orders are routinely granted in connection with sales under section 36 of the CCAA.<sup>41</sup>

### **B. The Credit Bid Backup APA**

51. The Bidding Procedures, which were approved by the Court on December 20, 2020, contemplated a Credit Bid Backup Bid should the Stalking Horse Transaction fail to close and no other Qualified Bids are received and consummated.<sup>42</sup>

52. In accordance with the Bidding Procedures, the Applicants and certain other Bumble Bee Group entities wish to be authorized to enter into a Credit Bid Backup APA with certain affiliates of the Term Agents (the Backup Canadian Buyer) for the sale of substantially all of the Bumble Bee Group Business in the event the Stalking Horse Transaction fails to close.<sup>43</sup>

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<sup>41</sup> *Canwest Global Communications Corp.*, (September 8, 2010), Toronto, CV-09-8396-00CL (Approval and Vesting Order), Applicants' Book of Authorities Tab 6; *Great Slave Helicopters Ltd.*, (November 23, 2018), Toronto, CV-18604434-00CL (Approval and Vesting Order), Applicants' Book of Authorities Tab 7; *Target Canada Co.*, (June 2, 2016), Toronto, CV-15-10832-00CL (Approval and Vesting Order), Applicants' Book of Authorities Tab 8; *Aralez Pharmaceuticals Inc.*, (December 7, 2018), Toronto, CV-18-603054-00CL (Approval and Vesting Order), Applicants' Book of Authorities Tab 9.

<sup>42</sup> Fourth Ware Affidavit, *supra* note 3 at para 35.

<sup>43</sup> *Ibid* at para 36.

53. The Applicants are therefore now seeking approval to enter into and consummate the transactions contemplated under the Credit Bid Backup APA should the Stalking Horse Transaction fail to close. As approval for a sale of all or substantially all of the assets outside the ordinary course of business, the factors in section 36 of the CCAA and the *Soundair* principles, both of which are set out above, apply to the Credit Bid Backup APA.

54. As the Credit Bid Backup APA will assume substantially the same liabilities in respect of the Applicants' employees as those that are contemplated to be assumed under the Stalking Horse APA,<sup>44</sup> and as the Credit Bid Backup APA is the result of the same sale processes leading to the Stalking Horse Transaction, the Applicants submit that all of the reasons for approval set out above with respect to the Stalking Horse Transaction are also applicable to the Credit Bid Backup APA and the considerations in section 36 of the CCAA and the *Soundair* principles are satisfied.

55. In addition, the Credit Bid Backup APA was the second highest offer received in the Stalking Horse Sale Process.

56. Approval of the Credit Bid Backup APA at this stage will ensure a more efficient CCAA proceeding should the Stalking Horse Transaction fail to close, and the Monitor is supportive of the relief being sought. Accordingly, the Applicants submit that approval of the Credit Bid Backup APA is appropriate and reasonable in the circumstances.

### **C. Expanded Powers of the Monitor**

57. Pursuant to section 11 and paragraph 23(1)(k) of the CCAA, the Court has the authority to expand the powers of the monitor.<sup>45</sup> In this case, it is expected that each member of the boards of

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<sup>44</sup> Third Monitor's Report, *supra* note 20 at para 5.15.

<sup>45</sup> CCAA, *supra* note 27 s 11, s 23(1)(k); *Ernst & Young Inc v Essar Global Fund Limited*, 2017 ONCA 1014 at paras 106, 117-118 [*Essar Global*], Applicants' Book of Authorities Tab 10.

directors of each of the Applicants is expected to resign either upon or shortly following the closing of the Stalking Horse Transaction or the Credit Bid Backup APA.<sup>46</sup> As a result, in these circumstances, the Monitor requires expanded powers in order to properly and effectively oversee the remaining business and wind-down activities of the Applicants, including post-closing matters contemplated by the Stalking Horse APA.

58. The expanded powers are limited to what the Monitor may need to do in order to effect those matters, and would not take effect until the closing of the Stalking Horse Transaction or the Credit Bid Backup APA, as applicable.

59. Expanded powers for the Monitor have been used in other CCAA proceedings.<sup>47</sup>

60. The proposed expanded powers for the Monitor are reasonable and necessary in the circumstances, and will best ensure a timely and efficient conclusion to these CCAA proceedings for the benefit of the Applicants' stakeholders.<sup>48</sup>

#### **D. Extension of the Stay Period**

61. The Applicants are seeking an extension of the Stay Period up to and including April 3, 2020. In order to extend the Stay Period, the Court must be satisfied that circumstances exist that make the order appropriate and the Applicants have acted, and are acting, in good faith and with due diligence.<sup>49</sup>

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<sup>46</sup> Fourth Ware Affidavit, *supra* note 3 at para 39.

<sup>47</sup> *Essar Global*, *supra* note 45 at paras 2-5, 62, Applicants' Book of Authorities Tab 10; *Essar Steel Alogma Inc.*, (September 26, 2016) Toronto, CV-15-000011169-00CL (Order), Applicants' Book of Authorities Tab 11; *Sears Canada Inc.*, (December 3, 2018) Toronto, CV-17-11846-00CL (Governance Protocol and Stay Extension Order), Applicants' Book of Authorities Tab 12; *Nortel Networks Corp. Re*, 2009 CarswellOnt 9378 at para 4, Applicants' Book of Authorities Tab 13; *Nortel Networks Corporation*, (August 14, 2009), Toronto, CV-09-CL-7950 (Expansion of Monitor's Role and Powers Order), Applicants' Book of Authorities Tab 14; *Nortel Networks Corporation*, (October 3, 2012) Toronto, CV-09-CL-7950 (Monitor's Expansion of Power Order #2), Applicants' Book of Authorities Tab 15.

<sup>48</sup> Fourth Ware Affidavit, *supra* note 3 at para 42.

<sup>49</sup> CCAA, *supra* note 27 s 11.02(3).

A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore solvency and emerge from the CCAA on a going concern basis.<sup>50</sup>

62. Extending the Stay Period until April 3, 2020 will permit the Bumble Bee Group to effect the Stalking Horse Transaction, or the Credit Bid Backup APA, which will allow the business to continue as a going concern and ultimately preserve and maximize the value of the Applicants' business in the best interests of the Applicants' stakeholders. It will also allow the Monitor to oversee the requisite wind-down activities.<sup>51</sup>

63. The Monitor expects there to be sufficient liquidity to manage the Applicants' estate and fund their obligations until April 3, 2020, and is supportive of the extension to the Stay Period.<sup>52</sup>

64. The Applicants have acted and continue to act in good faith and with due diligence to complete a going concern transaction under the CCAA.<sup>53</sup>

65. For the above reasons, the Applicants believe the extension of the Stay Period is appropriate in the circumstances.

#### **PART IV: RELIEF REQUESTED**

66. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of the Stalking Horse Approval and Vesting Order and the Monitor's Expansion of Powers and Stay Extension Order.

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<sup>50</sup> *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60 at para 14; *Target Canada Co*, 2015 ONSC 303 at para 8.

<sup>51</sup> Fourth Ware Affidavit, *supra* note 3 at para 45.

<sup>52</sup> *Ibid* at para 46; Third Monitor's Report, *supra* note 20 at paras 4.2-4.4, 6.12, 9.2.

<sup>53</sup> Fourth Ware Affidavit, *ibid* at para 48.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

January 27, 2020

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Bennett Jones LLP

## SCHEDULE A – LIST OF AUTHORITIES

### *Cases Cited*

1. *Aralez Pharmaceuticals Inc*, (December 7, 2018), Toronto, CV-18-603054-00CL (Approval and Vesting Order)
2. *Canwest Global Communications Corp*, (September 8, 2010), Toronto, CV-09-8396-00CL (Approval and Vesting Order)
3. *Century Services Inc v Attorney General (Canada)*, 2010 SCC 60
4. *Eddie Bauer of Canada Inc, Re* (2009), OJ No. 3784
5. *Ernst & Young Inc v Essar Global Fund Limited*, 2017 ONCA 1014
6. *Essar Steel Alogma Inc*, (September 26, 2016) Toronto, CV-15-000011169-00CL (Order)
7. *Great Slave Helicopters Ltd*, (November 23, 2018), Toronto, CV-18604434-00CL (Approval and Vesting Order)
8. *Nortel Networks Corp, Re*, 2009 CarswellOnt 9378
9. *Nortel Networks Corporation*, (August 14, 2009), Toronto, CV-09-CL-7950) (Expansion of Monitor's Role and Powers Order)
10. *Nortel Networks Corporation*, (October 3, 2012) Toronto, CV-09-CL-7950 (Monitor's Expansion of Power Order #2)
11. *Re Canwest Publishing Inc*, 2010 ONSC 2870
12. *Re Nelson Education Ltd*, 2015 ONSC 5557
13. *Re Sanjel Corp*, 2016 ABQB 257
14. *Royal Bank v Soundair Corp*, [1991] 4 OR (3d) 1
15. *Sears Canada Inc*, (December 3, 2018) Toronto, CV-17-11846-00CL (Governance Protocol and Stay Extension Order)
16. *Target Canada Co*, 2015 ONSC 303
17. *Target Canada Co*, (June 2, 2016), Toronto, CV-15-10832-00CL (Approval and Vesting Order)

## SCHEDULE B – STATUTES RELIED ON

### *Companies' Creditors Arrangement Act, RSC 1985, c C-36*

#### Section 11

##### **General power of court**

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.

#### Section 11.02

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

(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.

## **Section 23**

### **Duties and functions**

(1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

- (i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,
  - (ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and
  - (iii) at any other time that the court may order;
- (d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;
- (e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);
- (f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;
- (f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;
- (g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;
- (h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;
- (i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- (j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and
- (k) carry out any other functions in relation to the company that the court may direct.

**Monitor not liable**

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

## **Section 36**

### **Restriction on disposition of business assets**

(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.

**IN THE MATTER OF THE *COMPANIES CREDITORS' ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLOVER LEAF HOLDINGS  
COMPANY, CONNORS BROS. CLOVER LEAF SEAFOODS COMPANY, K.C.R. FISHERIES LTD., 6162410 CANADA  
LIMITED, CONNORS BROS. HOLDINGS COMPANY and CONNORS BROS. SEAFOODS COMPANY**

Court File No. CV-19-631523-00CL

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

Proceedings commenced in Toronto

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