

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

October 11, 2024

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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 various relief with respect to:
 - (a) the sale of the property located at 255 George Street, Sydney, Nova Scotia (the “**George Street Property**”);

¹ Capitalized terms not defined herein have the meaning defined in the Fifth Report of the Monitor dated September 30, 2024 (the “**Fifth Report**”).

- (b) the sale of Titan Security & Investigation Inc. (“**Titan**”);
- (c) the amendment of the style of cause in this proceeding to reflect the corporate name changes of Saltwire Network Inc. (“**Saltwire**”) and The Halifax Herald Limited (“**Halifax**”, and together with Saltwire, the “**Media Companies**”);
- (d) a liquidation services agreement with respect to the Media Companies’ owned inventory and equipment;
- (e) the discharge of David Boyd (the “**CRO**”), a representative of Resolve Advisory Services Ltd., as Chief Restructuring Officer of the Respondents;
- (f) an expansion of the Monitor’s powers;
- (g) the sealing of the Confidential Appendix to the Fifth Report; and
- (h) other relief ancillary to the foregoing.

2. The Monitor is not aware of any objections or opposition to the relief it seeks on this motion.

PART II - FACTS

George Street Transaction

3. The George Street Property is a two-storey building with 24,000 square feet for office space and 6,000 square feet for warehouse use built in 1984, formerly used for operating the Cape Breton Post.²

² Fifth Report, s. 4.1 at para 1.

4. The George Street Property had been listed for sale with Coldwell Banker Boardwalk Realty (“**Coldwell**”) for \$2.5 million since September 28, 2022. The listing price was based on an appraisal that had been prepared for Saltwire just before that time.³

5. On August 7, 2024, Saltwire accepted the George Street APS, which was conditional on diligence. The George Street Purchaser waived its conditions on August 30, 2024.⁴

6. The purchase price is \$2.25 million.⁵

7. The transaction is subject to approval of this Court, which the Monitor recommends for the reasons set out in the Fifth Report and summarized in paragraph 27 below.

Titan Transaction

8. Titan is a full-service security and health care services company with approximately 100 full and part-time employees.⁶

9. Pursuant to the April 30th Order, MCA was engaged as the Titan Sales Advisor to carry out the Titan Sales Process, which is described in the Second Report.⁷

10. The Monitor summarized the Titan Sales Advisor’s activities in the Third Report and advised that four offers were submitted for Titan’s business and assets as of the Bid Deadline (the “**Titan Offers**”).⁸

³ Fifth Report, s. 4.1 at para 2.

⁴ Fifth Report, s. 4.1 at para 4.

⁵ Fifth Report, s. 4.1.1.

⁶ Fifth Report, s. 5.0 at para 1.

⁷ Fifth Report, s. 5.0 at para 2.

⁸ Fifth Report, s. 5.0 at para 4.

11. Following its review of the Titan Offers, Fiera advised the Titan Sales Advisor and the Monitor that it would not consent to a transaction for any of the Titan Offers as, in its view, the offers were significantly below the value of Titan’s business.⁹

12. At the time of the Fourth Report, Fiera advised the CRO and the Monitor that it remained committed to submitting a credit bid for Titan’s business and assets. Since that time, Fiera has worked with Titan, the CRO and the Monitor to prepare the Subscription Agreement and to advance completion of a transaction.¹⁰

13. The contemplated Titan Transaction has been structured to be completed through a “reverse vesting order” (“**RVO**”) transaction, which provides, among other things, as follows:¹¹

(a) Titan shall issue to the Titan Purchasers and the Titan Purchasers shall subscribe from Titan, free and clear of all encumbrances, other than Permitted Encumbrances, an aggregate of 1000 Class “A” Common shares in the share capital of Titan from treasury as follows:

(i) 250 Class “A” Common Shares shall be issued to and registered in the name of Titan III LP (the “**Titan III Subscribed Shares**”); and

(ii) 750 Class “A” Common Shares shall be issued to and registered in the name of Titan V LP (the “**Titan V Subscribed Shares**”, and together with the Titan III Subscribed Shares, the “**Subscribed Shares**”);

⁹ Fifth Report, s. 5.0 at para 7.

¹⁰ Fifth Report, s. 5.0 at para 8.

¹¹ Fifth Report, s. 5.1 at para 2. The Monitor understands from Fiera that, pursuant to an assignment agreement dated as of October 2, 2024, Titan III LP and Titan V LP assigned their respective interests in the Subscription Agreement to Fiera Private Debt Fund (Titan III) Inc. (formerly Fiera Private Debt Fund (Titan III) GP Inc.) and Fiera Private Debt Fund (Titan V) Inc. (formerly Fiera Private Debt Fund (Titan V) GP Inc.), respectively.

- (b) pursuant to the RVO and in accordance with the Pre-Closing Reorganization and Implementation Steps (as defined in the Subscription Agreement), all Equity Interests of Titan outstanding prior to the issuance of the Subscribed Shares other than the Subscribed Shares shall be cancelled, without consideration, and the Subscribed Shares shall represent 100% of the outstanding Equity Interests in Titan after such cancellation and issuance; and
- (c) all Excluded Assets and Excluded Liabilities will be transferred and “vested out” to Residual Co., being a company formed by Brace Capital.

14. Key aspects of the Subscription Agreement are summarized in the following table (capitalized terms have the meanings ascribed to them in the Subscription Agreement):¹²

Purchase Price	\$1 million
Subscribed Shares	The Titan III Subscribed Shares and the Titan V Subscribed Shares
Excluded Assets	(a) Tax records and Tax Returns that primarily relate to any of the Excluded Liabilities; (b) Amounts owing from related parties; and (c) Any other assets that the Titan Purchasers elect to exclude in writing prior to Closing.
Continuing Liabilities	(a) Continuing Contracts listed in Schedule 1.1(r); (b) Continuing Employees; (c) Post-Filing Tax Liabilities; and (d) Other Continuing Liabilities listed in Schedule 2.3(d).
Excluded Liabilities	All claims, debts, obligations and liabilities of Titan, or any predecessors of Titan, of any kind or nature, except for the Continuing Liabilities.

¹² Fifth Report, s. 5.1 at para 3.

Material Conditions	<ul style="list-style-type: none"> (a) At or before the Closing Date, the RVO shall have been obtained and shall not have been stayed, varied or set aside; (b) The Titan Distribution Order shall have been obtained and shall not have been stayed, varied or set aside; (c) Titan shall have received all required Transaction Regulatory Approvals and all required Transaction Regulatory Approvals shall be in full force and effect, except those that are not required to be in full force and effect prior to the Closing Date; (d) Titan shall have received a Foreign Worker Employer Registration Certificate; and (e) Key Employees shall have accepted offers of employment.
Outside Date	October 25, 2024, or such date agreed to by both Titan and the Titan Purchasers in writing, in consultation with the Monitor.
Closing Date	A date no later than four business days after the conditions set forth in Article 7 have been satisfied or waived, other than the conditions set forth in Article 7 that by their terms are to be satisfied or waived on the Closing Date.

15. The transaction is subject to approval of this Court, which the Monitor recommends for the reasons set out in the Fifth Report and summarized in paragraphs 31 to 32 below.

16. The Monitor also recommends that, subject to the Court’s approval of the Titan Transaction, the Titan Distribution Order be issued to allow for the proceeds from the Titan Transaction to be distributed to Fiera as a partial repayment of the balance owing to it by the Companies. As referenced in the Fifth Report, the Monitor has obtained opinions that Fiera’s security is valid and enforceable.¹³

¹³ Fifth Report, s. 5.1.2 at para 1(g).

The Liquidation Services Agreement¹⁴

17. The Residual Property was not acquired by PNI and will need to be removed prior to the sale of the Real Properties.

18. The Media Companies solicited and received offers from local parties for certain items; however, to maximize their value and develop an organized realization process to monetize the assets, they also approached, in consultation with the Monitor, three liquidation firms to submit proposals to sell the Residual Property.

19. One of the liquidation firms offered to conduct auctions on site on a commission basis with no guaranteed recovery. Infinity offered to do so with a net minimum guarantee (an “**NMG**”). The third firm declined to submit a proposal.

20. Key aspects of the Liquidation Services Agreement are summarized in the following table (capitalized terms have the meanings ascribed to them in the Liquidation Services Agreement):

Auction Date	On or about November 13, 2024, or such other date as the Monitor and Infinity, acting reasonably, may agree in writing
NMG	<ul style="list-style-type: none">- The amount of the NMG is to be sealed;- Infinity paid a deposit of \$50,000 on September 30, 2024 to the Monitor towards the NMG. Infinity is to pay the balance of the NMG to the Monitor no later than one day prior to the scheduled Auction Date by way of bank draft or certified cheque; and- The NMG is subject to reduction for any Excluded Assets not available to be sold on the basis of the allocation set out in Schedule “A” of the Liquidation Services Agreement, which is also sealed.

¹⁴ Fifth Report, s. 6.

Buyer's Premium	Infinity is entitled to an 18% Buyer's Premium from each purchaser at the auction, and retains the right to waive the Buyer's Premium on any individual sale at its sole discretion.
Sharing Formula	The Liquidation Services Agreement provides that all proceeds in excess of the NMG (including, without limitation, the Buyer's Premium) are to be paid as follows: 1) The Transfer Taxes in accordance with the relevant taxing legislation; 2) To Infinity, the Expense Amount, which is \$85,000; and 3) To the Media Companies and Infinity, the balance of the Net Proceeds divided 80% in favour of the Media Companies and 20% in favour of Infinity.
Assets	The equipment and inventory listed on Schedule "A" of the Liquidation Services Agreement.
Conditions	The granting of the proposed Ancillary Order, which will authorize the Media Companies to (a) retain Infinity on the terms set forth in the Liquidation Services Agreement; (b) enter into and consummate the Infinity Transaction; and (c) transfer title to the Residual Property to any purchasers free and clear of liens, claims and encumbrances.

Discharge of the CRO / Expansion of the Monitor's Powers

21. The Media Companies Transaction has closed, and the Titan Transaction is shortly scheduled to close, subject to Court approval. With the completion of these transactions, the CRO's mandate will be completed. Additionally, Ian Scott, the Chief Operating Officer of the Media Companies, has been retained on a contract basis to assist the Monitor with the wind-down of the Companies' business and operations. Mr. Scott is a long-time employee of the Media Companies with deep knowledge of the business. Retaining the CRO and Mr. Scott would result in duplication. The Monitor therefore recommends that the CRO be discharged upon filing of the CRO Discharge Certificate.¹⁵

¹⁵ Fifth Report, s. 8.0 at para 2.

22. As the Residual Property and the Real Property remain to be monetized, documents and agreements will need to be executed on the Companies' behalf, such as offers and closing documents in respect of the sale of the Real Property. As such, and in order to facilitate the wind-down process, the Monitor recommends that its powers pursuant to the ARIO be enhanced such that, among other things, it be authorized to, in its discretion: i) approve all of the Companies' receipts and disbursements; ii) oversee and make decisions in respect of any transition services provided by the Media Companies pursuant to the TSA; iii) take steps to cause the Companies to disclaim any agreements to which any of the Companies are party in accordance with the CCAA; and iv) perform such other activities as may be required to realize on the Companies' remaining assets and to facilitate the orderly completion of these proceedings.¹⁶

PART III - ISSUES AND ANALYSIS

23. This Brief will address the following main legal issues raised on this motion:

- (a) Should the Court approve the George Street Transaction?
- (b) Should the Court approve the Titan Transaction and grant the RVO?
- (c) Should the Court approve the Liquidation Services Agreement?
- (d) Should the Court seal the Confidential Appendix?
- (e) Should the Court expand the Monitor's powers?
- (f) Should the Court approve the Monitor's Fifth Report and the activities described therein?

¹⁶ Fifth Report, s. 8.0 at para 3.

PART IV - LAW & ARGUMENT

A. Approval of the George Street Transaction

24. 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.¹⁷

25. Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered:¹⁸

- (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 its 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.

¹⁷ *PCAS Patient Care Automation Services Inc., Re*, [2012 ONSC 3367](#) at [para. 54](#), citing *White Birch Paper Holding Co., Re*, [2010 QCCS 4915](#) at [para. 49](#).

¹⁸ *CCAA*, [s. 36\(3\)](#).

26. 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.¹⁹ 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.²⁰

27. In this case, the Monitor recommends and respectfully submits that the George Street Transaction satisfies the criteria described above and should be approved for, among other things, the following reasons:²¹

- (a) the George Street Property has been marketed for sale by Coldwell, a reputable realtor with experience marketing real property in Sydney, using traditional methods to advertise the opportunity, including exterior signage and listing on MLS;
- (b) the George Street Property has been listed on the open market for over two years;
- (c) Coldwell is of the view that the George Street Transaction is the best available in the circumstances;
- (d) the George Street APS represents the best offer received to date;
- (e) neither the Monitor nor the CRO believes that further time spend marketing the property will result in a superior transaction. Continued marketing would result in

¹⁹ *Harte Gold (Re)*, [2022 ONSC 653](#) at [para 20](#) [*“Harte Gold”*].

²⁰ *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#).

²¹ Fifth Report, s. 4.1.2 at para 1.

increased carrying costs for insurance, property taxes, utilities and professional fees without any certainty that a higher value can be achieved in a reasonable amount of time;

- (f) Fiera supports the George Street Transaction; and
- (g) the George Street Transaction is unconditional except for Court approval.

B. Approval of the Titan Transaction

(i) Jurisdiction for an RVO

28. This Court has the jurisdiction to approve a reverse vesting transaction pursuant to: (a) s. 11 of the CCAA, which gives the Court broad powers to make any order that it considers appropriate in the circumstances; and (b) s. 36(3) of the CCAA, as described above.²²

29. In *Harte Gold Corp. (Re)*, the Court articulated the factors to be considered in respect of a proposed reverse vesting transaction, which include:²³

- (a) Why is the reverse vesting order necessary in this case?
- (b) Does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative?
- (c) Is any stakeholder worse off under the reverse vesting structure than they would have been under any other viable alternative?

²² CCAA, [s. 11](#) and [s. 36\(3\)](#).

²³ *Harte Gold*, *supra* note 19 at [para 38](#).

- (d) Does the consideration being paid for the debtor's business reflect the importance and value of assets being preserved under the reverse vesting structure?²⁴

30. A reverse vesting order has been determined to be a suitable restructuring tool in the following circumstances:²⁵

- (a) where the debtor operates within a stringently regulated environment in which the debtor possesses licenses, permits or other valuable rights that are difficult or impossible to assign to a purchaser;
- (b) where the debtor holds key agreements with assignment restrictions that would be similarly difficult or impossible to assign to a purchaser; and
- (c) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

(ii) The CCAA s. 36 Factors and the Soundair Principles are Satisfied

31. The Titan Transaction satisfies the criteria under s. 36(3) of the CCAA and the *Soundair* test, and is in the best interest of the Applicants' stakeholders for the following reasons:²⁶

- (a) the Titan Sale Process was conducted in accordance with the April 30th Order;
- (b) the Titan Sales Advisor canvassed the market for strategic and financial parties with experience in the security and health care sectors, as well as those with an interest in acquiring distressed businesses;

²⁴ *Harte Gold* at [para 38](#).

²⁵ *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, [2022 ONSC 6354](#) at [para 34](#).

²⁶ Fifth Report, s. 5.1.2 at para 1.

- (c) the Titan Transaction provides for the greatest recovery available in the circumstances;
- (d) the Monitor and the CRO are of the view that additional time marketing Titan's business and assets will not result in a superior transaction and would be reduced by the additional professional fees that would be associated with extending the process. Additionally, Fiera has advised that it is not prepared to provide funding to continue the sale process for Titan;
- (e) the Titan Transaction provides for continuation of Titan's business, including employment for all or substantially all of its employees; and
- (f) the Monitor and the CRO believe that the commercial terms of the Subscription Agreement are reasonable in the circumstances and that an RVO is appropriate in this situation.

(iii) The Reverse Vesting Structure Should Be Approved

32. The reverse vesting structure contemplated under the RVO is appropriate in the circumstances for the reasons set out below:²⁷

- (a) The reverse vesting structure is necessary in this case. An RVO allows Titan the best opportunity to maintain its status in two immigration programs, the Provincial Nominee Program (the “**PNP**”) and the Atlantic Immigration Program (the “**AIP**”) and together with the PNP, the “**Immigration Programs**”), participation in which provides a substantial employment advantage by attracting immigrant employees

²⁷ Fifth Report, s. 5.1.3 at para 1.

who wish to become Canadian permanent residents. This approach eliminates the added cost, delay, complexity, and uncertainty involved with Titan needing to fully requalify in the Immigration Programs, a process that could take up to two years. The Monitor understands that the Titan Transaction would not be feasible if it is not completed through an RVO structure in the circumstances. In addition, the Monitor understands that the Titan Purchasers are not prepared to acquire the business under an alternative structure as it would significantly impact the viability of the business.

- (b) The RVO structure produces an economic result at least as favourable as any other viable alternative. The RVO allows for the timely conveyance of Titan's business to the Titan Purchasers. As mentioned above, the issuance of an RVO is a material condition of the Subscription Agreement given the benefits of Titan's ongoing participation in the Immigration Programs and is integral in completing the Titan Transaction. There does not appear to be any viable alternative to an RVO in the circumstances considering that a comprehensive sale process has been conducted during these CCAA proceedings, that there is no funding available to conduct a further process and that the purchase price is greater than any of the other offers submitted in the Titan Sale Process.
- (c) There is no prejudice to stakeholders. The Monitor believes that no stakeholders are prejudiced by the reverse vesting structure relative to their treatment and outcome under any other viable alternative. The claims and other liabilities being transferred to Residual Co. are unsecured and/or would receive no distribution under any transaction structure. In addition, the Monitor is not aware of any

opposition to the RVO structure. Parties who were identified as potentially having Continuing Contracts with Titan were provided notice of this motion.

- (d) The consideration being paid for the debtor's business reflects the importance and value of the licenses, permits, or other intangible assets being preserved under the RVO structure. The Monitor believes that preserving Titan's status under the Immigration Programs is the critical consideration in structuring the Titan Transaction as a reverse vesting transaction so that the Titan business can remain viable. The consideration being paid by the Titan Purchasers reflects the importance and value of this structure to the business. The Purchase Price being paid by the Titan Purchasers significantly exceeds all other offers that were received in the Titan Sale Process.

C. Approval of the Liquidation Services Agreement

33. This Court has the jurisdiction to approve the Liquidation Services Agreement pursuant to section 36 of the CCAA.²⁸

34. The Monitor respectfully submits that the proposed liquidation of the Residual Property pursuant to the Liquidation Services Agreement satisfies the section 36 criteria for the following reasons:²⁹

- (a) the Residual Property is either not being used or will not be used once the TSA period expires prior to year end;

²⁸ See [Liquidation Consulting Agreement Approval Order](#), in the Matter of a Plan of Compromise or Arrangement of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. dated February 21, 2019, Court File No. CV-19-00614629-00CL.

²⁹ Fifth Report, s. 6.2 at para 1.

- (b) the Media Companies will be required to deliver vacant possession before the Real Properties are sold;
- (c) the Media Companies approached three reputable liquidation services firms (each of which was recommended by the Monitor) and accepted a proposal which guarantees a minimum recovery pursuant to the NMG;
- (d) the Liquidation Services Agreement provides for the greatest recovery available in the circumstances;
- (e) the Monitor believes that the commercial terms of the Liquidation Services Agreement are reasonable; and
- (f) Fiera supports acceptance of the Liquidation Services Agreement.

D. Sealing of the Confidential Appendix

35. The Monitor is seeking a sealing order with respect to the amount of the NMG in connection with the Infinity Transaction and Schedule “A” (the “**Allocation Summary**”) of the Liquidation Services Agreement until the earlier of (a) 30 days following the Auction Date; and (b) further order of the Court.³⁰

36. In *Sierra Club of Canada v. Canada (Minister of Finance)*, Justice Iacobucci held that a sealing order should only be granted when:³¹

³⁰ Fifth Report, s. 7.0 at para 1.

³¹ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) at [para 53](#).

- (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

37. In *Sherman Estate v. Donovan* (“*Sherman Estate*”), the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that:³²

- (a) court openness poses a serious risk to the public interest;
- (b) the order sought is necessary to prevent the risk to the identified interest because reasonable alternative measures will not prevent the risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

38. The unredacted version of the Allocation Summary to the Liquidation Services Agreement provides specific details on the allocation for any NMG reduction for any Excluded Assets (as defined in the Liquidation Services Agreement) not available to be sold.

39. If the NMG and Allocation Summary are not sealed, bidders would have access to the value attributed by Infinity to each asset, which would prejudice recoveries.³³

³² *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

³³ Fifth Report, s. 7.0 at para 1.

40. The Monitor does not believe that any party will be prejudiced if the information is sealed at this time. The salutary effects of sealing such information from the public record greatly outweigh deleterious effects of doing so under the circumstances. The Monitor believes that the sealing of the Confidential Appendix is consistent with the decision in *Sherman Estate*. Accordingly, the Monitor believes the proposed sealing of the Confidential Appendix is appropriate in the circumstances.³⁴

E. Enhanced Powers of the Monitor³⁵

41. As explained above, the CRO's mandate will be completed once the Titan Transaction has closed. Additionally, Ian Scott, the Chief Operating Officer of the Media Companies, has been retained on a contract basis to assist the Monitor with the wind-down of the Companies' business and operations. Retaining the CRO and Mr. Scott would result in duplication. The Monitor therefore recommends that the CRO be discharged upon filing of the CRO Discharge Certificate.³⁶

42. With the discharge of the CRO, it is appropriate that the Monitor be granted additional powers to facilitate the completion of these proceedings.

43. As the Residual Property and the Real Properties remain to be monetized, documents and agreements will need to be executed on the Companies' behalf, such as offers and closing documents in respect of the sale of the Real Properties.

44. The enhancement of a Monitor's powers following the sale of a debtor's assets in a CCAA proceeding is common, particularly where there may not be any remaining signing officers.

³⁴ Fifth Report, s. 7.0 at paras 2-3.

³⁵ Fifth Report, s. 8.0.

³⁶ Fifth Report, s. 8.0 at para 2.

45. Fiera has advised the Monitor that it supports this relief and believes that it is both necessary and appropriate for the continued wind-up of the Companies' affairs.

F. Approval of the Monitor's Fifth Report

46. 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;
- (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

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

- (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.

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

PART V - RELIEF SOUGHT

48. For the reasons set out above, the Monitor respectfully requests the relief set out in its Notice of Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of October, 2024.



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SCHEDULE “A”

LIST OF AUTHORITIES

1. *PCAS Patient Care Automation Services Inc., Re*, [2012 ONSC 3367](#).
2. *White Birch Paper Holding Co., Re*, [2010 QCCS 4915](#).
3. *Harte Gold (Re)*, [2022 ONSC 653](#).
4. *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#).
5. *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, [2022 ONSC 6354](#).
6. [Liquidation Consulting Agreement Approval Order](#), in the Matter of a Plan of Compromise or Arrangement of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. dated February 21, 2019, Toronto, Court File No. CV-19-00614629-00CL.
7. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).
8. *Sherman Estate v. Donovan*, [2021 SCC 25](#).
9. *Target Canada Co. (Re)*, [2015 ONSC 7574](#).

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.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128

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.