

Court File No. CV-25-00736572-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JBT
TRANSPORT INC., WAYDOM MANAGEMENT INC., MELAIR MANAGEMENT INC.,
HERITAGE TRUCK LINES INC., DRUMBO TRANSPORT LIMITED, HERITAGE
NORTHERN LOGISTICS INC., AND HERITAGE WAREHOUSING & DISTRIBUTION INC.

Applicants

**FACTUM OF THE APPLICANTS
(RE: APPLICATION FOR CCAA CONVERSION)**

February 7, 2025

RECONSTRUCT LLP
80 Richmond Street West, Suite 1700
Toronto, ON M5H 2A4

Caitlin Fell LSO No. 60091H
cfell@reconllp.com
Tel: 416.613.8282

Brendan Bissell LSO No. 40354V
bbissell@reconllp.com
Tel: 416.613.0066

Jessica Wuthmann LSO No. 72442W
jwuthmann@reconllp.com
Tel: 416.613.8288

Jasmine Landau LSO No. 74316K
jlandau@reconllp.com
Tel: 416.613.4880
Fax: 416.613.8290

Lawyers for the Applicants

TO: THE SERVICE LIST

TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – FACTS	3
A. Background of the Applicants	3
B. Carriers and Critical Suppliers	3
C. The Applicants' Financial Difficulties	4
D. The NOI Proceedings	7
PART III – ISSUES	9
PART IV – LAW & ARGUMENT	10
A. The Applicants Should be Permitted to Continue under the CCAA	10
B. The Applicants are Debtor Corporations to which the CCAA Applies	12
C. DLI should be appointed as Monitor	13
D. The Applicants Require the Protection of a Stay of Proceedings	14
E. The Critical Suppliers Charge and Associated Relief Should be Approved	16
F. The Administration Charge Should be Approved	18
G. The DIP Term Sheet and the DIP Lender's Charge Should be Approved	20
H. The Court Should Authorize the Payment of Pre-Filing Obligations with Approval of the Monitor	22
PART V – RELIEF REQUESTED	24
Schedule "A"	25
Schedule "B"	26

PART I – OVERVIEW

1. On January 24, 2025 (the “**Filing Date**”), JBT Transport Inc., Waydom Management Inc., Melair Management Inc., Heritage Truck Lines Inc. (“**HTL**”), Drumbo Transport Limited (“**Drumbo**”), Heritage Northern Logistics Inc. (“**HNL**”), and Heritage Warehousing & Distribution Inc. (“**HWD**”) (each individually, an “**Applicant**” and collectively, the “**JBT Group**” or “**Applicants**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”). Dodick Landau Inc. (“**DLI**”) was appointed as proposal trustee under each NOI proceeding (collectively, the “**NOI Proceedings**”).
2. The NOI’s were precipitated by the Applicants’ secured lender, Toronto-Dominion Bank (“**TD Bank**”), serving a demand for the entirety of the approximately \$16.2 million debt owed by the Applicants to TD Bank. For over a year before receiving the demands, the Applicants worked cooperatively with TD Bank to materially paydown the indebtedness. In particular, the Applicants engaged a financial advisor mandated by TD Bank, effected the sale of real property and other assets, and implementing an operational restructuring to decrease operating costs and enhance the Applicants’ market position. The Applicants efforts resulted in a reduction of the indebtedness owed to TD Bank from approximately \$25 million in January of 2024 to \$16.2 million in December, while staying current on all monthly payments.
3. The Applicants were also in the process of, and had negotiated with eCapital Commercial Finance Corp. (“**eCapital**”) and Pillar Financial Services Inc. (“**Pillar**”) to refinance the TD Bank indebtedness by early 2025. However, TD Bank rejected the proposed deal on the basis that it wished to be fully paid out as soon as possible.
4. To preserve the going concern operations of the Applicants and the value of the Applicants for its stakeholders, as well as to benefit from relief that would permit the Applicants to restructure its operations, the Applicants filed the NOI Proceedings.

5. The Applicants are now facing an urgent liquidity and operational crisis and require the benefit of the flexibility of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").
6. Debtor in possession financing will provide the Applicants with the necessary breathing room to implement a restructuring strategy and conduct a court-approved sale and investment solicitation process ("**SISP**").
7. The Applicants also seek a Critical Suppliers Charge (as defined below) and direction that suppliers continue to provide service under s 11.4 of the CCAA to address the exercise of prejudicial self-help remedies by carriers. Since the filing date, various transport carriers have refused to supply carriage services unless they receive payment of pre-filing arrears. Additionally, transport carriers have engaged in hostage tactics through the unlawful possession of the Applicants' property to obtain payment. The Applicants also seek an order staying such carriers from contacting customers of the Applicants directly or otherwise interfering with the Applicants' arrangements with their customers during the restructuring.
8. DLI as the Proposed Monitor is supportive of the Applicants' requested relief.
9. The alternative to the CCAA proceeding would be a receivership, which would risk the going concern of the Applicants' business. In contrast, a debtor-in-possession restructuring permits the Applicants, who are familiar with their operations, suppliers, customers, employees and other stakeholders, to continue the Applicants' operations in the normal course, which will preserve value for stakeholders.

PART II – FACTS

A. Background of the Applicants

10. The factual background to this application is more fully described in the Affidavit of Denis Medeiros sworn February 6, 2025.¹

11. The JBT Group is in the business of end-to-end supply chain services, transportation logistics and warehousing services (the “**Business**”). The companies are a family-run business that have been operating and providing supply chain services across North America since their inception in 2002.

12. Although the JBT Group started small, the companies have expanded significantly over the years. Today, the Applicants have over 58 trucks, 162 dry vans and refrigerated units, and over 100,000 square feet of state-of-the-art, GDP Gold-certified food storage and warehouse spaces. The Applicants also employ 8 full-time employees and 23 independent owner-operators.²

13. All references are to Canadian dollars unless otherwise stated.

B. Carriers and Critical Suppliers

14. In addition to relying on their own fleet of vehicles to offer transportation services, the Applicants also work as a third-party logistics provider to coordinate the transportation of goods from the supplier to the purchaser in exchange for a broker commission.

15. In order to review the background of this matter and the restructuring issues facing the JBT Group, an understanding of the flow of funds in the logistics portion of the Business is critical.

¹ Affidavit of Denis Medeiros, sworn February 6, 2025 (“**Medeiros Affidavit**”), **Application Record**, [Tab 2 \[AR\]](#).

² Medeiros Affidavit, [para 15](#), AR Tab 2.

16. On logistics operations, the amount of money owed from a shipper (or customer) who engages the JBT Group to ship goods is usually based on the cost of a carrier engaged by the JBT Group plus a commission of 10-15%, and is known as a broker receivable (“**Broker Receivables**”). Broker Receivables are an asset for the JBT Group. From the proceeds of the Broker Receivables, the Applicants then pay the amounts owing to the carriers they engage, which is known as a broker payable (“**Broker Payables**”). Broker Payables are a liability for the JBT Group.

17. Under the HTA, s 191.0.1(3), a broker who arranges for a carrier to transport goods is required to maintain each Broker Receivable in trust until the corresponding Broker Payable for the carrier has been paid. Until that time, Broker Receivables are not be used to pay other account payables or costs. Funds impressed with a trust pursuant to *Highway Traffic Act*, RSO 1990, c H.8, section 191.0.1(3) (the “HTA”) are referred to herein in as “**Carrier Trust Funds**”.

18. In the event of non-payment, transport carriers are able to enforce their right to payment of the Carrier Trust Funds directly from the customer who receives and pays for the goods, instead of that payment going to the broker.³

C. The Applicants’ Financial Difficulties

19. In February of 2022, the Applicants commenced an expansion of their Business by acquiring Drumbo, HTL, HNL, and HWD. The expansion brought an exciting opportunity for the Business to become a full-service provider and to cover a much broader service range. The acquisition also came with two real estate properties that required the JBT Group to incur significant costs for land development and construction.⁴

³ Medeiros Affidavit, [paras 32 and 34](#), AR Tab 2.

⁴ Medeiros Affidavit, [para 71](#), AR Tab 2.

20. The JBT Group entered into financing arrangements with TD Bank in January 2021, the terms of which were updated several times in 2022 to facilitate the expansion and to meet the Applicants' ongoing liquidity needs. An important part of those arrangements for the JBT Group was the understanding that TD Bank would not take a reserve against Broker Payables and that, as a result, their borrowing base calculation would be expanded to include the Broker Receivables. That understanding was not reflected in the loan agreements, but TD Bank assured the Applicants that this was not a problem and that was how the Applicants operated for several years.⁵

21. Unfortunately, shortly after the expansion, in September 2022, market conditions in the transportation industry began to swiftly decline and the Applicants were faced with a significant downward trend in their crossborder transportation operations. By March 2023, freight rates had declined by 31.6%. By August 2023, shipping volume had dropped by \$4.9 million for JBTTI alone.⁶

22. The terms of the loan agreement with TD Bank were revised throughout 2023 (the "**Loan Agreement**").⁷ By November 2023, the Applicants were sustaining significant losses and using the line of credit ("**LOC**") with the bank to fund their ongoing operations. As a result of breaching the LOC borrowing limit, JBT Group was assigned to TD Bank's special loans group ("**TD Special Loans**").⁸

23. TD Special Loans initiated a full review of the JBT Group's credit facilities. Upon doing this analysis, TD Bank realized that Broker Payables had not been included as a reserve against the eligible accounts receivable in the borrowing base calculations for the operating loan. TD Bank

⁵ Medeiros Affidavit, [paras 67-70](#) and [Exhibit T](#), AR Tabs 2 and 2T.

⁶ Medeiros Affidavit, [para 72](#), AR Tab 2.

⁷ Medeiros Affidavit, [para 52](#) and [Exhibit J](#), AR Tab 2s and 2J.

⁸ Medeiros Affidavit, [para 73](#) and [Exhibit U](#), AR Tab 2 and 2U.

then adjusted the borrowing base calculations by increasing the reserve for Broker Payables, effectively reducing the eligible accounts receivable available for loan coverage. This modification had a devastating impact on the JBT Group's borrowing capacity, particularly at a time when the Applicants were already grappling with the challenges facing the transportation industry.⁹

24. Starting in December 2023, the Applicants took numerous steps to improve their lending relationship with TD Bank, including engaging a financial advisor mandated by TD Bank and effecting the sale of real property. The Applicants also began implementing an operational restructuring process, the goal of which was to decrease operating costs and enhance the Applicants' market position.¹⁰

25. Through the Applicants' concerted efforts, the Applicants were able to successfully decrease the indebtedness owed to TD Bank from approximately \$25 million in January 2024 to \$16.2 million in December 2024.¹¹ The Applicants were able to do so while also remarkably paying all monthly principal and interest payment to TD Bank.

26. In December 2024, the Applicants also negotiated two potential transactions that would have significantly further repaid TD Bank.¹² However, TD Bank refused to permit the transactions to proceed, in part because the transactions had an associated timeline of a few months instead of days or weeks. It became clear that, despite the significant and consistent paydown to TD Bank and the Applicants' ongoing cooperation, TD Bank wanted the Applicants to pay out the entirety of the indebtedness on an expedited basis.¹³

⁹ Medeiros Affidavit, [paras 74-77](#), AR Tab 2.

¹⁰ Medeiros Affidavit, [paras 78-86](#), AR Tab 2.

¹¹ Medeiros Affidavit, [paras 80](#) and [86](#), AR Tab 2.

¹² Medeiros Affidavit, [paras 87-92](#), AR Tab 2.

¹³ Medeiros Affidavit, [paras 92-93](#), AR Tab 2.

27. Although the Applicants had never missed a principal or interest payment to TD Bank, they remained in breach of certain terms in their Loan Agreement with TD Bank. On January 15, 2024, TD delivered a demand to the Applicants for more than \$16 million and issued a Notice of Intention to Enforce Security under section 244 of the BIA (the “**Demand Notices**”). The breaches in the Demand Notices were:

- (a) failing to enter into a binding financial commitment with the proposed lender, eCapital Group Inc. by December 20, 2024;
- (b) failing to verify there were funds available to payout the LOC;
- (c) failing to keep outstanding advances from the LOC within limit; and
- (d) failing to maintain a minimum EBITDA for October 2024 as set out in the Second Amendment.¹⁴

28. The Applicants were unable to meet their liabilities as they came due in light of the inability to immediately repay the \$16 million demanded by TD Bank.¹⁵

D. The NOI Proceedings

29. Enforcement steps by TD Bank would decimate the value of the Applicants given that their value is derived from assets that require a going concern business. A cessation of the Applicants’ business as a going concern would be detrimental to their stakeholders, including their 83 employees as well as their suppliers, most of which are small businesses operating in Ontario.

¹⁴ Medeiros Affidavit, [paras 94-95](#) and [Exhibit AA](#), AR Tab 2 and 2AA.

¹⁵ Medeiros Affidavit, [para 98](#), AR Tab 2.

30. As such, in order to preserve the Applicants' ongoing operations and value, the Applicants each filed an NOI on the Filing Date, January 24, 2025. Since the filing of the NOI, the Applicants have, among other things:

- (a) attempted to continue to operate the Business in the normal course, with the oversight of the Proposed Monitor;
- (b) with the assistance of the Proposed Monitor, continued to assess various restructuring options;
- (c) began to develop a SISP with a potential stalking horse bid with a view to canvassing the market for a transaction and developing a proposal;
- (d) with the assistance of the Proposed Monitor, prepared a cash flow forecast statement for the period ending the week of April 19, 2025 (the "**Cash Flow Forecast**");
- (e) negotiated and arranged the a debtor-in-possession credit facility in the maximum principal amount of \$250,000 (the "**DIP Facility**") with Randy Bowman, (in this capacity, the "**DIP Lender**"), as more fully described in the interim financing term sheet dated February 5, 2025 (the "**DIP Term Sheet**"), which will allow the Applicants to sustain their operations during the NOI Proceedings;
- (f) engaged with their employees, vendors, suppliers, carriers and customers to address any questions about the NOI Proceedings;
- (g) engaged with TD Bank to discuss restructuring options;
- (h) disclaimed two leases of real property in order to decrease operational costs; and

- (i) continued to maintain and foster relationships with their suppliers and customers.¹⁶

31. Since the filing of the NOIs, operations have been severely impacted. Once carriers received notice of the NOI Proceedings, several carriers have (1) held loads hostage pending payment of pre-filing amounts, (2) gone directly to customers to cut out the Applicants as broker and reduce or deny their corresponding commission, and (3) held loads hostage while demanding direct payment from customers, rather than through the JBT Group.¹⁷ The Applicants now seek urgent relief in order to stabilize the situation with carriers and to prevent any further damage to their Business while restructuring.

PART III – ISSUES

32. The issues on this application are whether the Court should:

- (a) permit the Applicants to continue the NOI Proceedings under the CCAA;
- (b) find that the Applicants are a “debtor company” to which the CCAA applies;
- (c) approve DLI to act as Monitor;
- (d) grant an initial stay of proceedings up to and including February 20, 2025 (“**Stay of Proceedings**”), or a longer period of time if appropriate;
- (e) approve the Critical Supplier Charge and corollary relief, including pre-filing payments;
- (f) approve the Administration Charge; and,
- (g) approve the DIP Facility and corresponding DIP Lender’s Charge.

¹⁶ Medeiros Affidavit, [paras 15, 24-31](#), AR Tab 2.

¹⁷ Medeiros Affidavit, [para 138](#), AR Tab 2.

PART IV – LAW & ARGUMENT

A. The Applicants Should be Permitted to Continue under the CCAA

33. The Court may order that NOI Proceedings commenced under the BIA can be continued pursuant to s 11.6(a) of the CCAA (the “**CCAA Proceeding**”).¹⁸ In *Re Clothing for Modern Times Ltd.*, this Court adopted a three-prong test that a debtor must satisfy to continue under the CCAA:

- (a) it has not filed a proposal under the BIA;
- (b) the proposed continuation is consistent with the purposes of the CCAA; and
- (c) it has provided the court with the information that would otherwise form part of an initial CCAA application under CCAA, s 10(2).¹⁹

(i) The Applicants have not filed a proposal under the BIA

34. The first prong is satisfied because the Applicants have not filed a proposal under the BIA in their NOI Proceedings.

(ii) The Proposed Continuation is Consistent with the CCAA’s Purposes

35. In *Century Services*, the Supreme Court of Canada identified the following remedial purposes of the CCAA:

- (a) to permit a company to carry on business and, where possible, avoid the adverse effects of bankruptcy or liquidation while a court supervised attempt to reorganize the financial affairs of a debtor company is made;²⁰

¹⁸ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (“**CCAA**”), [s 11.6](#).

¹⁹ *(Re) Clothing for Modern Times Ltd.*, 2011 ONSC 7522 (“**Clothing**”) at [para 9](#). These factors were applied in *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 3882 at [para 10](#) (“**Body Shop**”) and *Comstock Canada Ltd. (Re)*, 2013 ONSC 4756 at [paras 36-45](#).

²⁰ *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at [paras 15, 59 and 70](#) (“**Century**”).

(b) to provide a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of a debtor company is made;²¹ and

(c) to create conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all.²²

36. This Court has held that, in appropriate circumstances, a sale of the debtor's business as a going concern to a new owner satisfies the purposes of the CCAA.²³

37. The Applicants submit that the proposed continuation of the NOI Proceedings to the CCAA Proceeding is consistent with the underlying purpose of the CCAA because:

(a) the CCAA Proceeding will allow the Applicants to carry on business with the Monitor's oversight and the protection of the Stay of Proceedings, and to restructure its Business with the court's supervision;

(b) the CCAA Proceeding and associated relief will help preserve the Applicants' operational *status quo* by requiring critical suppliers (as defined in the CCAA and addressed below) to continue providing services and to provide for payment thereof on specific, protective terms (as will be discussed below). If the CCAA Proceeding is not granted, the Applicants would not likely be able to continue operations at all, particularly as their critical suppliers could continue to take immediate enforcement steps in respect

²¹ *Ibid* at [para 59](#).

²² *Ibid* at [para 77](#).

²³ *Clothing*, at [para 12](#).

of outstanding Carrier Trust Funds, circumvent the Applicants and go directly to customers and appropriate the Applicants' business, to the detriment of all stakeholders; and,

(c) a SISF is already in development for the purposes of selling the Applicants as a going concern to a new owner.

(iii) The Applicants have Provided all of the Information that Would Otherwise be Filed on a CCAA Initial Order Application

38. The Applicants have disclosed the requisite information to satisfy CCAA, s 10(2),²⁴ namely:

(a) a weekly Cash Flow Forecast through to April 19, 2025 that shows the Applicants will have liquidity during the Stay of Proceedings, subject to the approval of the DIP Facility;

(b) the Proposed Monitor's report demonstrates that the cash flow analysis for the Applicants is reasonable; and

(c) the Applicants have provided the most recent financial statements available.²⁵

39. Based on the foregoing, the Applicants have met the test for the continuation of the NOI Proceedings under the CCAA.

B. The Applicants are Debtor Corporations to which the CCAA Applies

40. The Applicants are "debtor companies" as that term is defined under s. 2(b) of the CCAA, as they are insolvent within the meaning of the BIA.²⁶ The BIA provides that a person is insolvent if it is unable to meet its obligations as they generally become due, has ceased paying current

²⁴ CCAA, [s 10\(2\)](#).

²⁵ Audited financial statements dated August 31, 2023 and unaudited consolidated financial statement for 2024, Medeiros Affidavit, [Exhibits H](#) and [I](#), MR, Tabs 2H and 2I respectively.

²⁶ CCAA, [s 2](#).

obligations in the ordinary course of business, or whose aggregate property is not at fair valuation sufficient to enable payment of all its obligations due and accruing due.²⁷

41. The CCAA applies in respect of a “debtor company” or “affiliated company” where the total claims against the debtor or affiliate exceeds \$5 million.²⁸ Companies that are part of an affiliated group do not need to individually satisfy the definition of insolvency if the group, taken as a whole, is insolvent, and if it is appropriate that all the companies in the group be included as part of the CCAA orders and restructuring proceeding.²⁹

42. It is appropriate for all Applicants to be included in the CCAA proceedings as “affiliated companies.” Among other things, the Applicants are comprised of seven companies which have been operated together since the acquisition in February 2022 of the Heritage Group entities (Drumbo, HWD, HNL, HTD).³⁰ This is also reflected in the Loan Agreement as between all of the Applicants and TD Bank, which is secured by a general security agreement against all of the Applicants’ assets collectively whereby the obligations are effectively cross-collateralized under the Loan Agreement.³¹ The amounts owing to secured creditors are \$18.4 million in aggregate, which is in excess of the \$5 million threshold.³²

C. DLI should be appointed as Monitor

43. Pursuant to CCAA, s 11.7, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made.³³

²⁷ *Ibid*; BIA, [s 2](#).

²⁸ CCAA, [s 3\(1\)](#).

²⁹ *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299 at [paras 25-30](#).

³⁰ Medeiros Affidavit, [paras 17-19](#) and [Exhibit C](#), AR Tab 2 and 2C.

³¹ Medeiros Affidavit, [para 52](#) and [Exhibit J](#), AR Tab 2 and 2J.

³² Medeiros Affidavit, [para 50](#), AR Tab 2.

³³ CCAA, [s 11.7](#).

44. Section 11.7(2) also sets out certain requirements for, and restrictions on, who may act as a monitor, including that a monitor be a trustee within the meaning of subsection 2 of the BIA.

45. DLI is a trustee within the meaning of subsection 2(1) of the BIA and is not barred by any of the restrictions outlined in CCAA, s 11.7(2), including that it is not the auditor or accountant of any of the Applicants. DLI is already familiar with the JBT Group in light of its existing engagement as Proposal Trustee under the NOI Proceedings. Subject to Court approval, DLI has consented to act as Monitor for the Applicants in these proceedings.

46. In the course of the existing NOI Proceedings and in preparing for this filing, DLI has assisted with preparing the 12-week Cash Flow Forecast and has gained critical knowledge about the Applicants, their Business operations, financial challenges and the specific circumstances related to Critical Supplier and Carrier Trust Funds issues.

D. The Applicants Require the Protection of a Stay of Proceedings

47. CCAA, s 11.02 allows a court to grant a stay of proceedings in an initial application for a period of no more than ten days if it is satisfied that circumstances exist to make such an order appropriate and for relief as reasonable necessary.³⁴

48. A stay of proceedings is appropriate where it provides a debtor with “breathing room” while the debtor seeks to restore solvency and emerge from the CCAA on a going concern basis.³⁵ Absent exceptional circumstances, the relief sought shall be limited to relief reasonably necessary for the ordinary course continued operations and, whenever possible, the *status quo* should be maintained during the initial 10-day period before the comeback hearing (“**Comeback Period**”).³⁶

³⁴ CCAA, [s 11.02](#); see also CCAA, [s 11.001](#).

³⁵ *Re Lydian International Limited*, 2019 ONSC 7473 (“*Lydian*”), at [para 22](#).

³⁶ *Lydian*, [paras 26-28](#).

49. A stay of proceedings is appropriate in the circumstances of this case . The Stay of Proceedings will facilitate the preservation of the *status quo* and provide the Applicants with the time necessary to stabilize operations and chart a course in its restructuring, for the benefit of all of the stakeholders. It would be significantly detrimental to the Applicants' business and ongoing operations if enforcement steps were commenced or continued, or rights and remedies were executed against them.

50. Without the Stay of Proceedings, the Applicants would be unable to continue operations in the ordinary course of business. A significant portion of their Business involves transport carriers and critical suppliers who have already taken steps to withhold shipments and who have threatened or taken steps toward enforcement, as will be further described below. A stay of proceedings will ensure that no further enforcement steps can occur without the Court's approval.

51. The Cash Flow Forecast indicates that the Applicants will have sufficient funds to continue to operate during an initial 10 day stay pending a comeback hearing. No party will be prejudiced by continuing the stay granted under the NOI Proceedings because, whether at a comeback hearing scheduled in ten days' time or at some later date, any affected party who wishes to seek to have the Initial Order amended or vacated may do so.³⁷

52. In connection with the stay to be granted, it should be noted that case law supports the conclusion that an initial stay period may be longer than 10 days in circumstances where a matter is being converted from a NOI proceeding. This is due to the prior notices delivered to creditors on the filing of a NOI and the consequent greater ability for creditors to engage than on most CCAA initial order hearings.³⁸ If the Court is persuaded that a longer initial stay period is warranted in the circumstances, the Applicants request that the stay be granted until April 19, 2025, in which

³⁷ *Body Shop*, paras 19-20.

³⁸ [Endorsement of Cavanagh J dated October 7, 2021 in *Medifocus Inc \(Re\)*, Court File No CV20-00669781-00CL](#). See also the initial order granted in [Cannmart Labs \(Re\)](#).

case approval of the DIP Facility as noted below will also ensure that no creditor is prejudiced during a longer stay period under the cash flow projections. In fact the cash position of the Applicants is projected to improve beyond the amounts of the DIP Facility.

E. The Critical Suppliers Charge and Associated Relief Should be Approved

53. CCAA, s 11.4 empowers the Court to grant an order declaring that a person is a critical supplier, if the court is satisfied that the person is a supplier of goods or services to an applicant and that such goods or services are critical to the applicant's continued operation.³⁹

54. If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any Court-specified goods or services to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.⁴⁰

55. If the court requires a critical supplier to continue to supply, it must then also order that all or part of the applicant's property be subject to a security or charge in favour of that critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order. That security or charge may rank in priority over the claim of any secured creditor of the company.⁴¹

56. Here, the Applicants are seeking a charge that secures a carrier's right to payment for each supply of services rendered to the Applicants in respect of a shipment of goods on or subsequent to the Filing Date. The charge is to be granted in first priority over the applicable receivable associated with each such shipment received by the Applicants from and after the

³⁹ CCAA, [s 11.4](#).

⁴⁰ CCAA, [s 11.4\(2\)](#).

⁴¹ CCAA, [ss 11.4\(3\) and 11.4\(4\)](#).

Filing Date, and the charge on the applicable receivable shall be in the amount owing to the respective Carrier (all such charges, collectively the “**Critical Suppliers Charge**”).

57. Similar to the Critical Suppliers’ Charge, the Applicants are also seek approval to address their trust obligations to carriers under the HTA, s 190.0.1 by setting aside all Broker Receivables into an account subject to the Proposed Monitor’s oversight.

58. In order to stabilize the operations of the JBT Group and their dealings with carriers and customers, they also seek an order staying all Carriers (as defined in the HTA) from contacting customers of the Applicants in respect of the business of the Applicants, including but not limited to requiring customers to: make payments to the Carriers, refrain from soliciting business from such customers, refrain from taking any enforcement action with respect to the Carrier Trust Funds, and refrain from holding the Applicants’ load freight product hostage on account of any outstanding indebtedness owed by the Applicants to the Carriers prior to the Filing Date.

59. Courts have considered the various relief provided under a critical suppliers charge as is necessary for the debtor’s business. A supplier is considered to be critical where the uninterrupted supply of goods and/or services is sufficiently integral to the debtor’s business that it would be prejudicial to the debtor’s restructuring efforts for supply to be interrupted.⁴²

60. The Applicants submit that the above-noted factors support the granting of the requested relief:

- (a) the Carriers are integral to the Applicants’ Business such that an interruption of supply would have an immediate material adverse impact, which is being demonstrated by the self-help remedies being effected by Carriers already;

⁴² *Prizm Income Fund (Re)*, [2011 ONSC 2061](#) at [para 31](#) (“*Prizm*”); *Pride Group Holdings Inc et al (Re)*, [2024 ONSC 2026](#) at [para 46](#).

- (b) the Applicants require an uninterrupted supply of goods and services so that shipments will arrive on time to customers, particularly for any perishable shipments;
- (c) notice has been provided to the Carriers at issue and the other secured creditors in respect of the priming charge; and
- (d) the relief sought is balanced with the ability to pay the Critical Suppliers going forward out of amounts to be held aside under the Applicants' HTA obligations.

F. The Administration Charge Should be Approved

61. The Court has express jurisdiction to grant the Administration Charge under CCAA, s 11.52.⁴³ Section 11.52 requires that notice be given to the secured creditors who are likely to be affected by the charge and that the charge is limited to an amount that the court considers appropriate.⁴⁴

62. Courts have considered the following non-exhaustive factors in determining whether an administration charge is appropriate:

- (a) the size and complexity of the business being restructured,
- (b) the proposed role of the beneficiaries of the charge,
- (c) whether there is an unwarranted duplication of roles,
- (d) whether the quantum of the proposed charge appears to be fair and reasonable,
- (e) the position of the secured creditors likely to be affected by the charge,

⁴³ CCAA, [s 11.52](#).

⁴⁴ *Ibid.*

(f) and the position of the Monitor.⁴⁵

63. The Applicants request a priority charge in favour of DLI, as Monitor, counsel to the Monitor at Loopstra Nixon LLP, and counsel to the Applicants at Reconstruct LLP (the “Administration Charge”).

64. An administration charge is considered fair and reasonable where its quantum is not, on a balance, disproportionate to the complexity of the business and restructuring.⁴⁶ The total Administration Charge of \$250,000 is reasonable and proportionate under the circumstances given the Applicants’ Cash Flow Forecast. For an initial 10 day Stay of Proceedings pending a comeback hearing, the Applicants will seek an Administration Charge of \$150,000. For a further or longer stay period, the \$250,000 charge is sought.⁴⁷

65. The proposed Administration Charge is necessary under the circumstances. The Applicants lack restructuring expertise and have been working with restructuring professionals since 2023 to advance the restructuring process for the benefit of the Applicants, their creditors and stakeholders, which has already yielded significant and positive results.⁴⁸

66. The beneficiaries of the Administration Charge have already engaged in a significant amount of work in connection with this CCAA application and the preceding NOI Proceedings, and will continue to play a key role in advancing the CCAA proceedings.⁴⁹

⁴⁵ *Canwest Publishing Inc*, 2010 ONSC 222 [Pepall J.] (“**Canwest 2010**”) *Canwest 2010*, [para 54](#); principles applied in *Springer*, [paras 18-19](#) and *Lydian*, [paras 46-47](#).

⁴⁶ See *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) [Pepall J.] (“**Canwest 2009**”), [para 40](#); *Springer*, [para 19](#).

⁴⁷ Medeiros Affidavit, [para 127](#).

⁴⁸ Medeiros Affidavit, [paras 79-80](#).

⁴⁹ Medeiros Affidavit, [paras 129-130](#).

G. The DIP Term Sheet and the DIP Lender's Charge Should be Approved

67. This Court has jurisdiction under CCAA, s 11.2 to approve an interim financing facility and to grant a priority charge in favour of a lender (the “**DIP Lender's Charge**”) in an amount that the court considers appropriate, having regard to the company's cash flow statement.⁵⁰ The CCAA expressly provides that the charge may rank in priority to the claims of any other creditor.⁵¹

68. Section 11.2(4) establishes the following non-exhaustive criteria that the court is to consider in deciding whether to grant the DIP Lender's Charge:

- (a) the period during which the applicant is expected to be subject to CCAA proceedings;
- (b) how the applicant's business and financial affairs are to be managed during the proceedings;
- (c) whether the applicant has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the applicant, the nature and value of the applicant's property;
- (e) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (f) whether the Monitor supports the charge.⁵²

⁵⁰ [CCAA, s 11.2.](#)

⁵¹ [CCAA, ss 11.2\(1\) and \(2\)](#); see *Canwest 2010*, [paras 42-44](#).

⁵² [CCAA, s 11.2\(4\).](#)

69. In this case, immediate approval of the DIP Facility is not necessary if there is to be a comeback hearing after 10 days, because the cash flow projections of the Applicants suggest that they will not need to draw down on the DIP Facility until March. For a longer initial stay, or at the comeback hearing, approval of the DIP Facility is sought.

70. The terms of the DIP Facility are fair and reasonable, and typical compared to other interim facilities approved in Ontario and elsewhere in Canada. They represent the best available interim financing arrangement that could be arranged by the Applicants within the time frame and to meet the Applicants' needs. The DIP Term Sheet was negotiated and executed with Randy Bowman, who is a director and officer of the Applicants and who operates the Applicants' Business.⁵³

71. The Proposed Monitor has reviewed the terms of the DIP Facility and supports its approval.⁵⁴

72. Although the DIP Lender's Charge will prime the existing secured lenders over certain of the Applicants' property, following discussions with TD Bank, the DIP Lender's Charge will be subordinated to TD Bank's charge over the Head Office at 425 Melair Drive, Ayr, Ontario. It is also subordinate to the Critical Suppliers' Charge and the Administration Charge.

73. Any potential impact on creditors and stakeholders of further borrowing through the DIP Facility should be considered in the context of the Applicants' Business. The transportation and logistics industry relies heavily on interpersonal relationships and complex transportation networks, which the Applicants have developed for decades with hundreds of their Carriers.⁵⁵ JBT also has licenses and permits that are required for its commercial vehicles, including Department

⁵³ Medeiros Affidavit, [paras 118-123](#), AR Tab 2.

⁵⁴ Medeiros Affidavit, [para 126](#), AR Tab 2.

⁵⁵ Medeiros Affidavit, [paras 32-33](#), AR Tab 2.

of Transportation licences, commercial drivers' licenses, broker certificates, C-PTAT certification for ports of entry to the US; state transportation permits and SQF food certifications.⁵⁶

74. A debtor-in-possession restructuring permits the Applicants, who are familiar with their operations, suppliers, customers, employees and other stakeholders, to continue the Applicants' structure and operations. The alternative would be a receivership, which would risk the going concern nature of the Applicants' Business and the proven cash flow positive operations since restructuring steps began the Fall of 2023. As noted above, the cash flow projections of the Applicants suggest that the cash position will be improved beyond the amounts of the DIP Facility over the period to April 19, 2025.

H. The Court Should Authorize the Payment of Pre-Filing Obligations with Approval of the Monitor

75. The Applicants also seek authority to pay, with the Monitor's consent, amounts owing for goods or services supplied to the Applicants before the NOI Proceedings if such payment is necessary or to maintain the uninterrupted operations of the Business.

76. The Court has jurisdiction to grant this relief pursuant to the Court's general jurisdiction under s 11 of the CCAA to make orders that it considers appropriate in the circumstances.⁵⁷ This Court has routinely granted orders allowing CCAA applicants to pay pre-filing amounts to critical suppliers with the consent of the Monitor.⁵⁸ In doing so, Courts have applied the following criteria:

- (a) whether the goods and services concerned are integral to the business,
- (b) the applicant's need for the uninterrupted supply of the goods or services,

⁵⁶ Medeiros Affidavit, [para 37](#), AR Tab 2.

⁵⁷ [CCAA, s 11](#).

⁵⁸ *Springer*, [paras 25-27](#); *McEwan Enterprises Inc.*, 2021 ONSC 6453, [paras 32-33](#) ("*McEwan*").

(c) the Monitor's support and willingness to work with the applicant to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate, and

(d) the effect on the applicant's ongoing operations and ability to restructure if it were unable to make pre-filing payments to its critical suppliers.⁵⁹

77. The Applicants submit that this criteria is met. The Applicants rely heavily on contractors who provide specialized logistics services. These contractors are necessary to the uninterrupted operation of the Business. Given the fast-paced nature of the Applicants' operations, there are few vendors who can supply the specific services that the JBT Group requires at a reasonable cost and in a timely manner.

78. If certain critical suppliers are not paid their pre-filing arrears, they will (and have) abruptly ceased providing services, materially prejudicing the Business.

79. As the Applicants are also seeking a Critical Suppliers Charge, the relief sought for pre-filing payments is connected to the delivery of goods and services by Carriers and other critical suppliers that are integral to the Business, including in respect of services that cannot be interrupted without significant effects on the Business. Without the ability to pay certain pre-filing amounts, Carriers will continue to hold current and future shipments hostage, paralyzing the Applicants' ability to operate.

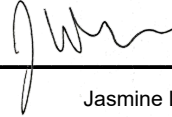
80. The Applicants will consult with the Monitor, as the Monitor's consent is necessary for any such payment to be made, with consideration of the Cash Flow Forecast.

⁵⁹ [CCAA, s 11](#). See *Springer*, [paras 25-27](#); *McEwan*, [para 33](#); *Canwest 2009*, [paras. 41-43](#); *Canwest 2010*, [paras 47-51](#).

PART V – RELIEF REQUESTED

81. Based on the foregoing, the Applicants respectfully request that this Court grant the proposed form of Initial Order at Tab 3 of the Applicants' Application Record.

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.



Jasmine Landau

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF FEBRUARY, 2025.



RECONSTRUCT LLP

SCHEDULE "A"**List of Authorities**

	Jurisprudence
1.	<i>(Re) Clothing for Modern Times Ltd.</i> , 2011 ONSC 7522
2.	<i>In the Matter of The Body Shop Canada Limited</i> , 2024 ONSC 3882
3.	<i>Comstock Canada Ltd. (Re)</i> , 2013 ONSC 4756
4.	<i>Century Services Inc. v Canada (Attorney General)</i> , 2010 SCC 60
5.	<i>First Leaside Wealth Management Inc. (Re)</i> , 2012 ONSC 1299
6.	<i>Re Lydian International Limited</i> , 2019 ONSC 7473
7.	Endorsement of Cavanagh J dated October 7, 2021 in <i>Medifocus Inc (Re)</i> , Court File No CV20-00669781-00CL
8.	Initial Order of Penny J dated May 2, 2024 in <i>Canmart Labs(Re)</i> , CV-24-00719639-00CL
9.	<i>Prizm Income Fund (Re)</i> , 2011 ONSC 2061
10.	<i>Pride Group Holdings Inc et al (Re)</i> , 2024 ONSC 2026
11.	<i>Canwest Publishing Inc.</i> , 2010 ONSC 222
12.	<i>Canwest Global Communications Corp. (Re)</i> , 2009 CanLII 55114 (ONSC)
13.	<i>Springer Aerospace Holdings Limited</i> , 2022 ONSC 6581
14.	<i>McEwan Enterprises Inc.</i> , 2021 ONSC 6453

SCHEDULE "B"**Statutory Authorities**

[Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)

Definitions**2 (1) In this Act,**

aircraft objects [Repealed, [2012, c. 31, s. 419](#)]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

bond includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

cash-flow statement, in respect of a company, means the statement referred to in [paragraph 10\(2\)\(a\)](#) indicating the company's projected cash flow; (*état de l'évolution de l'encaisse*)

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of [section 2](#) of the [Bankruptcy and Insolvency Act](#); (*réclamation*)

collective agreement, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of [section 2](#) of the [Bank Act](#), telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

court means

(a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,

[\(a.1\)](#) in Ontario, the Superior Court of Justice,

(b) in Quebec, the Superior Court,

(c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and

(d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the [Bankruptcy and Insolvency Act](#) or is deemed insolvent within the meaning of the [Winding-up and Restructuring Act](#), whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the [Bankruptcy and Insolvency Act](#), or
- (d) is in the course of being wound up under the [Winding-up and Restructuring Act](#) because the company is insolvent; (*compagnie débitrice*)

director means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever named called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

income trust means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act; (*fiducie de revenu*)

initial application means the first application made under this Act in respect of a company; (*demande initiale*)

monitor, in respect of a company, means the person appointed under [section 11.7](#) to monitor the business and financial affairs of the company; (*contrôleur*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

prescribed means prescribed by regulation; (*Version anglaise seulement*)

secured creditor means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds; (*créancier garanti*)

shareholder includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

Superintendent of Bankruptcy means the Superintendent of Bankruptcy appointed under [subsection 5\(1\)](#) of the [Bankruptcy and Insolvency Act](#); (*surintendant des faillites*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under [subsection 5\(1\)](#) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

title transfer credit support agreement means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

unsecured creditor means any creditor of a company who is not a secured creditor, whether resident or domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

Meaning of related and dealing at arm's length

(2) For the purpose of this Act, [section 4](#) of the *Bankruptcy and Insolvency Act* applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

Application

3(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with [section 20](#), is more than \$5,000,000 or any other amount that is prescribed.

Form of applications

Documents that must accompany initial application

10(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Relief reasonably necessary

11.001 An order made under [section 11](#) at the same time as an order made under [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Interim financing

11.2 (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, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow

statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in [paragraph 23\(1\)\(b\)](#), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

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.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of [subsection 2\(1\) of the *Bankruptcy and Insolvency Act*](#).

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

- (a) if the trustee is or, at any time during the two preceding years, was
- (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- (b) if the trustee is
- (i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the [Civil Code of Quebec](#) that is granted by the company or any person related to the company, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of [subsection 2\(1\)](#) of the [Bankruptcy and Insolvency Act](#), to monitor the business and financial affairs of the company.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the [Bankruptcy and Insolvency Act](#),

- (a) proceedings commenced under Part III of the [Bankruptcy and Insolvency Act](#) may be taken up and continued under this Act only if a proposal within the meaning of the [Bankruptcy and Insolvency Act](#) has not been filed under that Part; and
- (b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in [section 116](#) of the [Bankruptcy and Insolvency Act](#) but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from
- (i) the operation of [subsection 50.4\(8\)](#) of the [Bankruptcy and Insolvency Act](#), or
 - (ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the [Bankruptcy and Insolvency Act](#).

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects[Repealed, [2012, c. 31, s. 414](#)]

application, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

assignment means an assignment filed with the official receiver; (*cession*)

bank means

(a) every bank and every authorized foreign bank within the meaning of [section 2](#) of the [Bank Act](#),

(b) every other member of the Canadian Payments Association established by the [Canadian Payments Act](#), and

(c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

child[Repealed, 2000, c. 12, s. 8]

claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite ou réclamation prouvable*)

collective agreement, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated,

that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of [section 2](#) of the [Bank Act](#), insurance companies, trust companies or loan companies; (*personne morale*)

court, except in [paragraphs 178\(1\)\(a\)](#) and [\(a.1\)](#) and [sections 204.1](#) to [204.3](#), means a court referred to in [subsection 183\(1\)](#) or [\(1.1\)](#) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

creditor means a person having a claim provable as a claim under this Act; (*créancier*)

current assets means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets; (*actif à court terme*)

date of the bankruptcy, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*date de la faillite*)

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
 - (i) referred to in [paragraph 50.4\(8\)\(a\)](#) or [57\(a\)](#) or [subsection 61\(2\)](#), or
 - (ii) in which a notice of intention to make a proposal has been filed under [section 50.4](#) or a proposal has been filed under [section 62](#) in respect of the person and the person files an assignment before the court has approved the proposal,
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the [Companies' Creditors Arrangement Act](#); (*ouverture de la faillite*)

debtor includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt; (*débiteur*)

director in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

executing officer includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor; (*huissier- exécutant*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

General Rules means the [General Rules](#) referred to in [section 209](#); (*Règles générales*)

income trust means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or

(b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event; (*fiducie de revenu*)

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

legal counsel means any person qualified, in accordance with the laws of a province, to give legal advice; (*conseiller juridique*)

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (*localité*)

Minister means the Minister of Industry; (*ministre*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

official receiver means an officer appointed under [subsection 12\(2\)](#); (*séquestre officiel*)

person includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person; (*personne*)

prescribed

(a) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under [paragraph 5\(4\)\(e\)](#), and

(b) in any other case, means prescribed by the [General Rules](#); (*prescrit*)

property means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property; (*bien*)

proposal means

(a) in any provision of Division I of Part III, a proposal made under that Division, and

(b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement; (*proposition concordataire* ou *proposition*)

public utility includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services; (*entreprise de service public*)

resolution or **ordinary resolution** means a resolution carried in the manner provided by [section 115](#); (*résolution* ou *résolution ordinaire*)

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable, and includes

(a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the [Civil Code of Québec](#) or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or

(b) any of

(i) the vendor of any property sold to the debtor under a conditional or instalment sale,

(ii) the purchaser of any property from the debtor subject to a right of redemption, or

(iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the [Civil Code of Québec](#) entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights; (*créancier garanti*)

settlement [Repealed, [2005, c. 47, s. 2](#)]

shareholder includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

sheriff [Repealed, [2004, c. 25, s. 7](#)]

special resolution means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution; (*résolution spéciale*)

Superintendent means the Superintendent of Bankruptcy appointed under [subsection 5\(1\)](#); (*surintendant*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under [subsection 5\(1\)](#) of the [Office of the Superintendent of Financial Institutions Act](#); (*surintendant des institutions financières*)

time of the bankruptcy, in respect of a person, means the time of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment by or in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*moment de la faillite*)

title transfer credit support agreement means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

trustee or licensed trustee means a person who is licensed or appointed under this Act. (*syndic ou syndic autorisé*)

Designation of beneficiary

2.1 A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.

Superintendent's division office

2.2 Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provided to the Superintendent, other than an application for a licence under [subsection 13\(1\)](#), shall be given, forwarded, mailed, sent or otherwise provided to the Superintendent at the Superintendent's division office as specified in directives of the Superintendent.

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

Court File No. CV-25-00736572-00CL **A821**

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JBT TRANSPORT
INC., WAYDOM MANAGEMENT INC., MELAIR MANAGEMENT INC., HERITAGE TRUCK LINES
INC., DRUMBO TRANSPORT LIMITED, HERITAGE NORTHERN LOGISTICS INC., AND
HERITAGE WAREHOUSING & DISTRIBUTION INC.

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

Proceedings commenced at Toronto

FACTUM OF THE APPLICANTS

RECONSTRUCT LLP
80 Richmond Street West, Suite 1700
Toronto, ON M5H 2A4

Caitlin Fell LSO No. 60091H
cfell@reconllp.com
Tel: 416.613.8282

Brendan Bissell LSO No. 40354V
bbissell@reconllp.com
Tel: 416.613.0066

Jessica Wuthmann LSO No. 72442W
jwuthmann@reconllp.com
Tel: 416.613.8288

Jasmine Landau LSO No. 74316K
jlandau@reconllp.com
Tel: 416.613.4880

Lawyers for Applicants

A821