

SUPREME COURT OF NOVA SCOTIA

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

AND IN THE MATTER OF A PLAN OR ARRANGEMENT OF SALTWIRE NETWORK INC., THE HALIFAX HERALD LIMITED, HEADLINE PROMOTIONAL PRODUCTS LIMITED, TITAN SECURITY & INVESTIGATION INC., BRACE CAPITAL LIMITED AND BRACE HOLDINGS LIMITED

BETWEEN:

Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP,
each by their general partner, Fiera Private Debt GP Inc.

Applicants

-and-

Saltwire Network Inc., The Halifax Herald Limited, Headline Promotional Products Limited,
Titan Security & Investigation Inc., Brace Capital Limited and Brace Holdings Limited

Respondents

BRIEF OF LAW

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BRIEF OF LAW

To the Honourable Justice Keith, KSV Restructuring Inc., in its capacity as court-appointed CCAA¹ monitor (the “**Monitor**”), submits:

PART I - OVERVIEW

1. The Monitor brings this motion seeking:
 - (a) an Approval and Vesting Order consisting of the following substantive relief (the “**AVO**”):

¹ Capitalized terms not defined herein have the meaning defined in the Amended and Restated Initial Order dated March 22, 2024 (the “**ARIO**”) and/or the Fourth Report of the Monitor dated July 30, 2024 (the “**Fourth Report**”).

- (i) approving the APA and the Media Companies Transaction;
 - (ii) vesting the Purchased Assets (as defined in the APA) in PNI Maritimes LP, an affiliate of Postmedia Network Inc. (“**Postmedia**”), free and clear of encumbrances, upon execution and delivery of a certificate by the Monitor confirming completion of the Media Companies Transaction; and
 - (iii) certain releases as described below;
- (b) an Ancillary Order:
- (i) declaring that the Media Companies meet the criteria prescribed by section 3.2 of the WEPP Regulations and that the Media Companies’ employees to be terminated upon or after completion of the Media Companies Transaction are eligible to receive payments under and in accordance with the WEPPA;
 - (ii) sealing the Confidential Appendix to the Fourth Report;
 - (iii) approving amendments to the Interim Financing Facility, including an increase to the maximum principal amount that the Media Companies may borrow under that facility of \$7 million;
 - (iv) extending the Stay Period to December 13, 2024; and
 - (v) approving the Fourth Report and the Monitor’s activities described therein.

PART II - FACTS

Background²

2. The Companies are private companies incorporated under the laws of Nova Scotia.
3. The Media Companies publish The Chronicle Herald, the Cape Breton Post, The Telegram (St. Johns) and The Guardian (Charlottetown), as well as several digital publications. The Monitor understands that these are the largest media and newspaper businesses in Atlantic Canada.
4. Herald's head office and principal address is located at 2717 Joseph Howe Drive, Halifax, where it operates from leased premises. The registered office of Saltwire, Headline and Titan is 600-1741 Lower Water Street, Halifax.
5. Saltwire owns the following locations (the "**Real Properties**") from which it presently operates (or formerly operated), each of which is listed for sale, except Bluewater (as defined below):
 - (a) 311 Bluewater Road, Bedford ("**Bluewater**");
 - (b) 2 Second Street, Yarmouth;
 - (c) 255 George Street, Sydney; and
 - (d) 36 Austin Street, St. John's.
6. Fiera has senior ranking mortgages on the Real Properties. The Monitor's Nova Scotia counsel has provided the Monitor with an opinion that, subject to customary assumptions and qualifications, the security interests granted by the Companies to Fiera in their personal property

² Fourth Report of KSV Restructuring Inc. as CCAA Monitor ("**Fourth Report**"), at s. 2, paras. 1-2, 6-9.

and the Real Properties are valid and enforceable as against the Companies, and would be effective as against a trustee in bankruptcy of the Companies.

7. As of the date of the ARIO, the Media Companies had approximately 390 employees and 800 independent contractors. Approximately 25% of the Media Companies' employees are union members. As of the date of the Fourth Report, the Media Companies had approximately 363 employees and 800 independent contractors.

The Media Companies SISP

8. The following table provides a summary of key process milestones and dates under the Media Companies SISP.³

Milestone	Deadline
Commencement Date	March 26, 2024
Phase 1 Bid Deadline	5pm AST, April 25, 2024 (“ Phase 1 Bid Deadline ”)
Phase 2 Bid Deadline	5pm AST, May 24, 2024 (“ Phase 2 Bid Deadline ”)
Court Approval Date	No later than June 28, 2024
Closing Date Deadline	July 31, 2024

9. As set out above, the Media Companies SISP had two stages⁴:

- (a) Phase 1 - intended to solicit indicative non-binding letters of intent (“**LOIs**”) from interested parties; and
- (b) Phase 2 - parties who submitted qualifying LOIs in Phase 1 would be permitted to participate in Phase 2 and would be required to submit binding offers on or before the Phase 2 Bid Deadline.

³ Fourth Report, at s. 3, para. 2.

⁴ Fourth Report, at s. 3, para 3.

10. Following the date of the SISP Approval Order, the SISP Agent worked with the CRO and the Monitor regarding all aspects of the SISP and provided them with regular progress updates.⁵

11. The SISP Agent's activities following the SISP Approval Order were summarized in the Second Report of the Monitor dated April 23, 2024 (the "**Second Report**").⁶

12. In the Supplement to the Second Report dated April 26, 2024, the Monitor reported that:⁷

(a) as of the Phase 1 Bid Deadline, several LOIs were submitted from interested parties for all or part of the Media Companies' business and assets, including offers that, if completed, would see the business continue on a going-concern basis. The LOIs were subject to various conditions and further due diligence; and

(b) the Monitor intended to work with the CRO and the SISP Agent to attempt to successfully complete a transaction. The SISP Agent and the CRO, in consultation with the Monitor, would be determining the process to be followed in pursuing Qualified LOIs in Phase 2 and which participants would be requested to submit binding offers on or before the Phase 2 Bid Deadline.

13. The SISP Agent, the CRO and the Monitor discussed the LOIs with Fiera, the Media Companies' most significant financial stakeholder. The Media Companies and the SISP Agent, with the assistance of the CRO, under the Monitor's oversight, also continued to facilitate due diligence with several Potential Bidders.⁸

⁵ Fourth Report, at s. 3, para. 4.

⁶ Fourth Report, at s. 3, para. 5.

⁷ Fourth Report, at s. 3, para. 6.

⁸ Fourth Report, at s. 3, para. 7.

14. In its Third Report, the Monitor advised that “[a]s of the Phase 2 Bid Deadline, four offers were submitted from interested parties for all or part of the Media Companies’ business and assets, including offers that, if completed, would see the entirety of the business continue on a going-concern basis”, and that “[o]n June 14, 2024, the SISP Agent advised all [but one bidder] that the Media Companies were not considering their bids at this time”.⁹

15. Following the Phase 2 Bid Deadline, the Media Companies, the SISP Agent, the CRO and Fiera, in consultation with the Monitor, continued negotiations with Postmedia, including facilitating Postmedia’s remaining due diligence.¹⁰

16. Postmedia’s bid was considered superior to the others due to, among other reasons:¹¹

- (a) it provides a platform to maintain journalism in Atlantic Canada and preserves employment for certain of the Media Companies’ employees;
- (b) Postmedia is believed to be well positioned to capitalize on the synergies required to make the Media Companies’ business successful in the long-term;
- (c) Postmedia’s due diligence was more advanced than other bidders; and
- (d) it provides Fiera with the opportunity for recoveries based on the future performance of the Media Companies’ business that can only be realized through synergies with Postmedia.

⁹ Fourth Report, at s. 3, para. 8.

¹⁰ Fourth Report, at s. 3, para. 9.

¹¹ Fourth Report, at s. 3, para. 10.

17. None of the other bids contemplated any greater or higher recovery for Fiera or any other stakeholders. Postmedia was therefore considered to be the “Successful Bidder” and its bid was considered the “Successful Bid” as such terms are defined in the SISP Approval Order.¹²

18. Extensive negotiations among Postmedia, the Companies, Fiera and the Monitor ultimately led to the execution of the APA on July 25, 2024.¹³

19. The APA and the Media Companies Transaction are described in detail in the Fourth Report.¹⁴

20. The CRO has submitted an affidavit expressing his support for the Media Companies Transaction, in which he deposes, among other things, that:¹⁵

- (a) in his capacity as court-appointed CRO, he was involved in the development of the Media Companies SISP;
- (b) he was consulted with and made decisions as were mandated by the SISP Approval Order in conjunction with the Sales Agent and the Monitor;
- (c) he was kept apprised of the significant efforts made by the Sales Agent to market the shares and/or assets of the Media Companies; and
- (d) in his view, the Media Companies Transaction constitutes the only viable transaction at this time, and he does not believe that further marketing would lead

¹² Fourth Report, at s. 3, para. 10.

¹³ Fourth Report, at s. 3, para. 11.

¹⁴ Fourth Report, at s. 3.1.

¹⁵ Affidavit of David Boyd (“**Boyd Affidavit**”), sworn July 31, 2024, at paras. 6-9.

to any greater recovery for stakeholders, nor do the Media Companies have sufficient liquidity to support any further marketing.

21. The Media Companies Transaction is conditional on Court approval and, among other things, certain union concessions which are to be satisfied by August 5, 2024. The Monitor will advise the Court of the status of those conditions on or before the return date of this motion.¹⁶

22. On July 26, 2024, Postmedia issued a press release announcing its execution of the APA and on July 30, 2024, the Media Companies also issued a press release concerning the Media Companies Transaction.¹⁷

23. The Fourth Report includes a summary of the Media Companies SISP prepared by the SISP Agent.¹⁸

24. The Fourth Report also includes as a confidential appendix a summary of the offers submitted by the Phase 2 Bid Deadline.¹⁹

WEPPA²⁰

25. The Media Companies presently have approximately 363 employees. On or after August 8, 2024, those employees not retained by PMI upon closing will either be terminated or they will be offered the opportunity to continue their employment by the Media Companies for an interim period (the “**Terminated Employees**”) pursuant to the transition services agreement to be entered into pursuant to the APA (the “**TSA**”).

¹⁶ Fourth Report, at s. 3.2, para. 1(i).

¹⁷ Fourth Report, at s. 3, para. 12.

¹⁸ Fourth Report, at s. 3, para. 13.

¹⁹ Fourth Report, at s. 3, para. 13.

²⁰ Fourth Report, at s. 3.3, paras. 1-3.

26. Earlier in these proceedings, the Court issued an order declaring that Headline's terminated employees are subject to the Wage Earner Protection Program ("WEPP"), which allows them to make claims of up to \$8,508 for unpaid wages, severance and termination pay.

27. All Terminated Employees are to receive wages and vacation pay to their last day of employment. Making WEPP available to Terminated Employees will provide them the opportunity to receive through WEPP some or all of their severance and termination pay, which, as unsecured claims, would otherwise not be the case.

Interim Financing Facility²¹

28. The terms of the Interim Financing Facility were detailed in the Pre-filing Report and the First French Affidavit. The Interim Financing Facility was amended and restated pursuant to the Amended and Restated Interim Financing Term Sheet and provided for a borrowing limit of up to \$1.5 million. The Court approved the Amended and Restated Interim Financing Term Sheet pursuant to the ARIIO. The Interim Financing Term Sheet has been amended three times, resulting in the present borrowing limit of \$4.1 million.

29. Based on the Cash Flow Forecast and the accrued obligations referenced in the Fourth Report, the Companies require additional funding up to the Stay Extension Date, bringing total projected borrowing under the Interim Financing Term Sheet to \$7 million.

30. The Monitor and the CRO discussed the Companies' borrowing requirements with Fiera. Fiera has advised that it is prepared to further increase the limit under the Amended and Restated

²¹ Fourth Report, at s. 6.1, paras. 1-3, 5.

Interim Financing Term Sheet subject to the certain amendments (the “**Second Amendment to Interim Financing Term Sheet**”), including:

- (a) Facility Amount: \$7 million, with the final \$2.9 million to be fully drawn pursuant to a single advance when required in accordance with the Cash Flow Forecast, provided that the APA has not been terminated.
- (b) Commitment Fee and Standby Fee: 1%, plus applicable taxes, of the incremental \$2.9 million amount, fully earned by the Interim Lender upon execution of the Second Amendment to Interim Financing Term Sheet, which amount shall be deducted from the first advance made after Court approval.
- (c) Additional conditions: (i) Court approval of the Second Amendment to Interim Financing Term Sheet; (ii) Court approval of the APA; and (iii) extension of the Stay Period to December 13, 2024.

31. The Second Amendment to the Interim Financing Term Sheet also provides that if the APA is not approved by the Court, Fiera will work with the Media Companies and the Monitor to provide the funding required to wind-down the operations of the Media Companies in accordance with a revised cash flow which would be prepared and be subject to the approval of the Interim Lender so as to satisfy accrued and unpaid obligations since the Filing Date.

Stay Extension²²

32. The Stay Period currently expires on August 9, 2024.

²² Fourth Report, at s. 9, paras. 1-2.

33. The Monitor recommends that the Stay Period be extended to December 13, 2024 for the following reasons, among others:

- (a) the Companies are continuing to act in good faith and with due diligence to advance their restructuring;
- (b) the Stay Extension will allow for completion of the Media Companies Transaction or to wind down the business if the Media Companies Transaction is not approved or does not close;
- (c) the Stay Extension will allow for time to deal with the post-closing activities discussed in Section 3.4 of the Fourth Report, including to market the Real Properties for sale;
- (d) the Stay Extension will provide an opportunity to complete a transaction for the Titan assets;
- (e) the Monitor does not believe that any creditor will be materially prejudiced if the extension is granted as the Cash Flow Forecast projects that the Companies are forecasted to be able to meet their obligations;
- (f) as of the date of the Fourth Report, the Monitor is not aware of any party opposed to the requested extension; and
- (g) subject to Court approval of the proposed increase to the Interim Financing Facility, the Companies are projected to have sufficient liquidity to fund operations and the costs of these proceedings, as reflected in the Cash Flow Forecast.

PART III - ISSUES AND ANALYSIS

34. The issues addressed below in this Brief include whether this Court should approve: (a) the Media Companies Transaction; (b) the Releases; (c) the proposed amendments to the DIP Facility; (d) the WEPP relief; (e) the Monitor's activities; and (f) the proposed extension of the Stay Period.

PART IV - LAW & ARGUMENT

A. Approval of the Media Companies Transaction

35. Under s. 36 of the CCAA, this Court may authorize a debtor to sell or otherwise dispose of its assets outside of the ordinary course of business free and clear of any security, charge or other restriction. A sale to preserve the business as a going-concern is consistent with the objectives of the CCAA.²³

36. In deciding whether to exercise its discretion to approve a sale transaction, this Court must review the transaction as a whole and decide whether it is appropriate, fair, and reasonable. This determination is made in the context of the primary objectives of the CCAA, which include avoiding the devastating social and economic costs of liquidation of a debtor company's assets.²⁴

37. Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

²³ *Consumers Packaging Inc., Re* (2001), 2001 CanLII 6708 at [paras. 5, 9](#) (CA); *Nortel Networks Corp., Re*, 2009 CanLII 39492 (ON SC) at [paras. 35 – 40, 48](#) (SC) [**Nortel**]; PCAS Patient Care Automation Services Inc. (Re), 2012 ONSC 3367 at [para. 35](#) [**PCAS**].

²⁴ PCAS at [para. 54](#), citing *White Birch Paper Holding Co., Re*, 2010 QCCS 4915 at [para. 49](#) [White Birch].

- (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.

38. The s. 36(3) factors are not intended to be exhaustive and the principles established in *Royal Bank v. Soundair Corp.* for approval of a sale in an insolvency proceeding remain relevant.²⁵ Applying these principles, courts examine: (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (b) the interests of all parties; (c) the efficacy and integrity of the process by which offers were obtained; and (d) whether there has been unfairness in the working out of the process.²⁶

39. In this case, the Monitor recommends and respectfully submits that the APA and the Media Companies Transaction should be approved for, among other things, the following reasons²⁷:

²⁵ *Harte Gold (Re)*, 2022 ONSC 653 at [para 20](#) [Harte Gold].

²⁶ *Royal Bank v. Soundair Corp.* 1991 CanLII 2727 (ON CA)

²⁷ Fourth Report, at s. 3.2, para. 1.

- (a) the Media Companies SISP was a continuation of a sale and investment solicitation process that the Media Companies commenced many months prior to the commencement of this CCAA proceeding and was carried out by the SISP Agent, at that time in its capacity as financial advisor to the Media Companies;
- (b) the SISP Agent, the CRO and the Monitor believe that the Media Companies SISP was commercially reasonable and carried out in accordance with the SISP Approval Order. The Media Companies SISP canvassed the market for strategic and financial parties (including non-domestic parties) with experience in the media sector, as well as those having an interest in distressed businesses. The SISP Agent considered sale, financing and investment opportunities, and the SISP Agent considered a wide spectrum of potential transaction structures;
- (c) the Media Companies Transaction is structured to generate recoveries based on the future success of their businesses. It provides Fiera an opportunity to generate significant recoveries on its loans to the Media Companies over several years. No other available third-party transactions provided the same opportunity or for a better recovery for Fiera or other stakeholders;
- (d) the SISP Agent, the CRO and the Monitor are of the view that additional time marketing the Media Companies' business and assets will not result in a superior transaction. Additionally, Fiera has advised that it is not prepared to continue to fund the Media Companies' operating losses. Subject to internal approval and Court approval of the Media Companies Transaction, Fiera is prepared to increase the amount of the Interim Financing Facility to \$7 million, failing which it has advised that it is only prepared to provide the Media Companies with funding necessary to expediently wind down their businesses;

- (e) the Monitor and the CRO believe that the commercial terms of the APA are reasonable in the present circumstances, including the distressed state of the media industry, as well as the transition in the industry from traditional media (including print) to digital media;
- (f) the Media Companies Transaction provides for continuation of a significant portion of the Media Companies' business, including employment for certain of its employees, both on an interim basis pursuant to the TSA and on a permanent basis under the Media Companies Transaction;
- (g) absent the Media Companies Transaction, the Media Companies' business is likely to be immediately wound down. This would result in job losses and Atlantic Canada's largest media business would come to an end; and
- (h) Fiera, the Companies' primary economic stakeholder, has been consulted throughout the course of the SISP and supports approval of the Media Companies Transaction, including the terms and payment of the Break Fee in the event of an Alternative Transaction.

B. Approval of the Releases

40. The proposed AVO contains releases (the "**Releases**") in favour of (a) the current directors, officers and advisors of the Sellers; (b) the Monitor, its affiliates and their respective advisors, (c) Postmedia, the Buyer and their respective affiliates and their respective advisors; and (d) the Applicants, the DIP Lender and their respective affiliates and their respective advisors (in such capacities, collectively, the "**Released Parties**", which for greater certainty, do not include the Sellers), from claims based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Closing Time or undertaken or completed

with respect to the Transaction, the Asset Purchase Agreement and the Closing Documents (collectively, subject to the excluded matters below, the “**Released Claims**”).²⁸

41. The Releases do not release or discharge: (a) any claim that is not permitted to be released under s. 5.1(2) of the CCAA or claims with respect to any act or omission that is finally determined by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence; or (b) any obligations of any of the Released Parties under or pursuant to the Asset Purchase Agreement, the Closing Documents and/or any agreement, document, instrument, matter or transaction involving the Sellers entered into pursuant to the foregoing.²⁹

42. The term “Releasing Parties” under the proposed Approval and Vesting Order includes all Persons other than the Sellers and their respective current and former affiliates.³⁰

43. Under s. 11 of the CCAA, and subject to certain restrictions, this Court may make any order that it considers appropriate in the circumstances.

44. CCAA courts have frequently approved releases, both in the context of a plan and in the absence of a CCAA plan, both on consent and in contested matters, in favour of various parties, including directors and officers of debtor companies, employees, shareholders, monitors, counsel, buyers, and their respective advisors.³¹

45. In deciding whether to approve the Releases in the context of the Media Companies Transaction, this Court must consider whether: (a) the consideration to be received for the assets is reasonable and fair, taking into account their market value; (b) the Released Parties were necessary to the Transaction; (c) the claims to be released are rationally connected to the purpose

²⁸ Draft Saltwire and The Herald Sale Approval and Vesting Order (“**AVO**”), at para. 15.

²⁹ AVO, at para. 16.

³⁰ AVO, at para. 15.

³¹ *Harte Gold* at [para. 79](#).

of the Transaction and necessary for it; (d) the Transaction could succeed without the Releases; (e) the Released Parties contributed to the Transaction; and (f) the Releases benefit the Companies as well as the Companies' creditors generally. It is not necessary for each of these factors to apply in order for the Releases to be granted.³²

46. The Releases are consistent with those previously approved by CCAA Courts and are aligned with the factors described in paragraph 45 above.

47. The Releases are rationally connected to the Media Companies Transaction. Among other things, the APA provides that the form of AVO be in form and substance satisfactory to the Buyer, which has insisted on a release in its favour.

48. The Released Parties have, in varying degrees, made significant contributions to the development and implementation of the proposed transaction and the continued viability of the Media Companies' business as a going-concern. If the AVO is granted and the Media Companies Transaction is consummated, the Media Companies' business will continue under new ownership, and various stakeholders will have the benefit of: (a) an ongoing relationship with the business; or (b) proceeds of the transaction. The Release is appropriately tailored and extends to those parties who have provided significant value to the Companies' restructuring. Notice of the Releases and the draft AVO containing their specific wording have been provided to the service list.

³² *Lydian International Limited (Re)*, 2020 ONSC 4006 at [para. 54](#); *Re Green Relief Inc.*, 2020 ONSC 6837 at [para. 27](#); *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at [para. 128](#); *Harte Gold* at [paras. 79-86](#); and *LoyaltyOne, Co.*, Approval and Vesting Order dated May 12, 2023 (CV-23-00696017-00CL) (Ont. Sup. Ct. J. [Commercial List]) at [paras. 21-22](#).

C. Proposed Amendments to the DIP Facility

49. In determining whether to grant a charge to secure the interim financing sought, the following factors described in Section 11.2 of the CCAA are to be considered:³³

- (a) whether notice has been given to secured creditors who are likely to be affected by the subject charge;
- (b) whether the amount of the interim financing to be secured by the charge is appropriate and necessary having regard to the debtor's cash flow statement;
- (c) whether the charge secures an obligation that would exist before the order is made; and
- (d) the factors listed in subsection 11.2(4) of the CCAA.

50. The factors listed under subsection 11.2(4) of the CCAA are: (a) the period during which the Companies are expected to be subject to proceedings under the CCAA; (b) how the Companies' business and financial affairs are to be managed during the CCAA proceedings; (c) whether the Companies' management has the confidence of its major creditors; (d) whether the proposed interim financing would enhance the prospects of a viable compromise or arrangement; (e) the nature and value of the Companies' property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) the Monitor's report filed in connection with the Companies' cash-flow statement.³⁴

³³ Companies' Creditors Arrangement Act, RSC 1985, c C-36, at [s. 11.2](#) [CCAA].

³⁴ CCAA, [s 11.2\(4\)](#).

51. The Monitor respectfully submits that the terms of the Second Amendment to the Interim Financing Term are reasonable and appropriate for the following reasons:³⁵

- (a) the Cash Flow Forecast reflects that the Companies will borrow \$7 million under the Amended Interim Financing Facility, with a portion of the funding to be used to satisfy obligations payable following the Cash Flow Forecast period, net of projected future recoveries;
- (b) the financial terms of the Second Amendment to the Interim Financing Term Sheet, including the incremental fees for the additional \$2.9 million, are reasonable based on comparable facilities as addressed in the Pre-Filing Report and the Second Report;
- (c) the CRO, on behalf of the Companies, has agreed to the terms of the Second Amendment to Interim Financing Term Sheet and has advised the Monitor that he believes the terms are commercially reasonable; and
- (d) without the DIP Increase, the Companies are not projected to have sufficient funding to operate their business, complete the Media Companies Transaction and fund these proceedings.

D. WEPP Relief³⁶

52. Subsection 5(1) of the WEPPA provides that an individual is eligible to receive payment under the WEPP if, among other things: a) the individual's employment is ended for a reason prescribed by regulation; b) the individual is owed eligible wages by a former employer; c) the

³⁵ Fourth Report at s. 6, para 4 and s. 6.1, para. 6.

³⁶ Fourth Report at s. 3.3, paras. 4-7.

former employer is subject to proceedings under the CCAA; and d) a court determines under subsection 5(5) of the WEPPA that the criteria prescribed by regulation are met.

53. Pursuant to Section 3.2 of the WEPP Regulations, the Court “may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.”

54. The proposed WEPPA declaration is intended to assist the Terminated Employees to access benefits under the WEPPA shortly after their termination and subject to the WEPP Regulations.

55. The Monitor recommends that the Court make an Order declaring that the Media Companies are a former employer for the purposes of subsection 5(5) of the WEPPA. If such declaration is made, the Monitor intends to work with the Media Companies and eligible employees to assist them to file WEPP claims with Service Canada.

E. Approval of the Monitor’s Activities

56. As noted by R.S.J. Morawetz (as he then was) in *Target Canada Co. (Re)*³⁷, requests to approve a CCAA monitor’s report are not unusual, and there are good policy and practical reasons for the court to do so, including:

- (a) allowing the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;

³⁷ *Target Canada Co. (Re)*, 2015 ONSC 7574 at [para 23](#).

- (b) bringing the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) providing certainty and finality to processes in a CCAA proceeding and activities undertaken (e.g., asset sales), all parties having been given an opportunity to raise specific objections and concerns;
- (d) enabling the court, tasked with supervising the CCAA process, to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) providing protection for the monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from the delay in distributions that would be caused by:
 - (i) re-litigation of steps taken to date; and
 - (ii) potential indemnity claims by the monitor.

57. For all of these reasons, approval of the Fourth Report and the Monitor's activities described therein is appropriate at this stage.

F. Extension of the Stay Period

58. Pursuant to Section 11.02(1) of the CCAA, the Court has the jurisdiction to extend the stay of proceedings after an initial order has been made.³⁸

59. The Court may not make the order unless: (a) the Court is satisfied that the circumstances exist that make the order appropriate; and (b) the Court is satisfied that the debtor has acted, and is acting, in good faith and with due diligence.³⁹

60. The proposed extension of the Stay Period is appropriate in this case for the reasons set out above in paragraph 33.

PART V - RELIEF SOUGHT

61. For the reasons set out above, the Monitor respectfully requests the relief set out above in paragraph 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of August, 2024.



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³⁸ CCAA, [s 11.02\(1\)](#).

³⁹ CCAA, [s 11.02\(3\)](#).

SCHEDULE “A”

LIST OF AUTHORITIES

1. [Consumers Packaging Inc. \(Re\), 2001 CanLII 6708 \(ON CA\)](#)
2. [Nortel Networks Corporation \(Re\), 2009 CanLII 39492 \(ON SC\)](#)
3. [PCAS Patient Care Automation Services Inc. \(Re\), 2012 ONSC 3367 \(CanLII\)](#)
4. [White Birch Paper Holding Company \(Arrangement relatif à\), 2010 QCCS 4915 \(CanLII\)](#)
5. [Harte Gold Corp. \(Re\), 2022 ONSC 653 \(CanLII\)](#)
6. [Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 \(ON CA\)](#)
7. [Lydian International Limited \(Re\), 2020 ONSC 4006 \(CanLII\)](#)
8. [Re Green Relief Inc., 2020 ONSC 6837 \(CanLII\)](#)
9. [Arrangement relatif à Blackrock Metals Inc., 2022 QCCS 2828 \(CanLII\)](#)
10. *LoyaltyOne, Co.*, Approval and Vesting Order dated May 12, 2023 (CV-23-00696017-00CL) (Ont. Sup. Ct. J. [Commercial List])
11. [Target Canada Co. \(Re\), 2015 ONSC 7574 \(CanLII\)](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

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

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.

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.