

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

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**BRIEF OF LAW**

To the Honourable Justice Keith, KSV Restructuring Inc., in its capacity as court-appointed CCAA<sup>1</sup> monitor (the “**Monitor**”), submits:

**PART I - OVERVIEW**

1. The Monitor brings this motion seeking orders, among other things: (a) approving an extension of the Stay Period to August 9, 2024; (b) approving the KERP and granting the KERP Charge; (c) approving amendments to the DIP Facility, including an increase to the maximum principal borrowing amount to \$4.1 million; and (d) other relief ancillary thereto.

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<sup>1</sup> 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 Third Report of the Monitor dated June 19, 2024 (the “**Third Report**”).



## PART II - FACTS

### Prior Court Orders

2. Pursuant to an order (the “**Initial Order**”) issued by this Court on March 13, 2024 (the “**Filing Date**”)<sup>2</sup>, the Respondents (also referred to herein as the “**Companies**”) were granted protection under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”). The Initial Order, *inter alia*:

- (a) granted a stay of proceedings in favour of the Companies and their directors and officers to and including March 22, 2024 (the “**Stay Period**”);
- (b) appointed David Boyd, a representative of Resolve Advisory Services Ltd., as Chief Restructuring Officer (the “**CRO**”);
- (c) approved the DIP Facility in the maximum principal amount of \$500,000 made available by the Applicants; and
- (d) granted the Administration Charge, the D&O Charge and the Interim Lender’s Charge (the “**Court-Ordered Charges**”).

3. Following the hearing of the ‘comeback motion’ on March 22, 2024, the Court made orders *inter alia*:

- (a) amending and restating the Initial Order, including to provide for (i) an extension of the Stay Period to May 3, 2024; (ii) an increase to the maximum borrowing

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<sup>2</sup> Initial Order, Third Report, s. 1.0, para. 4.

amount under the DIP Facility to \$1.5 million: (iii) an increase in the amounts of the Court-Ordered Charges; (iv) expansion of the CRO's powers and authority; and (v) expansion of the Monitor's powers and authority;<sup>3</sup> and

- (b) approving a sale and investment solicitation process (the “**SISP**”) for the business and assets of The Halifax Herald Limited and Saltwire Network Inc. (the “**Media Companies**”).<sup>4</sup>

### **Background**<sup>5</sup>

4. The Companies are private companies incorporated under the laws of Nova Scotia.

5. 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.

6. The Media Companies recently launched a “last mile” parcel delivery business known as “Door Direct”, which utilizes their existing carrier network. The Media Companies believe that this business has the potential to materially improve their viability. The Door Direct business is in its development stages.

7. Titan Security & Investigation Inc. (“**Titan**”) is a full-service security and health care services company with approximately 100 full and part-time employees.

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<sup>3</sup> ARIQ, Appendix A to the Third Report.

<sup>4</sup> SISP Approval Order, Appendix B to the Third Report.

<sup>5</sup> Third Report at s. 2.0, paras. 1-10.

8. Headline Promotional Products Limited (“**Headline**”) is a promotional products company that procures branded novelty and other products for corporate buyers. As of the Filing Date, it employed six individuals. The Companies decided to wind down Headline’s business as it is not profitable. Headline is no longer operating.

9. Brace Capital Limited is the sole shareholder of Headline and Titan. Brace Holdings Limited is the sole shareholder of the Media Companies and Brace Capital.

10. 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.

11. Saltwire owns the following locations 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.

10. As of the date of the ARIIO, the Media Companies had approximately 390 employees and 800 independent contractors. Approximately 25% of the Media Companies’ employees are union members. Since that time, 14 employees have been terminated, including eight at the Media Companies and six at Headline.

**DIP Facility**<sup>6</sup>

12. The Companies, with the assistance of the CRO and the Monitor, prepared a cash flow forecast for the period June 15, 2024 to August 17, 2024 (the “**Cash Flow Forecast**”). The Cash Flow Forecast reflects that the Companies are expected to require borrowings of up to approximately \$1.1 million under the DIP Facility during the forecast period, for total borrowings of up to \$4.1 million since the Filing Date.

13. 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 Interim Financing Term Sheet subject to the following amendments (the “**First Amendment to Interim Financing Term Sheet**”):

Facility Amount: \$4.1 million

Commitment Fee and Standby Fee: 1%, plus applicable taxes, of the incremental \$1.1 million amount, fully earned by the Interim Lender upon execution of the First Amendment to Interim Financing Term Sheet, which amount shall be deducted from the first Advance made after Court approval. The unused portion of the Facility Amount shall also be equal to a 1% standby fee, payable monthly in arrears on the first day of each month.

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<sup>6</sup> Third Report at ss. 6.0., 6.1.

Additional Conditions: Additional conditions include:

- The Court shall have issued an order amending the ARIIO in form and substance acceptable to the Interim Lender and its legal counsel, which shall, among other things: (i) increase the maximum borrowing amount to \$4.1 million; and (ii) confirm the Interim Lender's Charge secures the increased borrowing amount, which shall be in full force and effect and shall have not been stayed, reversed, vacated, rescinded, modified or amended in any respect adversely affecting the Interim Lender unless otherwise agreed by the Interim Lender; and
- The Court shall have granted an order extending the Stay Period to August 9, 2024.

14. The Monitor understands that the Interim Lender is prepared to fund the Companies and these proceedings in accordance with the Cash Flow Forecast, subject to the Court granting the requested stay extension and approving the First Amendment to Interim Financing Term Sheet.

#### **KERP**<sup>7</sup>

15. The Companies have developed a proposed key employee retention plan ("**KERP**") in consultation with the Monitor.

16. The Companies have proposed that seven employees participate in the KERP (the "**KERP Employees**"). The Companies advised the Monitor that the KERP Employees represent individuals integral to the Companies' business, the SISF and the Titan Sales Process. The KERP is intended to incentivize the KERP Employees to assist the Companies through to completion of a transaction for the Media Companies' and Titan's businesses and/or the restructuring proceedings.

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<sup>7</sup> Third Report at s. 5.0.

17. For confidentiality reasons, the identity of the KERP Employees and the amounts payable to each KERP Employee are not included in the Third Report, but can be made available to the Court should it request such information.

18. Payments under the KERP in the aggregate amount of up to \$135,000 (plus applicable employer remittances) are to be made upon the earliest of: a) completion of a transaction under the SISP and Titan Sales Process, as applicable; b) August 31, 2024; or c) termination of the CCAA proceeding, in each case a “Trigger Date”. KERP Employees would not be entitled to receive their portion of the above noted payment if, prior to a Trigger Date, they voluntarily resign from their employment or if they are terminated for cause.

19. The KERP contemplates that the payments under the KERP (i.e., the \$135,000) are to be secured by a Court-ordered charge on the Companies’ assets, subject only to the Administration Charge and SISP Agent Charge created under the ARIO (the “**KERP Charge**”).

### **Stay Extension**<sup>8</sup>

20. The Stay Period currently expires on June 28, 2024.

21. The Monitor recommends that the Stay Period be extended to August 9, 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;

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<sup>8</sup> Third Report at s 9.0.

- (b) the Stay Extension will allow for the SISP to continue in accordance with the SISP Approval Order to identify a going-concern transaction for the Media Companies' business which, in the Monitor's view, is in the best interests of the Media Companies and their stakeholders;
- (c) the Stay Extension will also allow for the Titan Sales Process to continue which, in the Monitor's view, is in the best interests of Titan and its stakeholders;
- (d) 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 should be able to meet their obligations in the ordinary course;
- (e) as of the date of this Third Report, the Monitor is not aware of any party opposed to the requested extension; and
- (f) subject to Court approval of the proposed increase to the DIP 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**

22. The issues addressed below in this Brief include: (a) the proposed extension of the Stay Period; (b) proposed amendments to the DIP Facility; and (c) the proposed KERP and KERP Charge.

## **PART IV - LAW & ARGUMENT**

### **The Stay Period Should be Extended**

23. 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.<sup>9</sup>

24. 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.<sup>10</sup>

25. The proposed extension of the Stay Period is appropriate in this case for the reasons set out above in paragraph 21.

### **The Proposed Amendments to the DIP Facility Should be Approved**

26. 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:<sup>11</sup>

- (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;

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<sup>9</sup> CCAA, [s 11.02\(1\)](#).

<sup>10</sup> CCAA, [s 11.02\(3\)](#).

<sup>11</sup> CCAA, [s 11.2](#).



- (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.

27. 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.<sup>12</sup>

28. The Monitor respectfully submits that the terms of the First Amendment to Interim Financing Term Sheet are reasonable and appropriate for the following reasons:<sup>13</sup>

- (a) the Cash Flow Forecast projects that the Companies will require additional financing of up to \$1.1 million to the Stay Extension Date;
- (b) the terms of the First Amendment to Interim Financing Term Sheet, including the incremental fees for the additional \$1.1 million, are reasonable and competitive with those summarized in the Pre-Filing Report and the Second Report;

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<sup>12</sup> CCAA, [s 11.2\(4\)](#).

<sup>13</sup> Third Report at s 6.1.

- (c) the inclusion of the standby fee is reasonable in the circumstances and within the acceptable range for such fees in debtor in possession facilities;
- (d) the CRO, on behalf of the Companies, has agreed to the terms of the First Amendment to Interim Financing Term Sheet and has indicated that he believes the terms are commercially reasonable; and
- (e) without the DIP Increase, the Companies are not projected to have the funding they require to operate their business and/or to fund these proceedings.

### **KERP and KERP Charge**

29. The jurisdiction to approve a KERP is grounded in the Court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding.<sup>14</sup> The discretion of the court to approve a KERP will be exercised on a case-by-case basis.<sup>15</sup>

30. Courts have frequently recognized the importance and utility of KERPs in restructuring proceedings.<sup>16</sup> A debtor company that is able to retain the critical skills and knowledge of its employees and executives has a greater chance of successfully restructuring its business for the benefit of all stakeholders.<sup>17</sup>

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<sup>14</sup> CCAA, s. 11; [Cinram International Inc., Re, 2012 ONSC 3767](#) at para. 91 [*Cinram*].

<sup>15</sup> *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114 at para 49

<sup>16</sup> *Cinram* at paras 90-93; [Grant Forest Products Inc., Re, 2009 CanLII 42046 \(ONSC\)](#) at paras 8-10 [*Grant Forest*]; [Timminco Ltd., Re, 2012 ONSC 506](#) at paras 71-75 [*Timminco*]; [Target](#) at paras 56-59.

<sup>17</sup> [Timminco](#) at para 72; [Canwest Global](#) at paras 49-50.

27. The courts have developed the following list of factors to be considered when deciding whether to approve a KERP:<sup>18</sup>

- (a) whether the Monitor supports the KERP (to which great weight is attributed);
- (b) whether the employees to which the KERP applies would consider other employment options if the KERP were not secured by the KERP charge;
- (c) whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- (d) the employees' history with the debtor and any special knowledge and skills they possess;
- (e) the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- (f) whether the KERP is supported or consented to by secured creditors of the debtor;  
and
- (g) whether the payments under the KERP are payable upon the completion of the restructuring process.

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<sup>18</sup> [Cinram](#) at para 91, citing [Grant Forest](#) at paras 8-24; [Canwest Global](#) at para 50; [Aralez Pharmaceuticals Inc., Re, 2018 ONSC 6980](#) at para 29.

31. In this case, the Court should approve the proposed KERP and the KERP Charge for, among others, the following reasons:

- (a) the continued involvement and cooperation of the KERP Employees is critical to the overall success of the Companies' restructuring, and the proposed payments under the KERP are required to increase the likelihood that the KERP Employees will continue to facilitate the Companies' operations and the conduct of both the SISP and the Titan Sales Process;
- (b) each of the KERP Employees is expected to continue to contribute to generate value in this process in respect of the continued operation of the Companies' business, the SISP and Titan Sales Process;
- (c) in the Monitor's view, the amounts payable under the KERP are reasonable;
- (d) the creation of the KERP Charge will provide the KERP Employees with comfort that the amounts payable to them under the KERP will be paid; and
- (e) Fiera has advised that it consents to the KERP and the KERP Charge.

#### **PART V - RELIEF SOUGHT**

32. 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 25<sup>th</sup> day of June, 2024.



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## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *Cinram International Inc., Re*, 2012 ONSC 3767
2. *Canwest Global Communications Corp. (Re)*, 2009 CanLII 55114
3. *Grant Forest Products Inc., Re*, 2009 CanLII 42046 (ONSC)
4. *Timminco Ltd., Re*, 2012 ONSC 506
5. *Aralez Pharmaceuticals Inc., Re*, 2018 ONSC 6980

## 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.