Court File No. CV-23-00696017-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO.

(the "**Applicant**")

FACTUM OF THE AD HOC GROUP OF LOYALTY VENTURES INC. LENDERS
(Motion Returnable June 13 and 14, 2024)

May 28, 2024

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, ON M5X 1A4

Robert W. Staley (**LSO #27115J**)
Email: staleyr@bennettjones.com

Kevin J. Zych (**LSO #33129T**)
Email: zychk@bennettjones.com

Jesse Mighton (**LSO #62291J**)
Email: mightonj@bennettjones.com

Tel: 416-863-1200
Fax: 416-863-1716

Lawyers for the Ad Hoc Group of Loyalty Ventures Inc. Lenders

TO: **CASSELS BROCK & BLACKWELL LLP**
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos (**LSO# 20027U**)
Email: tpinos@cassels.com

Alan Mersky (**LSO# 41377I**)
Email: amerskey@cassels.com

John M. Picone (**LSO# 58406N**)
Email: jpicone@cassels.com

Tel: 416-869-5300
Fax: 416-360-8877

Lawyers for the Applicant

GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby (**LSO# 38439P**)
Email: pruby@goodmans.ca

Brendan O'Neil (**LSO# 43331J**)
Email: boneil@goodmans.ca

Chris Armstrong (**LSO# 55148B**)
Email: carmstrong@goodmans.ca

Tel: 416-979-2211

Lawyers for the Monitor, KSV Restructuring Inc.

AND TO: **STIKEMAN ELLIOTT**
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

Eliot Kolers (**LSO# 38304R**)
Email: ekolers@stikeman.com

Maria Konyukhova (**LSO# 52880V**)
Email: mkonyukhova@stikeman.com

Lesley Mercer (**LSO# 54491E**)
Email: lmercer@stikeman.com

RJ Reid (**LSO# 88760P**)
Email: rreid@stikeman.com

Tel: 416-979-2211

Lawyers for Bread Financial Holdings Inc.

AND TO: **THE SERVICE LIST**

FACTUM OF AD HOC GROUP OF LOYALTY VENTURES INC. LENDERS

PART I: OVERVIEW[1]

1. This Factum is submitted on behalf of the ad hoc group of Term B Loan Lenders (the "**TLB Lenders**") under the Credit Agreement dated November 3, 2021, among, *inter alia,* Loyalty Ventures Inc., as borrower, LoyaltyOne, Co. (the "**Applicant**"), as guarantor, Bank of America, N.A., as administrative agent, and the lenders party thereto, including the Term Loan A lender group and the revolving credit facility lender group (the "**Credit Agreement**").[2]

2. The TLB Lenders support the relief sought on this motion by the Applicant and KSV Restructuring Inc., in its capacity as the Monitor (the "**Monitor**") and adopt the submissions of both the Applicant and the Monitor.

3. The TLB Lenders submit this Factum solely to supplement the submissions of the Applicant and the Monitor with three relevant considerations in respect of the TLB Lenders, on some of the issues that the Court may consider.[3]

4. *First,* the TLB Lenders agree with the Applicant that the TMA is not binding on it or is void as a TUV. However, should this Court determine that the TMA is binding on LoyaltyOne and is not otherwise void as a TUV, disclaimer of the TMA should be upheld. One of the relevant considerations for this Court is whether disclaimer would further the objectives of the CCAA, including the equitable treatment of creditors. In these circumstances, including the conduct of

---

[1] Capitalized terms not defined herein have the meaning ascribed to them in the Factum of the Applicant.
[2] Affidavit of Cynthia Hageman, affirmed November 9, 2023 ("**First Hageman Affidavit**"), Exhibit P, Motion Record of the Applicant / LoyaltyOne dated November 9, 2023 (**L1 MR**), Tab 2(P).
[3] If this Court finds that the TMA is not binding on LoyaltyOne or is void as a TUV contrary to section 36.1 of the *CCAA*, then the issues raised herein may not be pertinent to the Court's analysis.

Bread leading up to the CCAA proceedings, and the fact that the other creditors will be suffering material shortfalls on their claims, disclaimer of the TMA would enhance the equitable treatment of creditors in a liquidation, consistent with the purpose of the disclaimer provisions under the CCAA.

5. *Second,* while the TMA is governed by the laws of Delaware, the issues of priorities and remedies within these CCAA proceedings must be governed by the *lex fori,* being Ontario law.

6. *Third,* under Ontario law, the relief sought by Bread requires a consideration of the conduct of ADS/Bread to date, and the impact of the relief sought on all creditors of the Applicant, including the TLB Lenders. The conduct of Bread, including the withholding of material information about LoyaltyOne's business, and its attempt to use the TMA to obtain a priority over other creditors, including the TLB Lenders, should disentitle Bread to any discretionary or equitable relief. The material prejudice to creditors, including the TLB Lenders who will already suffer a significant shortfall, also militates against granting the relief sought by Bread.

7. The TLB Lenders therefore submit that the relief sought by the Applicant and the Monitor should be granted, and the relief sought by Bread should be dismissed.

PART II: FACTS

A. The TLB Lenders

8. The Credit Agreement made the following facilities available to the borrowers thereunder: (i) a US$175 million Term Loan A facility for the borrowers due November 3, 2026; (ii) a US$500 million Term Loan B facility for the borrowers due November 3, 2027; and (iii) a revolving credit facility in the maximum amount of US$150 million for LVI due November 3, 2026.

9. As of March 9, 2023, there was approximately US$656 million of principal estimated to be outstanding (plus ongoing interest and expenses), as well as an additional approximately US$8 million in respect of letters of credit.[4] The lenders under the Credit Agreement are the fulcrum creditors in these proceedings.[5]

10. From the outset of these proceedings, the TLB Lenders were projected to incur a significant shortfall on their claims.[6] As disclosed in the Fifth Report of the Monitor, a portion of the proceeds ultimately received from the sale of the AIR MILES business – approximately US$85 million – was distributed to the lenders under the Credit Agreement,[7] resulting in total recovery to date for the TLB Lenders of approximately 13% on their outstanding claims.

B. Sobeys' Intention to Terminate Was Never Disclosed to the TLB Lenders

11. As further described in the Applicant's factum,[8] beginning as early as January 2021, and continuing throughout the year leading up to the Spin Transaction, Sobeys repeatedly communicated to ADS that it intended to withdraw from the AIR MILES program by the end of 2022. By as early as January 2021, members of the ADS Board and senior executive team were aware of Sobeys' stated intention to terminate its contract and exit the program.[9]

---

[4] Pre-Filing Report of the Monitor, s. 3.1.1 (2).
[5] Second Report of the Monitor, s. 1.1 (2).
[6] Second Report of the Monitor.
[7] Fifth Report of the Monitor, s. 2.3 (4).
[8] Factum of the Applicant at paras. 19-25.
[9] See, *e.g.*, Transcript to Cross-Examination of Joseph Motes, held May 17, 2024 ("**Motes Cross**") at p. 19, qq. 52-55, at pp. 23-24, qq. 65-67, at pp. 28-29, qq. 81-84; Motes Cross, Exhibit 23; Motes Cross, Exhibit 53, slide 19; Affidavit of Cynthia Hageman, affirmed March 8 and April 17, 2024 ("**Second Hageman Affidavit**"), at paras. 46-52, Amended Reply Record of LoyaltyOne dated May 3, 2024 ("**L1 ARR**"), Tab 1; Second Hageman Affidavit, Exhibit D, slide 2, L1 ARR, Tab 1(D); Transcript to Cross-Examination of Cynthia Hageman, held May 15, 2024 ("**Hageman Cross**"), Exhibit 30.

12. For instance, in a January 22, 2021 meeting of the Audit Committee of ADS, Charles Horn informed the Committee and other ADS executives in attendance[10] that management had "received notice of Sobeys' intent to terminate by the end of 2022."[11] Bread's affiant, and ADS senior executive, Joseph Motes, confirmed on cross-examination that it was based on this advice that he "definitively" learned of Sobeys' intention to terminate its contract.[12] Mr. Horn's advice to the ADS Board and executive team was based on, among other things, his own direct conversations with Sobeys' President and CEO, Michael Medline, which confirmed Sobeys' planned departure.[13]

13. Despite ADS' understanding surrounding the expected loss of Sobeys and its knowledge of the impact of such departure on the AIR MILES business, ADS never disclosed this material fact to the TLB Lenders or their agents at any time prior to the execution of the Credit Agreement in November 2021, pursuant to which US$675 million in term loans were eventually advanced to LVI as part of the Spin Transaction.[14]

14. For example, throughout the Fall of 2021, LVI put on a number of presentations (or "roadshows") to prospective lenders – including the TLB Lenders – to solicit and support the debt financing that would eventually be advanced under the Credit Agreement in connection with the Spin Transaction.[15] None of these lender presentations disclosed Sobeys' stated intention to

---

[10] Bread's affiant, Joseph Motes, confirmed that it was customary for ADS' executives to attend meetings of the ADS Audit Committee at that time: see Motes Cross at p. 8, qq. 19, 20, p. 27, qq. 79-80.
[11] See Minutes of Meeting of ADS Audit Committee, dated January 22, 2021: Motes Cross, Exhibit 23, and at pp. 28-29, qq. 81-84. See also, ADS Audit Committee Update, dated January 22, 2021: Motes Cross, Exhibit 53, slide 19.
[12] Motes Cross at p. 29, q. 84.
[13] See Email correspondence between Charles Horn and Michael Medline, dated January 6, 2021: Hageman Cross, Exhibit 30; Second Hageman Affidavit, at para. 49, L1 ARR, Tab 1. See also, Transcript to Examination of Blair Cameron, held May 13, 2024 ("**Cameron Cross**"), at pp. 21-23, qq. 62-67.
[14] Second Hageman Affidavit, at para. 59, L1 ARR, Tab 1; Hageman Cross, p. 110, q. 355.
[15] Hageman Cross, at pp. 58-60, qq. 209-214; Motes Cross, at pp. 72-73, qq. 217-219.

terminate, exit, or otherwise not renew its contract with AIR MILES, or even the risk of termination or non-renewal by Sobeys.[16]

15. Not only was this fact or risk never disclosed to the TLB Lenders, but in seeking to solidify the debt financing needed to support the Spin Transaction, the Fall 2021 lender roadshow openly touted Sobeys as being among AIR MILES' "Key Brands," part of its "Breadth and Depth of Collector and Sponsor Base," and reflecting its "Deep, Long-Term Relationship With Client and Sponsors."[17]

16. Thus, while ADS – including individual presenters involved in the lender roadshow[18] – were admittedly aware of Sobeys' intention to extricate itself from AIR MILES, that information was withheld from the lenders, who were at all times kept in the dark while agreeing to advance US$675 million in term loans under the Credit Agreement.[19]

PART III: ISSUES

17. The TLB Lenders support and adopt the submissions of the Applicant and the Monitor; this factum is solely intended to supplement those submissions in respect of select issues directly impacting the TLB Lenders:

(a) To the extent that this Court finds the TMA is binding on the Applicant and is not void as a TUV, disclaimer of the TMA is appropriate including in light of the beneficial impact on all creditors of the Applicant;

---

[16] Cameron Cross at p. 30, qq. 92-95. See, *e.g.*, LVI Lender Presentation dated September 9, 2021: Affidavit of Joseph Motes, affirmed February 9, 2024 ("**Motes Affidavit**"), Exhibit K, Bread Motion Record dated February 14, 2024 ("**Bread MR**"), Tab 2(K). See also, "Private Supplement" dated September 2021: Motes Cross, Exhibit U.
[17] Motes Affidavit, Exhibit K, slides 14, 20, and 40, Bread MR, Tab 2(K).
[18] Messrs. Horn, Tusa, Chesnut, and Cameron were regular presenters in the Fall 2021 lenders roadshow, and were also aware of the Sobeys' impending exit as early as January 2021: Hageman Cross, at pp. 58-60, qq. 209-214; Motes Cross, Exhibit 23; Cameron Cross at pp. 21-23, qq. 62-67.
[19] First Hageman Affidavit, at paras. 48-49, L1 MR, Tab 2; First Hageman Affidavit, Exhibit P, L1 MR, Tab 2(P).

(b) Ontario law applies to the issue of priorities, including the potential imposition of a constructive trust;

(c) Under Ontario law, the following two issues must be considered by the Court in determining this motion:

(i) The conduct of ADS/Bread, including its failure to disclose the impending Sobeys' exit to the TLB Lenders; and

(ii) The impact of the relief sought on the creditors of the Applicant, including the TLB Lenders.

PART IV: LAW AND ANALYSIS

A. Disclaimer of the TMA

18. The TLB Lenders agree with the Applicant and the Monitor that the TMA is not binding on the Applicant or is otherwise void as a TUV. However, should this Court determine that the TMA binds LoyaltyOne and is not void as a TUV, the TLB Lenders support the position of the Applicant and the Monitor that the TMA should be disclaimed. One of the relevant factors to be considered is an overriding objective of the CCAA, being that creditors are treated equitably.[20]

19. Disclaimer of the TMA would further the objectives of the CCAA, by allowing all creditors to share in the remaining assets of LoyaltyOne, rather than allowing one creditor – Bread – to obtain an unfair advantage (in circumstances where Bread arguably has no entitlements under the TMA in any event). As noted above, the TLB Lenders became creditors in circumstances where material information in respect of the business was withheld, including by Bread. Such facts further support disclaimer of the TMA.

[20] Factum of the Applicant at paras. 63-64, and cases cited therein.

B. Ontario Law Applies to the Issues of Priorities and Remedies

20. While the choice of law clause in the TMA is Delaware law, CCAA courts have explicitly held that local law applies to the insolvency estate established pursuant to the CCAA, such that issues of priority are to be determined by the local law.[21] This is consistent with: (i) general conflicts of laws principles which provide that Canadian law governs the administration and distribution of insolvency estates within Canada;[22] (ii) Canadian law outside of the CCAA context dictating that the *lex fori* must determine matters of priority with respect to competing claims,[23] and (iii) directions from the Supreme Court of Canada that the purpose of a national insolvency system is in part to ensure consistent priorities.[24]

21. In this case, the relief sought by Bread, including the potential imposition of a constructive trust is seeking to re-order priorities and therefore must be governed by Ontario law. Alternatively, a constructive trust is being sought as an equitable remedy, which is also to be determined by the laws of the *lex fori*.[25] As such, the law of Ontario must apply.

---

[21] *Homburg Invest Inc., Re,* 2014 QCCS 3135 at para. 31 (affirmed 2015 QCCA 62); *Xebec Adsorption Inc.,* 2023 QCCS 4213 at para. 17.

[22] Janet Walker, *Canadian Conflict of Laws*, 7th Ed. (Markham, Ontario: LexisNexis Canada, 2023) ["***Canadian Conflict of Laws***"] at PART VIII FOREIGN CORPORATIONS, BANKRUPTCY AND INSOLVENCY, Chapter 25 FOREIGN CORPORATIONS, BANKRUPTCY AND INSOLVENCY, § 25.02 BANKRUPTCY AND INSOLVENCY, 1. Background, Jurisdiction and Applicable Law. See also, John D. Honsberger & Vern W. DaRe, *Debt Restructuring: Principles and Practice* (Aurora, Ont.: Canada Law Book, 1990-) (Loose-leaf, Release No. 2, May 2024) at § 13:52: "Priorities are determined by the *lex fori*."

[23] *Canada Deposit Insurance Corp. v. Canadian Commercial Bank* (1992), 137 AR 372 (QB) at paras. 15-17, and cases cited therein (affirmed (1993), 12 Alta. L.R. (3d) 323 (CA)).

[24] See discussion in *Husky Oil Operations Ltd. v. Minister of National Revenue,* [1995] 3 SCR 453.

[25] "The nature of the plaintiff's remedy, such…the imposition of a constructive trust…is for the *lex fori*": *Canadian Conflict of Laws* at PART IV APPLICABLE LAW ANALYSIS, Chapter 16 IDENTIFYING AND APPLYING RELEVANT FOREIGN LAW, § 16.06 PROCEDURAL ISSUES. *Minera Aquiline Argentina SA v. IMA Exploration Inc.,* 2006 BCSC 1102 at paras. 244-249 (affirmed 2007 BCCA 319).

22. In any event, as noted in the factum of the Applicant, even if Delaware law applied to the issue of a constructive trust, the elements are not satisfied.

C. The Conduct of Bread and the Interests of the TLB Lenders Must be Considered

23. As set out in the Applicant's Factum, the Supreme Court has dictated that four conditions must be met before a constructive trust is imposed, the last (and key) one being: "there must be no factors which would render the imposition of a constructive trust unjust in all the circumstances of the case; e.g. the interests of intervening creditors must be protected."[26]

24. The Supreme Court also indicated that the imposition of a constructive trust must be "informed by the absence of an indication that a constructive trust would have an unfair or unjust effect on the defendant or third parties, matters which equity has always taken into account. Equitable remedies are flexible; their award is based on what is just in all the circumstances of the case."[27]

25. And as also discussed in the factum of the Applicant, the threshold is even higher in an insolvency:

> The onus of proving a constructive trust falls upon the claimant and, in a bankruptcy setting, is not lightly undertaken. The evidence must be clear and the standard of proof is high… the legal rights of creditors should not be defeated unless it would be unconscionable not to recognize a constructive trust…
>
> The remedy is discretionary and the authorities have expressed reservations as to the availability of a constructive trust where creditors and third party interests are affected…[28]

---

[26] *Soulos v. Korkontzilas,* [1997] 2 SCR 217 [***Soulos***] at para. 45.
[27] *Soulos* at para. 34.
[28] *Hoard, Re,* 2014 ABQB 426 [***Hoard***] at paras. 23-24 [emphasis added]. See also, *Re Derworiz*, 2021 ABQB 448 at paras. 41-42; *Re Bellatrix Exploration Ltd*, 2020 ABQB 809 at paras. 76-78

26. The above principles dictate two relevant considerations. *First*, in seeking an equitable remedy such as a constructive trust, Bread's request must be viewed in light of its conduct to date. Ordering a constructive trust within this insolvency requires Bread to meet a very high threshold that the imposition of a trust is not only just, but it would be unconscionable not to order it.

27. In light of Bread's conduct leading up to the CCAA proceedings, including its failure to disclose a material fact or risk to the TLB Lenders, its request for any equitable relief should be denied on that basis alone.

28. *Second*, the interests of the TLB Lenders must be considered and protected. Utilizing the equitable remedy of a constructive trust would cause further harm to the TLB Lenders in circumstances where they will already suffer a significant shortfall.

29. Bread is seeking the imposition of a constructive trust as a means through which to obtain a priority over other creditors where it does not otherwise have a priority; this is not an appropriate use of an equitable remedy,[29] and would impose a material prejudice on those creditors in circumstances where it is not justified. Bread's requests for relief should be denied.

PART V: ORDER REQUESTED

30. The TLB Lenders support the requests of the Applicant and the Monitor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF MAY, 2024.

Bennett Jones LLP

[29] See *Walter Street Profile Services Inc v. Kelowna Sustainable Innovation Group Ltd.,* 2018 BCSC 925 at paras. 45-47; *Hoard* at paras. 32-33.

SCHEDULE "A"

LIST OF AUTHORITIES

Cases Cited

1. *Canada Deposit Insurance Corp. v. Canadian Commercial Bank* (1992), 137 AR 372 (QB)

2. *Canada Deposit Insurance Corporation v. Canadian Commercial Bank*, (1993), 12 Alta. L.R. (3d) 323 (CA)

3. *Hoard, Re,* 2014 ABQB 426

4. *Homburg Invest Inc., Re,* 2014 QCCS 3135

5. *Husky Oil Operations Ltd. v. Minister of National Revenue,* [1995] 3 SCR 453

6. *Minera Aquiline Argentina SA v. IMA Exploration Inc.,* 2006 BCSC 1102

7. *Minera Aquiline Argentina SA v. IMA Exploration Inc.*, 2007 BCCA 319

8. *Re Bellatrix Exploration Ltd*, 2020 ABQB 809

9. *Re Derworiz*, 2021 ABQB 448

10. *Soulos v. Korkontzilas,* [1997] 2 SCR 217

11. *Taberna Preferred Funding VI Ltd. c. Stichting Homburg Bonds*, 2015 QCCA 62

12. *Walter Street Profile Services Inc v. Kelowna Sustainable Innovation Group Ltd.,* 2018 BCSC 925

13. *Xebec Adsorption Inc.,* 2023 QCCS 4213

Secondary Sources

1. Janet Walker, *Canadian Conflict of Laws*, 7th Ed. (Markham, Ontario: LexisNexis Canada, 2023)

2. John D. Honsberger & Vern W. DaRe, *Debt Restructuring: Principles and Practice* (Aurora, Ont.: Canada Law Book, 1990-) (Loose-leaf, Release No. 2, May 2024)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

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

Agreements

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Court may prohibit disclaimer or resiliation

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or resiliated.

Court-ordered disclaimer or resiliation

(3) If the monitor does not approve the proposed disclaimer or resiliation, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or resiliated.

Factors to be considered

(4) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

Date of disclaimer or resiliation

(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

Intellectual property

(6) If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Loss related to disclaimer or resiliation

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

Reasons for disclaimer or resiliation

(8) A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

Exceptions

(9) This section does not apply in respect of

(a) an eligible financial contract;

(b) a collective agreement;

(c) a financing agreement if the company is the borrower; or

(d) a lease of real property or of an immovable if the company is the lessor.

2005, c. 47, s. 131; 2007, c. 29, s. 108, c. 36, ss. 76, 112

Preferences and Transfers at Undervalue

Application of sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

(a) to "date of the bankruptcy" is to be read as a reference to "day on which proceedings commence under this Act";

(b) to "trustee" is to be read as a reference to "monitor"; and

(c) to "bankrupt", "insolvent person" or "debtor" is to be read as a reference to "debtor company".

2005, c. 47, s. 131; 2007, c. 36, s. 78

Court File No.: CV-23-00696017-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LOYALTYONE, CO. (the "Applicant")

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM OF AD HOC GROUP OF LOYALTY VENTURES INC. LENDERS

BENNETT JONES LLP
One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario M5X 1A4

Kevin Zych (LSO #33129T)
Email: zychk@bennettjones.com

Robert W. Staley (LSO #27115J)
Email: staleyr@bennettjones.com

Jesse Mighton (LSO #62291J)
Email: mightonj@bennettjones.com

Tel: 416-863-1200
Fax: 416-863-1716

Counsel to Ad Hoc Group of Loyalty Ventures Inc. Lenders