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: MOTION FOR CONTINUED PROTECTION UNDER THE CCAA)

February 25, 2025

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TO: THE SERVICE LIST

TABLE OF CONTENTS

PART I – OVERVIEW

1. This is principally a comeback hearing following the issuance of an Initial Order (as defined herein) granted under the *Companies' Creditors Arrangement Act* ("**CCAA**").

2. The main issue for the Court to consider is whether to continue the CCAA proceedings (the "**CCAA Proceeding**"). There is no serious question that the Applicants qualify for continued protection under the CCAA or that the remaining relief originally sought and put over to this hearing is warranted.

3. The alternatives for the Court are clear:

   a) on the one hand, the CCAA Proceeding seeks to continue the Applicants' Business (as defined herein) as a going concern for the benefit of all stakeholders including over 80 employees, augmented by a further motion that seeks to approve a sale and investment solicitation process ("**SISP**"), which SISP will solicit a wide range of possible transactions including refinancing, sale transactions, or liquidations and involves a stalking horse bid for the Business as a going concern; and

   b) on the other, a receivership resulting in significant social and economic costs for all stakeholders of the Applicants.

4. The core objectives of the CCAA and the jurisprudence support the preservation of the Applicants' Business that (i) engages more than 80 employees and 20 contractors, (ii) regularly services 187 customers, and (iii) deals with 125 carriers and suppliers. Avoiding the economic costs of a liquidation on all those stakeholders is a core objective under the CCAA. The CCAA requires broad balancing of stakeholder interests as a means to protect jobs and protect the public interest through facilitating the survival of a debtor.

5. The Business in this case has value as a going concern. Until these proceedings, the Applicants' Business generated positive revenue from operations and the Applicants had achieved a significant reduction in the debt owing to TD Bank – from $25 million to $16.2 million over a 12 month period.

6. The record is clear that the need for these proceedings arose when TD Bank required that it be fully repaid by January 31, 2025. The Applicants had obtained new financing, but economic conditions did not support a payout in full on such an expediated timeline. Notwithstanding the Applicants only needed an additional two months to build up the asset base (principally receivables) to achieve a full payout for TD Bank, TD Bank rejected both: (i) an immediate payout which would result in a compromise of its indebtedness and (ii) an extension of time which would facilitate a payout in full and, instead issued 244 notices under the BIA on January 15, 2025.

7. The consequences of TD Bank's position have been carefully reviewed by the Applicants with the assistance of their financial advisor, Grant Thornton ("**GT**"), and the Monitor. The shared conclusion is that a liquidation will produce a worse result than a going concern sale. The Applicants accordingly seek approval to commence a SISP and to accept a stalking horse bid from management as part of the SISP (the "**SISP Approval Order**").

8. When faced with competing applications for CCAA protection and the appointment of a receiver, case law emphasizes that the Court needs to balance various interests and factors. Receiverships are granted where (i) there are proven or significant issues of fraud or other serious misconduct by management, or (ii) the assets solely involve real property that the courts regard fundamentally differently than an operating business. Neither apply here.

9. Instead, the interests of all stakeholders, including TD Bank, are better served by maintaining the Applicants' family business as a going concern, with the continuation of the CCAA Proceedings.

10. Both before and since the Initial Order, the Applicants have demonstrated their ability to work diligently and in good faith with their stakeholders, including TD Bank, toward a positive and value-maximizing outcome in this restructuring proceeding. If the requested relief is not granted, the Applicants will be required to liquidate their assets at a significant loss and a going concern Business will end with a devastating impact on employees, customers and suppliers. Put bluntly, there are no better factual circumstance which would justify the granting of CCAA protection than the case at bar.

PART II – FACTS

A. The Initial Order

11. On February 10, 2025, this Court continued the notice of intention to make a proposal ("**NOI**") proceedings of 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**") (collectively, the "**Applicants**") under the CCAA and granted an Initial Order ("**Initial Order**"). Dodick Landau Inc. was appointed as monitor under the CCAA Proceeding (in such capacity, the "**Monitor**").[1]

12. The full relief in the Notice of Application was not granted in the Initial Order. Among other things, the proposed DIP Facility was not approved and was left to be considered at a comeback hearing, as was the balance of the requested administration charge of $250,000 (the "**Administration Charge**").

[1] Affidavit of Denis Medeiros, sworn February 24, 2025 ("**Feb. 24 Medeiros Affidavit**"), Motion Record, Tab 2, para 3.

B. Background of the Applicants

13. The factual background to this application is more fully described in the Affidavit of Denis Medeiros sworn February 6, 2025, the Reply Affidavit of Denis Medeiros sworn February 8, 2025, and the Affidavit of Denis Medeiros sworn February 24, 2025 (the "**Feb. 24 Medeiros Affidavit**").[2]

14. The Applicants operate end-to-end supply chain services, transportation logistics and warehousing services (the "**Business**"). The Applicants are family-run and have been operating and providing supply chain services across North America since their inception in 2002. The Applicants employ 83 full-time employees and 23 independent owner-operators and work with over 110 different carriers and 187 customers on a regular basis. 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.[3]

C. The Applicants' Financial Difficulties and Prefiling Restructuring Efforts

15. The Applicants entered into financing arrangements with TD Bank in January 2021, which included a line of credit ("**LOC**").[4] In February of 2022, supported by financing from TD Bank, the Applicants commenced an expansion of their Business by acquiring Drumbo, HTL, HNL, and HWD. 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 cross border transportation operations.[5]

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[2] Affidavit of Denis Medeiros, sworn February 6, 2025 ("**Feb. 6 Medeiros Affidavit**"), Application Record, Tab 2. Affidavit of Denis Medeiros, sworn February 8, 2025, Reply Application Record, Tab 1; Feb. 24 Medeiros Affidavit.
[3] Feb. 6 Medeiros Affidavit, paras 14-15 and 20.
[4] Feb. 6 Medeiros Affidavit, paras 51 and 55.
[5] Feb. 6 Medeiros Affidavit, paras 71-72.

16. By October 2023, the Applicants were sustaining significant losses and using the LOC with TD Bank to fund their ongoing operations. As a result of breaching the LOC borrowing limit, the Applicants were assigned to TD Bank's special loans group.[6]

17. Starting in December 2023, the Applicants took numerous steps to improve their lending relationship with TD Bank, including engaging GT as financial advisor mandated by TD Bank and effecting the sale of real property with the consent of TD Bank. The Applicants also began implementing an operational restructuring process, the goal of which was to decrease operating costs and enhance the Applicants' market position.[7]

18. 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.[8] The Applicants were able to do so while also remarkably paying all monthly principal and interest payment to TD Bank.

19. In an attempt to accommodate TD Bank's request to exit its lending relationship with the Applicants, they negotiated a refinancing transaction with eCapital and Pillar in December 2024, that would have significantly repaid TD Bank.[9] However, TD Bank refused to permit the transaction to proceed. Accordingly, TD Bank proceeded to deliver a demand and notice to enforce under section 244 of the BIA on January 15, 2024.[10]

20. In order to preserve the going concern nature of their Business, the Applicants each filed NOI's on January 24, 2025, which were continued under the CCAA pursuant to the Initial Order.

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[6] Feb. 6 Medeiros Affidavit, paras 73 and 75.
[7] Feb. 6 Medeiros Affidavit, paras 78-86.
[8] Feb. 6 Medeiros Affidavit, paras 80 and 86.
[9] Feb. 6 Medeiros Affidavit, paras 10 and 86.
[10] Feb. 6 Medeiros Affidavit, paras 94-95 and Exhibit AA.

D. Restructuring Plan

21. The Applicants intend to implement both a financial and operational restructuring. Since the Initial Order, the Applicants have taken significant strides on operations including:

(a) reducing operational costs by, among other things, closing the Applicants' former warehouse located at 325 Stirling Avenue South, Kitchener, ON;

(b) engaging in extensive discussions with TD Bank;

(c) spending significant time and resources addressing the issues with carriers;

(d) opening a segregated trust account to hold the Carrier Trust Funds (as defined below) per the Initial Order; and

(e) engaging in discussions with stakeholders, including employees and customers.[11]

22. In terms of a broader financial restructuring, the Applicants determined, with the assistance of counsel and of GT, that the best available option is to commence a SISP supported by a stalking horse purchase offer (the "**Stalking Horse Agreement**"), which is made by three members of management of the Applicants (the "**Stalking Horse Bidder**").[12]

23. The SISP will canvass all offers for the Business and assets of the Applicants, including both on a going concern basis and on a liquidation basis.[13] In light of the involvement of the Applicants' management in the Stalking Horse Agreement, the proposed SISP contemplates that the Monitor will administer the process.[14]

24. In summary, the SISP proposes the following key milestones and deadlines:[15]

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[11] Feb. 24 Medeiros Affidavit, para 5.
[12] Feb. 24 Medeiros Affidavit, paras 29 and 54-55.
[13] Feb. 24 Medeiros Affidavit, para 28.
[14] Feb. 24 Medeiros Affidavit, para 30.
[15] Feb. 24 Medeiros Affidavit, para 34.

Milestone	Deadline
Commencement of marketing and solicitation of interest	As soon as reasonably practicable but no later than March 12, 2025
Deadline to submit a binding offer	5:00 p.m. (EDT) on April 18, 2025
Selection of Successful Bid(s)	April 25, 2025
Motion for Court Approval of Successful Bid(s)	No later than May 9, 2025
Closing of Successful Bid(s)	No later than May 16, 2025

25. The SISP is supported by the Stalking Horse Agreement. The Stalking Horse Agreement's terms are discussed in more detail in the Feb. 24 Medeiros Affidavit[16] and a copy of the agreement is appended as Exhibit "B" to the affidavit.[17] In summary, the principal terms of the Stalking Horse Agreement are as follows:[18]

Term	Details
Seller	JBT Transport Inc., Heritage Truck Lines Inc., Heritage Warehousing & Distribution Inc., Melair Management Inc., Waydom Management Inc., and Drumbo Transport Limited (collectively, the "**Companies**")
Purchaser	Randy Bowman, Denis Medeiros and Kyle Medeiros, in trust for a company to be incorporated
Transaction Structure	Reverse vesting structure share subscription agreement
Purchased Assets	A number and class of shares in the share capital of the Companies from treasury, to be specified by the Stalking Horse Bidder at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances other than the Permitted Encumbrances ("**Purchased Shares**"). In addition the Retained Assets and Retained Liabilities will remain with the Purchased Entities.
Purchase Price	Approximately $13,316,523.76 representing: (a) payment in cash of $4,917,497.04, comprised of the Deposit plus further amounts payable at closing as follows: (i) an amount equal to $2,969,500 for the Equipment; (ii) an amount equal to $30,000 for the Inventory, (iii) an amount equal to $439,500 for Other Assets, (iv) an amount equal to 43% of the Accounts Receivables;

[16] Feb. 24 Medeiros Affidavit.
[17] Feb. 24 Medeiros Affidavit, Exhibit "B", Stalking Horse Agreement dated February 24, 2025 (the "**Stalking Horse Agreement**").
[18] Feb. 24 Medeiros Affidavit, para 50. Capitalized terms in this paragraph are defined in the Stalking Horse Agreement.

	(v) an amount equal to the Cure Costs, and (vi) an amount equal to the Priority Payment Amount, and Administrative Expense Amount; (b) the assumption of the Retained Liabilities, including: (i) the outstanding obligations under the DIP Term Sheet as of the Closing Time; (ii) the outstanding obligations in respect of the Non-TD Equipment Leases of the Companies owing as of the Closing Time; (iii) the outstanding obligations in respect of the Retained Leases as of the Closing Time; and (iv) Employee Liabilities.
Deposit	The Stalking Horse Bidder will provide a deposit of $250,000 being the principal amount to be advanced by the DIP Lender to the Applicants pursuant to and in accordance with the DIP Term Sheet, being a deposit in the approx. amount of 5% of the Cash Consideration.
Break Fee	$65,000 (approximately 1.35% of the cash portion of the purchase price). If the Stalking Horse Agreement is chosen as the Successful Bid, then no Break Fee will be payable to the Stalking Horse Bidder.
Employees	The Stalking Horse Bidder will determine which employees it will assume and continue to employ prior to Closing.
Key Conditions to Closing	Typical closing conditions of a purchase and sale in a CCAA proceeding.

26. The financial analysis of the Applicants is that the Stalking Horse Agreement represents a superior financial result for creditors, including TD Bank, relative to a liquidation. Specifically, a liquidation results in both a lower anticipated sale price as well as higher costs to the estate including as a result of occupation rent, employee WEPPA claims, and liquidator sales commissions.[19]

E. Interim Financing

27. The Applicants, with the assistance of the Monitor, have prepared an updated cash flow forecast statement for the period ending the week of May 31, 2025 (the "**Cash Flow Forecast**").

[19] Feb. 24 Medeiros Affidavit, paras 54-55, Confidential Exhibit "1" to the Feb. 24 Medeiros Affidavit.

Pursuant to the Cash Flow Forecast, the Applicants expect to require interim financing the week ending March 1, 2025.[20]

28. The Applicants have arranged a debtor-in-possession credit facility in the maximum principal amount of $250,000 (the "**DIP Facility**") from 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**"). The key terms and conditions of the DIP Term Sheet include a maximum principal loan amount of $250,000, and a super priority court-ordered charge in favour of the DIP Lender ranking behind the Critical Suppliers Charge (the "**Critical Suppliers Charge**"), the Administration Charge. It would also be subordinate to TD Bank's security on the property municipally known as 425 Melair Drive, Ayr, Ontario (the "**Melair Property**").[21]

F. Contact with TD Bank Since the Initial Order Hearing

29. Since the Initial Order hearing on February 10, 2025, the Applicants have engaged with TD Bank through counsel in an attempt to resolve or narrow the issues between them. The Applicants provided TD Bank with the SISP, the details of the intended stalking horse offer, and an analysis of the stalking horse offer in comparison to a liquidation. Notwithstanding, TD Bank still intends to continue with its application to appoint a receiver.[22]

30. It is not known what, if anything, TD Bank or its proposed receiver has done since the February 10, 2025 hearing to develop a realization plan under a receivership. The only contact between the Monitor or the Applicants and TD Bank since Feb. 10, has been (i) asking the Monitor for a soft copy of the prior cash flow projections, (ii) discussing the proposed stalking horse offer,

[20] Feb. 24 Medeiros Affidavit, para 5(h); Feb. 6 Medeiros Affidavit, para 106.
[21] Feb. 6 Medeiros Affidavit, para 122.
[22] Feb. 24 Medeiros Affidavit, paras 8-9.

and (iii) asking the Applicants to address a small amount of pre-authorized payments from the Applicants' TD Bank account.[23]

PART III – ISSUES

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

(a) extend the stay of proceedings up to and including May 16, 2025 and dismiss the application by TD Bank for a receiver;

(b) approve the DIP Facility and corresponding DIP Lender's Charge (as defined herein);

(c) approve the increased Administration Charge; and,

(d) approve the proposed SISP with the accompanying Stalking Horse Agreement.

PART IV – LAW & ARGUMENT

A. The Court should extend the Stay of Proceedings under the CCAA and dismiss the application by TD Bank for a Receiver

32. Given the interrelated applications for continued relief under the CCAA on the one hand, and a receivership on the other, the argument on this issue will address (i) the authority and applicable case law for relief under the CCAA, (ii) the authority and applicable case law for relief appointing a receiver and declining CCAA relief, and (iii) how those principles apply to this matter.

i. Authority and Test for (Continued) CCAA Relief

33. The statutory authority to continue a CCAA proceeding is in subsection 11.02(2), which allows the Court to extend a stay of proceedings for any period it considers necessary after an

[23] Feb. 24 Medeiros Affidavit, paras 12-13

initial application has been heard.[24] The Applicants must demonstrate to the Court that, (1) circumstances exist to make the order appropriate, and (2) they have acted and are acting in good faith and with due diligence.[25]

34. A stay of proceedings provides a debtor with "breathing room" while it seeks to restore solvency and emerge from the CCAA on a going concern basis.[26] The Supreme Court of Canada emphasized the following remedial purposes of the CCAA in *Century Services*: [27]

(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;[28]

(b) to avoid intangible losses like the evaporation of goodwill and to rehabilitate companies that are key elements in a complex web of interdependent economic relationships;[29]

(c) 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;[30] and

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[24] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), s 11.02(2).
[25] CCAA, s 11.02(3).
[26] *Re Lydian International Limited*, 2019 ONSC 7473 ("***Lydian***"), para 22; *Industrial Properties Regina Limited v Copper Sands Land Corp*, 2018 SKCA 36, paras 18-20 ("***Industrial***").
[27] *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 ("***Century***"), para 70.
[28] *Century,* paras 15, 59 and 70.
[29] *Century,* paras 17-18; *Canada v Canada North Group Inc*, 2021 SCC 30, paras 19 to 21.
[30] *Century,* para 59.

(d) 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.[31] (emphasis added)

35. Relief under the CCAA is more appropriate than a receivership where (i) there is an operating going-concern business, (ii) stakeholders would benefit from a debtor-in-possession process, (iii) the debtor has a general restructuring plan, and (iv) the debtor has been working cooperatively and in good faith with stakeholders.[32]

36. Blanket statements by creditors as to loss of confidence in management of the debtor should not be taken at face value, rather the court is entitled to consider this issue objectively. Where a debtor has been working cooperatively to resolve its issues and the Monitor has found that the management has been working in good faith and due diligence, courts give little weight to such statements by creditors, if any.[33]

37. The appropriateness of CCAA proceedings and the limitations of a declared loss of confidence in the debtor were both illustrated in the recent decision in *The Plan of Compromise or Arrangement of 2039882 Ontario Ltd*.[34] On appropriateness of a CCAA proceeding, Justice Conway noted that the business was different from a real estate development on account of tenanted residents and the provision of ongoing services to them. On loss of confidence, while noting the relationship between creditor and borrower had deteriorated, Her Honour discounted

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[31] *Century,* para 77.
[32] See for e.g. *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775 (Fitzpatrick J) ("***Pacific Shores***"); In the Plan of Compromise or Arrangement of 2039882 Ontario Ltd, CV-24-00713069-00CL, 18-JAN-2024, Conway J. ("***Shelter Cove***").
[33] *Pacific Shores*, paras 25-33.
[34] *Shelter Cove*.

that factor, holding that "much of the dynamic between [the creditor] and [the borrower] has to be seen against the backdrop of [the creditor's] pending enforcement proceedings".[35]

ii. Authority and Case Law for Appointing a Receiver and declining CCAA Relief

38. When faced with competing CCAA and receivership applications, courts have highlighted that the tests under section 11.02 of the CCAA and section 101 of the *Courts of Justice Act* are equally discretionary: [36]

(a) under section 11.02 of the CCAA, the Court must consider whether the order is appropriate and if the applicants are acting in good faith and with due diligence; and

(b) when determining whether to appoint a receiver, the Court must consider whether it is just and convenient to do so.

39. In both scenarios, the Court must have regard to all of the relevant circumstances to determine the most appropriate path forward.

40. When assessing a receivership application, the court has been clear that two arguments often made by creditors do not mean a CCAA proceeding must be rejected. Specifically,

(a) language in a forbearance agreement consenting to the appointment of a receiver is not determinative;[37] and similarly,

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[35] *Shelter Cove*, para 7

[36] *Ashcroft Urban Developments Inc. (Re)*, 2024 ONSC 7192 ("***Ashcroft***"), para 72; *In the Matter of a Plan of Compromise or Arrangement of Antibe Therapeutics Inc.*, CV-24-00717410-00CL (unreported), endorsement dated April 22, 2024 (Osborne J) ("***Antibe***"), paras 53-55 and 59

[37] See *Bank of Montreal v Maple City Ford Sales* (1986) Ltd., 2002 CanLII 23166 (ON SC) para 142, and also *Callidus v. Carcap*, 2012 ONSC 163 ("***Callidus***"), paras 29 and 31 on general consents to enforcement in forbearance agreements. Even a specific consent to an order appointing a receiver is not determinative: see *Bank of Nova Scotia v Smiling Simba Learning Academy Inc*, 2025 ABKB 11, paras 31-32.

(b) the opposition of the primary secured creditor is not determinative.[38]

41. Rather, the above-noted arguments are simply factors to consider as part of all of the relevant circumstances.

42. The jurisprudence notes that a receivership is generally more appropriate where: (i) the debtor is not operating an active business, (ii) the debtor has acted in a manner to ground an objective basis for a loss of confidence in management, (iii) there is no germ of a plan such that a stay is merely an attempt to postpone an inevitable liquidation, [39] and (v) the secured creditors will face prejudice as a result of a significant erosion of their security/collateral from the debtor's ongoing operations.[40]

43. These principals are demonstrated in the cases that the Court directed the parties to specifically address in its February 10, 2025 endorsement, namely *Re Ashcroft Urban Developments Inc.* ("***Ashcroft***") and *Re Antibe Therapeutics Inc.* ("***Antibe***").[41]

44. *Ashcroft* and *Antibe* considered the following factors in concluding that a receivership was more appropriate:

(a) there was an objective foundation for a loss of confidence in management that made a debtor-in-possession process inappropriate;

(b) the nature of the business and assets did not favour a debtor-in possession process;

(c) the debtors had no cogent plan for the restructuring; and

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[38] *Pacific Shores*, paras 40-44; *Otso Gold Corp (Re)*, 2021 BCSC 2531 (Gomery J), para 19.
[39] *Industrial*, para 21.
[40] See for e.g. *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc*, 2020 ONSC 1953; *Ashcroft*; *Antibe*; *AFC Mortgage Administrative Inc v Sunrise Acquisitions (Stayner) Inc et al*, Unreported decision of Black J, 29-FEB-2024; *Callidus,* paras 51-53.
[41] *Ashcroft*; *Antibe*.

(d) the interest of stakeholders weighed in favour of a receivership.

45. In particular, the courts found:

(a) an objective basis for lost confidence in management: Both debtors had an established pattern of hiding or failing to disclose key information, and refusing to work with their secured creditors in a forthright manner.[42]

(b) nature of the businesses: The majority of the debtors' assets in *Ashcroft* were real estate development projects and real property, which do not require a CCAA proceeding.[43] In *Antibe*, the debtor's sole asset was a pharmaceutical product that had been under development for over 20 years and was still a long way from commercialization and generating operating profits.[44]

(c) lack of cogent restructuring plan: In *Ashcroft*, the Court found that the debtors "were simply buying time and not much more" with their plan, which intended to rely on external factors to their business like a more active property market or improved interest rates; whereas in contrast, the plan put forward by the proposed interim receiver had more substance and was more cost-effective.[45] In *Antibe*, the debtor conceded that it had taken no steps toward designing or implementing a restructuring plan or even negotiating with a potential DIP lender. On that basis, Justice Osborne found that there was "no prospect whatsoever" that the debtor could do so and that the CCAA proceeding was merely a defensive tactic.[46]

(d) Interests of stakeholders: In *Ashcroft*, all of the secured creditors were *ad idem* on appointing a receiver, and their collaborative approach neutralized the Court's usual concerns regarding uncoordinated or forced liquidation.[47] In addition, there was no convincing evidence that a receivership would damage the interests of employees or tenants of the subject properties given the receiver would continue to operate the business as a going concern.[48] In *Antibe* a receivership was

[42] *Antibe*, paras 80-85; *Ashcroft*, paras 103-106.
[43] *Ashcroft*, paras 70 and 94.
[44] *Antibe*, paras 68-69.
[45] *Ashcroft*, paras 96 and 99-101.
[46] *Antibe*, paras 60 and 70.
[47] *Ashcroft*, para 96.
[48] *Ashcroft*, para 112.

warranted to ensure that costs and financial resources were minimized pending further regulatory developments related to the debtor's sole drug asset for the benefit of stakeholders.[49]

46. Layered upon the above-noted conventional considerations were concerns of the court about particular actions by management of the respective debtors. In *Ashcroft*, the court held that the debtors not only failed to provide appropriate notice of the CCAA to the secured creditors,[50] but also had been engaged in an "ongoing juggling act with their creditors".[51] The court further noted that debtors had failed to act with candour and straight dealing, including by sometimes taking steps to amalgamate or cross-guarantee entities without creditors' consent where required.[52]

47. Similarly, in *Antibe*, the court held that debtor had actively hid adverse regulatory concerns about development of its sole drug product on the eve of closing its licence agreement, which was found by an arbitrator in a separate arbitration to amount to a fraudulent misrepresentation.[53] Accordingly, a receiver was required to stabilize the debtors' businesses and to transfer control of the restructuring process from debtors in whom confidence was lost.[54]

iii. Application of the Principles to this Matter

48. Applying those principles to this matter supports a finding that the CCAA Proceeding is the preferable process:

(a) preservation of *status quo*: a continued CCAA Proceeding and the accompanying SISP and Stalking Horse Agreement will ensure preservation of the going concern

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[49] *Antibe*, paras 97-99.
[50] *Ashcroft*, paras 2, 50 and 71.
[51] *Ashcroft*, paras 103-104.
[52] *Ashcroft*, paras 80-83.
[53] *Antibe*, paras 8-9 and 99.
[54] *Ashcroft*, paras 110-113.

nature of the Applicants' Business and any associated value, whereas it is not clear that a receivership will, or even can;[55]

(b) nature of the business: the Applicants' family Business is an operating one that has been developed over twenty (20) years and involves a complex set of relationships and structures, which is unlike real estate or non-operating assets that are conducive to simple realization steps without the involvement of management through a receiver;[56]

(c) good faith and confidence in management: there is no serious suggestion that the Applicants have not acted in good faith, including maintaining open communications with TD Bank, and there is no objective basis for a loss of confidence in management within the meaning of the case law beyond the friction occasioned by TD Bank's enforcement steps, including none of the aggravating factors present in *Ashcroft* or *Antibe*;

(d) no material prejudice to creditors through a continued CCAA proceeding: there is no prejudice from a continued CCAA Proceeding. To the contrary, the Applicants' liquidation analysis, supported by the Monitor, suggests that a going concern sale will be better than a liquidation, and the Cash Flow Forecast also suggests that continued operations are likely to generate revenue in amounts more than the amounts required from the DIP Facility in the interim;[57] and

(e) comparable restructuring or realization plans: the Applicants have a well-developed restructuring plan by way of the SISP and associated Stalking Horse

[55] Feb. 24 Medeiros Affidavit, paras 10-11 and 58-59.
[56] Feb. 24 Medeiros Affidavit, para 14.
[57] Feb. 24 Medeiros Affidavit, para 54.

> Agreement, which among other things is the first initiative to seek a going concern sale of the Applicants' Business (prior efforts focused on a refinancing and a sale of piecemeal real estate).[58] In contrast, as of the date of this Factum there is no articulation by TD Bank or its proposed receiver of any restructuring or realization plan, and there have been no attempts to engage with the Applicants or Monitor to develop one.[59]

49. Having regard to the CCAA's objective to avoid "*the devastating social and economic effects of bankruptcy or creditor-initiated termination of ongoing business operations*", the factors support continued CCAA relief in this matter.

50. Therefore, the Applicants' CCAA Proceeding should continue through the amended and restated initial order ("**ARIO**"), and the application for an appointment of receiver by TD Bank should be dismissed.

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

51. This Court has jurisdiction under section 11.2 of the CCAA 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.[60]

52. Subsection 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

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[58] Feb. 24 Medeiros Affidavit, para 11.
[59] Feb. 24 Medeiros Affidavit, para 13.
[60] CCAA, s 11.2. *Canwest Publishing Inc*, 2010 ONSC 222 ("***Canwest 2010***"), paras 42-44.

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.[61]

53. DIP financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.[62] The terms of the DIP Facility are fair and reasonable, and typical compared to other interim facilities approved in Ontario and elsewhere in Canada.

54. As demonstrated by the Cash Flow Forecast, the Applicants require interim financing the week commencing March 1, 2025. The interim financing is critical to providing stability for stakeholders.[63]

55. No creditor would be materially prejudiced by the DIP Lender's Charge. The DIP Lender's Charge will also be subordinated to the Critical Suppliers' Charge, and the Administration Charge, as well as TD Bank's charge over the Melair Property. The Monitor has reviewed the terms of the DIP Facility and supports its approval.[64]

C. The Increased Administration Charge Should be Approved

56. The Applicants request to increase the priority Administration Charge in favour of DLI, as Monitor, counsel to the Monitor, and counsel to the Applicants from $150,000 to $250,000. The Applicants request that the Administration Charge be subordinate only to the Critical Suppliers Charge on Carrier Trust Funds.

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[61] CCAA, s 11.2(4).
[62] *AbitibiBowater inc. (Arrangement relative a)*, 2009 QCCS 6453, para 16.
[63] Feb. 6 Medeiros Affidavit, para 26.
[64] Feb. 6 Medeiros Affidavit, para 126.

57. The Court has jurisdiction to grant the Administration Charge under section 11.52 of the CCAA.[65] 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.[66]

58. 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, and (f) the position of the Monitor.[67]

59. 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.[68] The total Administration Charge of $250,000 is reasonable and proportionate under the circumstances given it is commensurate with the expected complexity of the Applicants' Business and anticipated restructuring.[69]

60. The proposed Administration Charge is necessary under the circumstances. The Applicants lack restructuring expertise and the success of the Applicants' restructuring is dependent on the involvement of the Monitor and legal counsel. Those roles are not duplicative.

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[65] CCAA, s 11.52.
[66] *Ibid*.
[67] *Canwest 2010*, para 54. See for e.g. *Springer Aerospace Holdings Limited, 2022 ONSC 6581* ("***Springer***"), paras 18-19; *Lydian*, paras 46-47.
[68] See *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) [Pepall J.], para 40; *Springer,* para 19.
[69] Feb. 6 Medeiros Affidavit, para 127.

D. The SISP and Stalking Horse Agreement Should be Approved

61. A CCAA court has authority to approve a sale of assets outside of the ordinary course of business,[70] and may approve a sale process in relation to a CCAA debtor's business and assets prior to the development of a plan of compromise and arrangement.[71]

62. Subsection 36(3) of the CCAA sets out the following list of factors for the Court to consider in determining whether to approve a sale transaction 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. [72]

63. CCAA courts have also considered the *Soundair* principles, which largely correspond with the subsection 36(3) criteria.[73]

64. In addition to the above, the factors that courts consider on a proposed stalking horse process are well-established (the "***Brainhunter* Criteria**") including: (a) is the sale warranted at this time?; (b) will the sale benefit the whole "economic community"?; (c) do any of the debtors'

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[70] *CCAA*, s 36.
[71] *Nortel Networks Corporation (Re)*, [2009] OJ No 3169 (SC) (Morawetz J.) ("***Nortel***"), para 48.
[72] *CCAA*, s 36(3).
[73] *Royal Bank of Canada v Soundair Corp*, [1991] OJ No 1137 (CA) (Whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently; The interests of all parties; The efficacy and integrity of the process by which offers have been obtained; and Whether there has been unfairness in the working out of the process).

creditors have a *bona fide* reason to object to a sale of the business?; and (d) is there a better viable alternative?[74]

65. Stalking horse agreements have been recognized by CCAA courts as useful elements of sales processes in insolvency proceedings.[75] The benefits of a stalking horse include:

(a) facilitating sales by establishing a baseline price and deal structure for superior bids from interested parties, and accordingly, the "use of a sales process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sales process";[76]

(b) providing certainty that a going concern solution for the business has already been identified;[77] and

(c) providing an important degree of certainty and stability to the employees of the company, customers and other stakeholders who may take some comfort that there is a possible going concern solution for the business.[78]

66. The Applicants submit that the SISP and Stalking Horse Agreement satisfy the requirements under subsection 36(3) of the CCAA and the *Soundair* principles, as well as the *Brainhunter* Criteria:

(a) the SISP is designed to be broad and flexible. The process will permit the Applicants to explore and fully canvas the market for any bid that is superior to the

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[74] *Re Brainhunter Inc*, 2009 CanLII 72333 (ON SC) ("***Brainhunter***"), paras 13-17; *Nortel,* para 49.
[75] *CCM Master Qualified Fund v bluetip Power Technologies*, 2012 ONSC 1750, [***CCM Master***], para 7; *Danier Leather Inc, Re*, 2016 ONSC 1044, para 20 [***Danier Leather***].
[76] *Danier Leather, supra*, para 20.
[77] *Cannapiece Group Inc. v Marzili*, 2022 ONSC 6379, para 4.
[78] *Validus Power Corp et al and Macquarie Equipment Finance Limited,* 2023 ONSC 6367, para 53.

Stalking Horse Agreement, whether in the form of a going concern sale, recapitalization, or a liquidation;[79]

(b) the SISP contemplated is fair, reasonable, and transparent with sufficient opportunity for interested parties to come forward with a superior offer.[80] The Monitor will conduct the process given the involvement of management of the Applicants in the Stalking Horse Agreement;[81]

(c) TD Bank has been consulted on both the SISP and the Stalking Horse Agreement;[82]

(d) the Monitor was involved in the development of the SISP and the Stalking Horse Agreement and supports their approval;[83]

(e) as the starting "floor" bid in the SISP, the consideration provided by the Stalking Horse Agreement is fair and reasonable in the circumstances, and was informed by the confidential analysis of the Applicants of the recovery under the Stalking Horse Agreement as compared to a liquidation. The Stalking Horse Agreement will result in a better outcome for the Applicants' stakeholders than a liquidation;[84]

(f) the Stalking Horse Agreement is designed to expedite and assist the sales process by providing a benchmark valuation of the Applicants' assets from the outset of the SISP and a form of agreement for consideration and use by all potential bidders,

[79] Feb 24. Medeiros Affidavit, para 28.
[80] Feb 24. Medeiros Affidavit, para 55.
[81] Feb 24. Medeiros Affidavit, para 30.
[82] Feb 24. Medeiros Affidavit, para 54.
[83] Feb 24. Medeiros Affidavit, paras 27 and 31.
[84] Feb 24. Medeiros Affidavit, paras 29 and 54.

thereby saving time, money, and other resources while moving the sales process forward in a meaningful way that benefits all stakeholders;[85]

(g) the timeline of the SISP strikes a balance between ensuring that creditor recoveries can be maximized through an effective sale process, while simultaneously mitigating any potential for prejudice to stakeholders as the result of delays;[86] and

(h) the proposed Break Fee is approximately 1.35% of the cash consideration of the purchase price which is reasonable given that, in *CCM Master*, this Court noted that courts have approved break fees between 1.8% and 5% of the value of the bid.[87]

E. Sealing of the Confidential Exhibit

67. This Court has jurisdiction to grant a sealing order pursuant to subsection 137(2) of the CJA,[88] in accordance with the principles established by the Supreme Court of Canada in *Sherman Estate v Donovan* ("***Sherman Estate***"). Those are: (a) whether court openness poses a serious risk to the public interest; (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.[89]

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[85] Feb 24. Medeiros Affidavit, para 48.
[86] Feb 24. Medeiros Affidavit, para 35.
[87] Feb 24. Medeiros Affidavit, para 51; *CCM Master*, *supra* at para 13.
[88] CJA, s. 137(2).
[89] *Sherman Estate v Donovan*, 2021 SCC 25, para. 38.

68. Courts have applied the *Sherman Estate* test in the insolvency context to grant sealing orders over confidential or commercially sensible documents to protect the interests of the debtor and its stakeholders.[90]

69. The sealing order sought by the Applicants is appropriate in the circumstances and meets the *Sherman Estate* test. The Confidential Exhibit discloses confidential information about the valuation of the Applicants' Business. If the liquidation analysis was made public, this would negatively affect the Applicants ability to maximize value and maintain integrity in their sale efforts. The sealing of the Confidential Appendices is limited to commercially sensitive information and is the least restrictive means possible to protect the confidential information.

PART V – RELIEF REQUESTED

70. Based on the foregoing, the Applicants respectfully request that this Court grant the proposed form of the ARIO appended at Tab 3 of the Applicants Motion Record, the SISP Approval Order appended at Tab 6 of the Applicants' Motion Record, and costs against TD Bank with respect to the receivership application.

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.

Jessica Wuthmann

JESSICA WUTHMANN (LSO# 72442W)

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 24th DAY OF FEBRUARY, 2025.

/s/ Reconstruct

RECONSTRUCT LLP

[90] See *Danier Leather*, para 84.

SCHEDULE "A"

List of Authorities

	Jurisprudence
1.	*Re Lydian International Limited*, 2019 ONSC 7473
2.	*Industrial Properties Regina Limited v Copper Sands Land Corp*, 2018 SKCA 36
3.	*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60
4.	*Canada v Canada North Group Inc*, 2021 SCC 30
5.	*Pacific Shores Resort & Spa Ltd. (Re)*, 2011 BCSC 1775
6.	In the Plan of Compromise or Arrangement of 2039882 Ontario Ltd, CV-24-00713069-00CL, 18-JAN-2024, Conway J.
7.	*Ashcroft Urban Developments Inc. (Re)*, 2024 ONSC 7192
8.	*In the Matter of a Plan of Compromise or Arrangement of Antibe Therapeutics Inc.*, CV-24-00717410-00CL (unreported), endorsement dated April 22, 2024 (Osborne J)
9.	*Bank of Montreal v. Maple City Ford Sales (1986) Ltd.,* 2002 CanLII 23166 (ON SC)
10.	*Callidus v. Carcap,* 2012 ONSC 163
11.	*Bank of Nova Scotia v Smiling Simba Learning Academy Inc,* 2025 ABKB 11
12.	*Otso Gold Corp (Re)*, 2021 BCSC 2531
13.	*BCIMC Construction Fund Corporation et al. v The Clover on Yonge Inc*, 2020 ONSC 1953
14.	*AFC Mortgage Administrative Inc. v. Sunrise Acquisitions (Stayner) Inc. et al.*, Unreported decision of Black J, 29-FEB-2024
15.	*Canwest Publishing Inc*, 2010 ONSC 222
16.	*AbitibiBowater inc. (Arrangement relative a)*, 2009 QCCS 6453
17.	*Springer Aerospace Holdings Limited*, 2022 ONSC 6581
18.	*Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC)
19.	*Nortel Networks Corporation (Re)*, [2009] OJ No 3169 (SC)
20.	*Royal Bank of Canada v Soundair Corp.*, [1991] OJ No 1137 (CA)
21.	*Re Brainhunter Inc.*, 2009 CanLII 72333 (ON SC)
22.	*CCM Master Qualified Fund v. bluetip Power Technologies*, 2012 ONSC 1750
23.	*Danier Leather Inc. Re*, 2016 ONSC 1044
24.	*Cannapiece Group Inc. v Marzili*, 2022 ONSC 6379
25.	*Validus Power Corp et al and Macquarie Equipment Finance Limited,* 2023 ONSC 6367
26.	*Sherman Estate v Donovan,* 2021 SCC 25

SCHEDULE "B"

Statutory Authorities

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

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.

[…]

Restriction on disposition of business assets

36 (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.

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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