

COURT FILE NUMBERS

Clerk's Stamp

COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

MATTER

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

AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF 420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED and 420 DISPENSARIES LTD.

APPLICANTS

420 INVESTMENTS LTD., 420 PREMIUM MARKETS LTD., GREEN ROCK CANNABIS (EC 1) LIMITED, and 420 DISPENSARIES LTD.

DOCUMENT

**BENCH BRIEF OF THE APPLICANTS**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors

4200 Bankers Hall West

888-3rd Street SW

Calgary, AB T2P 5C5

**Karen Fellowes, K.C. / Natasha Doelman**

Tel: (403) 724-9469 / (403) 781-9196

Fax: (403) 266-9034

Email: [kfellowes@stikeman.com](mailto:kfellowes@stikeman.com) / [ndoelman@stikeman.com](mailto:ndoelman@stikeman.com)

File No.: 155857.1002

## TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	STATEMENT OF FACTS.....	5
III.	ISSUES .....	5
IV.	LAW AND ARGUMENT .....	5
A.	CONTINUATION UNDER THE CCAA .....	5
B.	CRITERIA FOR CONTINUING UNDER THE CCAA IS SATISFIED .....	6
C.	THE APPLICANTS ARE ENTITLED TO SEEK PROTECTION UNDER THE CCAA .....	7
D.	THE STAY OF PROCEEDINGS SHOULD BE APPROVED .....	9
E.	THE APPOINTMENT OF KSV AS MONITOR SHOULD BE APPROVED .....	10
F.	THE SISP SHOULD BE APPROVED.....	10
G.	THE CLAIMS PROCESS SHOULD BE APPROVED .....	12
H.	THE COURT ORDERED CHARGES SHOULD BE CONTINUED.....	14
V.	CONCLUSION .....	16
VI.	TABLE OF AUTHORITIES.....	17

## I. INTRODUCTION

1. This Bench Brief is submitted on behalf of the Applicants, 420 Investments Ltd. (“**420 Parent**”), 420 Premium Markets Ltd. (“**420 Premium**”), Green Rock Cannabis (EC 1) Limited (“**GRC**”) AND 420 Dispensaries Ltd. (“**420 Dispensaries**”) (collectively, the “**Applicants**”), who seek the following relief in this Application:
  - a) abridging the time for service of the Application and the materials filed in support thereof, and dispensing with further service thereof;
  - b) an Initial Order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*<sup>1</sup> (the “**CCAA**”) substantially in the form attached as **Schedule “A”** to the Application for the following relief:
    - i abridging the time for service and deeming service of this Application and supporting materials good and sufficient;
    - ii declaring that each of the Applicants are companies to which the CCAA applies;
    - iii declaring the proposal proceedings of 420 Parent, 420 Premium and GRC (collectively, the “**420 NOI Entities**”) commenced under Division I of Part III of the *Bankruptcy and Insolvency Act*<sup>2</sup> (the “**BIA**”, and such proceedings the “**NOI Proceedings**”) are taken up and continued under the CCAA pursuant to section 11.6(a) thereof, declaring that Division I of Part III of the BIA has no further application to the 420 NOI Entities, and terminating the NOI Proceedings, provided that, notwithstanding the termination of the NOI Proceedings, the charges granted in the First Stay Extension Order and KERP Sealing Order (each as defined below) be taken up and continued to apply in these CCAA proceedings (the “**CCAA Proceedings**”);
    - iv appointing KSV Restructuring Inc. (“**KSV**”) as Monitor of the Applicants;
    - v staying, for an initial period of not more than 10 days, all proceedings and remedies taken or that might be taken in respect of the Applicants;
    - vi authorizing the Applicants to carry on business in a manner consistent with the preservation of its business and property;
    - vii authorizing the Applicants to pay the reasonable expenses incurred by it in carrying out its business in the ordinary course;

---

<sup>1</sup> RSC 1985, c C-36 [CCAA]. [TAB 1]

<sup>2</sup> RSC 1985, c B-3 [BIA]. [TAB 2]

- viii authorizing the Applicants to pay the reasonable fees and disbursements of the Monitor and its counsel, and the Applicants' professional advisors;
- ix continuing and taking up under the CCAA such charges and the amounts secured under the First Stay Extension Order as defined below, confirming such charges attach to all of the assets and property of the Applicants and continue to rank in priority to all other charges, mortgages, liens, security interests and other encumbrances therein, and in the following order priority amongst themselves:
  - (1) first – a charge in favour of the Monitor, its legal counsel, and the Applicants' legal counsel in respect of their fees and disbursements, to a maximum amount of \$300,000 (the "**Administrative Charge**");
  - (2) second – a charge in favour of the directors and officers of the Applicants, to a maximum amount of \$433,000 (the "**D&O Charge**");
  - (3) third – a charge in favour of certain key employees of the Applicants, to a maximum amount of \$373,928.17, less any amounts already paid to key employees pursuant to the KERP in the NOI Proceedings (the "**KERP Charge**" and collectively with the Administrative Charge and the D&O Charge, the "**Court Ordered Charges**");
- c) an Order (the "**SISP Approval Order**") substantially in the form attached as **Schedule "B"** to the Application for the following relief:
  - i approving the engagement of KSV as sales advisor (the "**Sales Advisor**"); and
  - ii approving the sales and investment solicitation process ("**SISP**") attached as **Appendix "A"** to the SISP Approval Order to be undertaken by the Applicants, the Monitor and the Sales Advisor, and authorizing and directing them to implement the SISP in accordance with the terms thereof;
- d) an Order (the "**Claims Procedure Order**") substantially in the form attached as **Schedule "C"** to the Application approving the solicitation, determination and resolution of claims against the estate of the Applicants (the "**Claims Process**"); and
- e) such further and other relief as this Honourable Court deems just.

## II. STATEMENT OF FACTS

2. The Applicants' application is supported by the Affidavit of Scott Morrow, Chief Executive Officer of each of the Applicants, sworn on September 10, 2024 (the "**Morrow Affidavit**").<sup>3</sup> The Applicants rely on the Statement of Facts contained in the Morrow Affidavit for the purposes of this Brief. Capitalized terms not defined herein have the meanings given to them in the Morrow Affidavit.

## III. ISSUES

3. The issues to be determined by this Court are as follows:
- a) This Court should continue the NOI Proceedings under the CCAA;
  - b) The Applicants are entitled to seek protection under the CCAA:
    - i The Applicants are insolvent and have obligations exceeding \$5 million;
    - ii The Alberta Court has jurisdiction over this proceeding;
  - c) The Applicants are entitled to a broad stay of proceedings;
  - d) This Court should:
    - i Approve KSV as Monitor and Sales Advisor
    - ii Grant the SISP;
    - iii Grant the Claims Process; and
    - iv Approve the continuation of the Court Ordered Charges.

## IV. LAW AND ARGUMENT

### A. Continuation under the CCAA

4. Section 11.6 of the CCAA authorizes this Court to take up and continue proposal proceedings commenced under Part III of the BIA where no proposal has been filed thereunder. Specifically, Section 11.6(a) of the CCAA sets out that:

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.<sup>4</sup>

---

<sup>3</sup> Affidavit of Scott Morrow, sworn on September 10, 2024 [Morrow Affidavit].

<sup>4</sup> CCAA, *supra* note 1, s 11.6.

5. In *Clothing for Modern Times*,<sup>5</sup> the Court held that when approving the continuance of BIA proposal proceedings under the CCAA, courts should consider whether: (a) the moving parties have satisfied the sole statutory condition in Section 11.6(a) of the CCAA, namely, that they have not filed a proposal under the BIA; (b) the proposed continuation would be consistent with the purposes of the CCAA; and (c) the moving parties have provided the court with evidence that serves as a reasonable surrogate for the information which Section 10(2) of the CCAA requires accompany any initial application under the CCAA.<sup>6</sup>

**B. Criteria for Continuing Under the CCAA is Satisfied**

6. The Applicants submit that the proposed continuance of the NOI Proceeding under the CCAA satisfies the criteria set out in *Clothing for Modern Times*. Specifically:
- a) No Proposal Has Been Filed – although each of the Applicants filed a notice of intention under Subsection 50.4(1) of the BIA on May 29, 2024, no proposal has been filed with respect to any of the Applicants.
  - b) The Proposed Continuance is Consistent with the Purposes of the CCAA – the jurisprudence under the CCAA accepts that, in appropriate circumstances, the purposes of the CCAA will be met even though the re-organization involves the sale of the company, with the consequence that the debtor no longer would continue to carry on the business.<sup>7</sup> In this case, the CCAA provides the most appropriate forum to close the SISP and conclude the Applicants insolvency proceedings, as it provides the best opportunity for avoiding a bankruptcy and preserving any remaining value of the Applicants' property.
  - c) The Information Required under Subsection 10(2) of the CCAA has been Filed – Subsection 10(2) of the CCAA requires that an initial application be accompanied by: (i) a statement indicating, on a weekly basis, the projected cash flow of the debtor company (the "**Cash Flow Forecast**"); (ii) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement (the "**Prescribed Representations**"); and (iii) copies of all financial statements, audited or unaudited, prepared during the year before the application (the "**Financial Statements**").<sup>8</sup> The Applicants' Cash Flow Forecast is attached to the Pre-Filing Report of the Monitor and the Applicants' Financial Statements (completed on a consolidated basis) are attached as Exhibit "C" to the Morrow Affidavit.

---

<sup>5</sup> 2011 ONSC 7522 [*Clothing for Modern Times*]. [TAB 3]

<sup>6</sup> Ibid at paras 8-9.

<sup>7</sup> *Clothing for Modern Times*, supra note 5 at para 12.

<sup>8</sup> CCAA, supra note 1, s 10(2).

**C. The Applicants are Entitled to Seek Protection Under the CCAA**

***The Applicants are Insolvent and Claims Exceed \$5 Million***

7. In addition to the criteria for continuance described above, the Applicants must also satisfy the general conditions for making a CCAA application.
8. To that end, the CCAA applies to a “debtor company” or affiliated debtor companies where the total of claims against the debtor or its affiliates exceeds five million dollars.<sup>9</sup>
9. A “debtor company” is defined as, *inter alia*, a “company” that is “insolvent”, or that has committed an act of bankruptcy within the meaning of the BIA.<sup>10</sup> A company that is incorporated under Federal or Provincial Business Corporations legislation falls within the definition of “company” in the CCAA.<sup>11</sup>
10. The definition of “insolvent person” under the BIA is applied in making a determination of solvency. The relevant definition states:

“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

  - (i) who is for any reason unable to meet his obligations as they generally become due
  - (ii) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
  - (iii) 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.<sup>12</sup>
11. The tests for an “insolvent person” under the BIA are disjunctive. A company satisfying any of (i), (ii), or (iii) of the test is considered insolvent for the purposes of the CCAA.<sup>13</sup>

---

<sup>9</sup> CCAA, *supra* note 1, s 3(1).

<sup>10</sup> BIA, *supra* note 2, s 2.

<sup>11</sup> CCAA, *supra* note 1, s 2(1).

<sup>12</sup> BIA, *supra* note 2, s 2.

<sup>13</sup> *Re Stelco Inc*, [2004] OJ No 1257 [*Stelco*] at para 28 [TAB 4]; *Target Canada Co*, 2015 ONSC 303 [*Target*] at paras 26-27. [TAB 5]

12. In addition to the foregoing statutory tests, it is now well-established that a financially troubled corporation may satisfy the criteria of insolvency if it is reasonably expected to run out of liquidity within a reasonable proximity of time, as compared with the time reasonably required to implement a restructuring. In other words, a corporation is insolvent if there is a reasonably foreseeable expectation at the time of filing that there is a looming liquidity crisis that will result in the debtor company not being able to pay its debts as they become due, without the benefit of a stay of proceedings.<sup>14</sup>
13. Pursuant to section 11 of the CCAA, the Court may “make any order that it considers appropriate in the circumstances” in the proceedings. In exercising its discretion under this part, the Court must be satisfied that the relief is “reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period”.<sup>15</sup>
14. The Supreme Court of Canada has emphasized that the CCAA is remedial in nature and has emphasized that “(r)eorganization serves the public interest by facilitating the survival of companies supplying goods or services crucial to the health of the economy or saving large numbers of jobs.”<sup>16</sup>
15. The Applicants are affiliated within the meaning of section 3 of the CCAA and collectively have claims against them in excess of \$5,000,000 CAD.<sup>17</sup> The Applicants are unable to pay these amounts.<sup>18</sup>
16. The Applicants are in urgent need of protection under the CCAA to preserve value for all stakeholders. Unless the NOI Proceedings are converted to CCAA Proceedings, the Applicants will be deemed bankrupt after September 26, 2024, being the end of the last stay extension. In addition, the six months available to complete the NOI Proceedings under the BIA ends on November 29, 2024. There is insufficient time available under the NOI Proceedings for the Applicants to conclude and close a transaction under the SISP.
17. In order to give effect to the CCAA objectives of allowing the debtor company breathing room to restructure, a debtor is insolvent under *Stelco* if there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured.<sup>19</sup>
18. Accordingly, the Applicants seek to continue the NOI Proceedings under the CCAA, as the CCAA provides the most appropriate forum to close the SISP and conclude the Applicants’ insolvency

---

<sup>14</sup> *Stelco*, *supra* note 13 at para 26; *Target*, *supra* note 13; *Laurentian University of Sudbury*, 2021 ONSC 659 [*Laurentian*] at paras 30-33. **[TAB 6]**

<sup>15</sup> CCAA, *supra* note 1, s 11.

<sup>16</sup> *Re Ted Leroy Trucking [Century Services] Ltd*, 2010 SCC 60 [*Century Services*] at para 16. **[TAB 7]**

<sup>17</sup> CCAA, *supra* note 1, s 3.

<sup>18</sup> Morrow Affidavit, *supra* note 3 at para 59.

<sup>19</sup> *Stelco*, *supra* note 13 at para 26; *Target*, *supra* note 13; *Laurentian*, *supra* note 14.



proceedings. Converting from the NOI Proceedings to the CCAA Proceedings presents the best chance for preserving any remaining value of the Applicants' property in the circumstances, as it will provide additional time during which the successful bidder under the SISP could be selected, the definitive documents completed, and the transaction closed.

### ***Alberta Court has Jurisdiction Over the Proceeding***

19. Subsection 9(1) of the CCAA provides that an application under the CCAA may be made to the Court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.<sup>20</sup>
20. All of the Applicants are private corporations existing under the laws of the Province of Alberta, with their registered offices in Calgary, Alberta.<sup>21</sup>

### **D. The Stay of Proceedings Should be Approved**

21. Section 11.02(1) of the CCAA permits this Court to grant an initial stay of up to 10 days on an application for an initial order, provided such a stay is appropriate and the applicants have acted with due diligence and in good faith.<sup>22</sup>
22. A stay of proceedings is appropriate where it maintains the status quo and provides the debtors the "breathing room" required to restructure with a view to maximizing recoveries, whether the restructuring takes place as a going concern or as an orderly liquidation or wind-down.<sup>23</sup>
23. In this instance, the Applicants require additional time to conclude the SISP. It is in the parties' best interests to ensure the stay of proceedings continues beyond September 29, 2024, until such time as the Applicants can, with the assistance of the Sales Advisor, select a successful bidder under the SISP, return to Court seeking approval of the successful bid under the SISP, and then close that transaction, so as to maintain stability and to reduce the risk of creditors taking advantage of self-help remedies.<sup>24</sup>
24. The Applicants expect to return to Court as soon as possible in the coming weeks to seek approval of a transaction pursuant to the SISP, and therefore seek a stay of proceedings against the Applicants and its property until December 16, 2024 pursuant to the ARIO, in order to provide

---

<sup>20</sup> CCAA, *supra* note 1, s 9(1); *Target*, *supra* note 13 at para 29.

<sup>21</sup> *Morrow Affidavit*, *supra* note 3 at para 8.

<sup>22</sup> CCAA, *supra* note 1, s 11.02(1).

<sup>23</sup> *Target*, *supra* note 13 at para 8.

<sup>24</sup> *Morrow Affidavit*, *supra* note 3 at paras 61-62.

stability and maintain the status quo in respect of the Applicants until the Applicants can finalize a transaction, complete definitive documents, and seek Court approval for a transaction.<sup>25</sup>

25. Although an ARIO is typically granted at a “comeback hearing” that takes place within ten days of the Initial Order being granted, this ten day period is provided to allow the debtor sufficient time to notify its creditors of the comeback hearing. There is nothing in the CCAA prohibiting the truncation of that ten day period. Given that all major stakeholders have been involved in the NOI Proceedings and have notice of these applications, the Applicants propose to bring an application for the ARIO immediately after (and assuming) the Initial Order is granted. It should be noted that all of the Applicants’ creditors have been notified of the insolvency proceedings and consequent stay of proceedings by virtue of the statutory notice that was issued by the Proposal Trustee at the outset of the NOI Proceedings. On this basis, the Applicants’ creditors have been aware of the stay imposed as a result of the NOI Proceedings, and those following the process were also notified about the Administration Charge as well as the SISP.<sup>26</sup>
26. Given the prior notice of the NOI Proceedings, no creditors will be prejudiced by the consecutive granting of the Initial Order and the ARIO.<sup>27</sup>
27. Similar relief was granted by this Court in *Free Rein*. In those proceedings, the comeback application was heard immediately following the initial application, and an ARIO was granted consecutively with the Initial Order. Just like the current scenario, Free Rein was also a conversion from NOI proceedings to CCAA proceedings.<sup>28</sup>

**E. The Appointment of KSV as Monitor Should be Approved**

28. The Applicants seek appointment of KSV as Monitor with enhanced powers in these proceedings, as well as Sales Advisor with respect to the SISP. KSV has consented to act as Monitor and Sales Advisor, subject to Court approval.<sup>29</sup>

**F. The SISP Should be Approved**

29. The Court has the authority to grant the SISP. In considering whether to do so, Courts have had regard to section 36 of the CCAA and the factors to consider when approving a sale outside of the ordinary course of business articulated at subsection 36(3) of the CCAA; namely:

---

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid* at para 63.

<sup>27</sup> *Ibid* at para 64.

<sup>28</sup> In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd (Initial Order) of Neilson J. dated December 7, 2023 [TAB 8]; In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd (Amended and Restated Initial Order) of Neilson J. dated December 7, 2023. [TAB 9]

<sup>29</sup> Morrow Affidavit, *supra* note 3 at para 66.

- a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- b) whether the monitor approved the process leading to the proposed sale or disposition;
- c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d) the extent to which the creditors were consulted;
- e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>30</sup>

30. The Courts have drawn a distinction between the approval of a sales process and the approval of an actual sale itself. Therefore, while these factors may be considered on an application to approve a sales process, they are not determinative.<sup>31</sup>

31. In approving a SISP, Courts have also referred to the well-known *Soundair* principles, which have been expressed in the following terms:

Although the decision to approve a particular form of sales process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale. Those factors were identified by the Court of Appeal in its decision in *Royal Bank v. Soundair Corp.*: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties. Accordingly, when reviewing a sales and marketing process proposed by a receiver a court should assess:

- (i) the fairness, transparency and integrity of the proposed process;

---

<sup>30</sup> CCAA, *supra* note 1 s 36(3).

<sup>31</sup> *Re Brainhunter Inc*, 2009 CanLii 72333 (Commercial List) at para 13 [TAB 10]; *Re Danier Leather Inc*, 2016 ONSC 1044 at para 22. [TAB 11]

- (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,
- (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>32</sup>

32. In considering each of the *Soundair* factors, the Applicants submit that approval of the proposed SISP is appropriate in the circumstances. The process has been specifically designed to enhance participation through the selection of bid deadlines.
33. The timeline of the SISP was designed to balance the Applicants concerns with a lengthy and expensive CCAA proceeding, with the need for sufficient flexibility to allow interested parties a reasonable opportunity to formulate and submit bids to maximize the Applicants' success in the SISP.<sup>33</sup>
34. The Monitor and Sales Advisor have advised that they are in support of the proposed SISP. The Monitor and Sales Advisor will further ensure an independent and fair process in the SISP.<sup>34</sup>

#### **G. The Claims Process Should be Approved**

35. The Applicants are seeking this Court's approval of the Claims Process substantially in the form of the proposed Claims Procedure Order.
36. Pursuant to section 11 of the CCAA, the Court has the jurisdiction to make any order it considers appropriate in the circumstances, which includes the ability to approve a process to solicit claims against a debtor company, its directors and officers as well as against other parties involved in the restructuring against which claims could be filed:<sup>35</sup>

[8] Claims procedure orders are routinely granted under the court's general powers under ss. 11 and 12 of the CCAA. Claims procedure orders are designed to create processes under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation. Claims procedures usually involve establishing a method to communicate to potential creditors that there is a process by which they must prove their claims by a specific date. The procedure usually includes an opportunity for the debtor or its

---

<sup>32</sup> *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, 2012 ONSC 1750 at para 6 [TAB 12], citing *Royal Bank v Soundair Corp* (1991), 83 DLR (4th) 76 (Ont CA) at para 16. [TAB 13]

<sup>33</sup> Morrow Affidavit, *supra* note 3 at para 77.

<sup>34</sup> *Ibid* at para 80.

<sup>35</sup> CCAA, *supra* note 1, s 11.

representative to review and, if appropriate, contest claims made by creditors. If claims are not agreed upon and cannot be settled by negotiation, then the claims procedure orders may go on to establish an adjudication mechanism in court or, typically in Ontario, by arbitration that is then subject to an appeal to the court. Claims procedure orders will usually also establish a “claims bar date” by which claims must be submitted by creditors. Late claims may not be allowed as it can be necessary to establish a cut off to give accurate numbers for voting and distribution purposes.<sup>36</sup>

37. Furthermore, section 12 of the CAA, which provides that the Court has power to “fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement”, has been held to be sufficient authority for a CCAA Court to grant claims process orders and claims bar orders.<sup>37</sup>
38. The Court routinely approves claims processes in CCAA restructurings. A claims process order, and, in particular, the establishment of a claims bar date allows the debtor to “determine the universe of claims and the potential distribution to creditors, and creditors are in a position to make an informed choice as to the alternatives presented to them. If distributions are being made or a plan is presented to creditors and voted upon, stakeholders should be able to place a degree of reliance in the claims bar process.”<sup>38</sup>
39. Claims procedure orders should be both flexible and expeditious in order to achieve the broad remedial objectives of the CCAA and ensure that stakeholders are treated as advantageously and fairly as the circumstances permit in a restructuring process.<sup>39</sup> The order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders.<sup>40</sup>
40. The Claims Process provides for a timely and efficient process for determination of the claims of the Applicants. In particular, it will provide some clarity to potential investors and bidders who wish to participate in the SISF process or the Applicants’ plan of arrangement.<sup>41</sup>
41. The Claims Process has been formulated in consultation with the Monitor and the Monitor supports the establishment of the Claims Process in the form of the proposed Claims Procedure Order.<sup>42</sup>

---

<sup>36</sup> *Re TOYS “R” US (Canada) Ltd*, 2018 ONSC 609 [Toys R Us] at para 8. [TAB 14]

<sup>37</sup> *CCA*, *supra* note 1, s 12; *Toys R Us*, *supra* note 36.

<sup>38</sup> *Re Timminco Ltd*, 2014 ONSC 3393 at para 43. [TAB 15]

<sup>39</sup> *Re ScoZinc Ltd*, 2009 NSSC 136 at para 23. [TAB 16]

<sup>40</sup> *Laurentian*, *supra* note 14 at para 32.

<sup>41</sup> *Morrow Affidavit*, *supra* note 3 at para 83.

<sup>42</sup> *Ibid* at para 84.

**H. The Court Ordered Charges Should be Continued**

42. The Applicants are seeking the continuation of the Court Ordered Charges in the CCAA Proceedings.

***The Administrative Charge***

43. The Administrative Charge granted in the NOI Proceedings secured the legal fees of the Applicants' legal counsel, the professional fees of the Proposal Trustee and its legal counsel, up to a maximum amount of \$300,000.
44. The Applicants are seeking the continuation of the Administrative Charge in the CCAA Proceedings, and to extend the Administrative Charge to secure the professional fees of KSV in its capacity as Monitor, along with the legal fees of the Monitor's legal counsel. In addition, the Administrative Charge would be continued to cover any unpaid fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel, and the Applicants' legal counsel incurred during the NOI Proceedings.
45. Section 11.52 of the CCAA gives this Court the jurisdiction to grant an administrative charge in circumstances such as these. In this case, the work performed by the professionals covered by the Administrative Charge in the NOI Proceedings was integral to processing the NOI Proceedings and continues to be integral to successfully restructure the Applicants. In order to ensure the continued participation of the Monitor and its legal counsel in the CCAA Proceedings, the Administrative Charge is required to protect and secure their fees and disbursements.
46. The Administrative Charge is reasonable and appropriate in the circumstances and is critical to the success of the Applicants' insolvency proceedings. The proposed Administrative Charge is sought in the same quantum as in the NOI Proceedings.

***The D&O Charge***

47. The D&O Charge granted in the NOI Proceedings was granted in favour of the directors and officers of the Applicants to indemnify such directors and officers against any obligations and liabilities that they may incur as director or officer, up to a maximum amount of \$433,000.
48. The Applicants are seeking the continuation of the D&O Charge in the CCAA Proceedings. In addition, the D&O Charge would be continued to cover any obligations and liabilities that arose during the NOI Proceedings.

49. Section 11.51 of the CCAA gives this Court the jurisdiction to grant a directors and officers charge in circumstances such as these. In order to facilitate the restructuring of the Applicants, it was, and continues to be, necessary to have the directors and officers of the Applicants remain in their current positions. In order to ensure the continued participation of these directors and officers in the CCAA Proceedings, the D&O Charge is necessary to indemnify them against any obligations or liabilities that may arise therein.
50. The D&O Charge is reasonable and appropriate in the circumstances and is critical to the success of the Applicants' insolvency proceedings. The proposed D&O Charge is sought in the same quantum as in the NOI Proceedings.

### ***The KERP Charge***

51. The KERP Charge granted in the NOI Proceedings was granted to secure payments to certain key employees of the Applicants pursuant to the KERP. The KERP Charge was granted up to a maximum amount of \$373,928.17.
52. The Applicants are seeking the continuation of the KERP Charge in the CCAA Proceedings in the same maximum amount granted in the NOI Proceedings, less any payments already made to key employees. In addition, the KERP Charge would be continued to cover any amounts owing under the KERP accrued during the NOI Proceedings.
53. There is no express statutory jurisdiction in the CCAA for the Court to approve a KERP. However, this Court has repeatedly held that the Court's general power under section 11 of the CCAA gives it jurisdiction to authorize a KERP and grant a charge to secure the Applicants' obligations thereunder. For example, in approving a KERP in *Cinram International Inc, Re*,<sup>43</sup> Justice Morawetz (as he then was) held:

The CCAA is silent with respect to the granting of KERP charges. Approval of a KERP and a KERP charge are matters within the discretion of the Court.<sup>44</sup>

54. The KERP Charge is fair and reasonable in the circumstances, will provide an incentive for the KERP participants to continue to perform their critical roles throughout the restructuring process, and is, therefore, in the best interests of the Applicants.
55. The list of KERP participants and the amounts of the cash retention payments offered to them were formulated by the Applicants' management with the assistance of the Applicants' legal counsel and in consultation with the Monitor. All of the KERP participants are critical to a successful

---

<sup>43</sup> 2012 ONSC 3767. [TAB 17]

<sup>44</sup> *Ibid* at para 91.

restructuring of the Applicants for the benefit of all stakeholders. Their institutional knowledge and experience cannot be replaced

56. Without the security provided by the KERP Charge, there is concern that the KERP participants would leave their employment prior to the completion of the Applicants' restructuring proceedings. The KERP Charge is necessary to provide the Applicants with the greatest chance of achieving a successful going concern outcome from these proceedings.
57. The proposed KERP Charge is sought in the same quantum as in the NOI Proceedings, less any amounts that have already been paid to key employees pursuant to the KERP.

**V. CONCLUSION**

58. For the foregoing reasons, the Applicants respectfully submit that this Court should grant the form of Orders appended as **Schedule "A", Schedule "B" and Schedule "C"** to the Notice of Application dated September 10, 2024.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10 DAY OF SEPTEMBER 2024.**

**STIKEMAN ELLIOTT LLP**

By: 

---

Karen Fellowes, K.C.

Lawyer for the Applicants



**VI. TABLE OF AUTHORITIES**

<b>TAB</b>	<b>DOCUMENT</b>
1.	<i>Companies' Creditors Arrangement Act</i>
2.	<i>Bankruptcy and Insolvency Act</i>
3.	2011 ONSC 7522 [ <i>Clothing for Modern Times</i> ]
4.	<i>Re Stelco Inc</i> , [2004] OJ No 1257 [ <i>Stelco</i> ]
5.	<i>Target Canada Co</i> , 2015 ONSC 303 [ <i>Target</i> ]
6.	<i>Laurentian University of Sudbury</i> , 2021 ONSC 659 [ <i>Laurentian</i> ]
7.	<i>Re Ted Leroy Trucking [Century Services] Ltd</i> , 2010 SCC 60 [ <i>Century Services</i> ]
8.	In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd (Initial Order) of Neilson J. dated December 7, 2023
9.	In the Matter of a Plan of Compromise or Arrangement of Free Rein Resources Ltd (Amended and Restated Initial Order) of Neilson J. dated December 7, 2023
10.	<i>Re Brainhunter Inc</i> , 2009 CanLii 72333 (Commercial List)
11.	<i>Re Danier Leather Inc</i> , 2016 ONSC 1044
12.	<i>CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd</i> , 2012 ONSC 1750
13.	<i>Royal Bank v Soundair Corp</i> (1991), 83 DLR (4th) 76 (Ont CA)
14.	<i>Re TOYS "R" US (Canada) Ltd</i> , 2018 ONSC 609 [ <i>Toys R Us</i> ]
15.	<i>Re Timminco Ltd</i> , 2014 ONSC 3393
16.	<i>Re ScoZinc Ltd</i> , 2009 NSSC 136
17.	<i>Cinram International Inc, Re</i> , 2012 ONSC 3767