



**Sixth Report of
KSV Restructuring Inc.
as CCAA Monitor of
LoyaltyOne, Co.**

April 19, 2024

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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.

SIXTH REPORT OF KSV RESTRUCTURING INC.

APRIL 19, 2024

1.0 Introduction

1. Pursuant to an order (the "Initial Order") issued by the Ontario Superior Court of Justice (Commercial List) (the "Court") on March 10, 2023, LoyaltyOne, Co. (the "Applicant") was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and KSV Restructuring Inc. ("KSV") was appointed monitor of the Applicant (in such capacity, the "Monitor"). The Initial Order also extended the CCAA stay and certain other relief to LoyaltyOne Travel Services Co./Cie Des Voyages LoyaltyOne, a non-applicant subsidiary of the Applicant ("Travel Services" and together with the Applicant, the "LoyaltyOne Entities"). At a comeback hearing on March 20, 2023, the Court issued an Amended and Restated Initial Order (the "ARIO").
2. Also on March 10, 2023, the Applicant's ultimate parent company, Loyalty Ventures Inc. ("LVI"), and three affiliated entities¹ (collectively, the "US Debtors"), filed voluntary petitions to commence proceedings (the "US Proceedings") under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the "US Court"). The LoyaltyOne Entities are not debtors in the US Proceedings.
3. The principal purpose of this proceeding (the "CCAA Proceeding") was to create a stabilized environment in which the Applicant could:
 - a) continue to operate in the ordinary course with the breathing space afforded by filing for protection under the CCAA, including to continue to operate the AIR MILES® Reward Program and to honour redemptions by the collectors of AIR MILES® reward miles in the normal course;

¹ The affiliated Chapter 11 debtor entities are LVI Sky Oak LLC, LVI Lux Holdings S.à r.l. and Rhombus Investments L.P.

- b) secure required debtor-in-possession (“DIP”) financing from Bank of Montreal (“BMO”) to fund the Applicant’s ongoing business and the restructuring proceedings pursuant to a US\$70 million DIP loan facility (the “DIP Facility”); and
 - c) identify and complete a going-concern sale transaction pursuant to a Court supervised sale and investment solicitation process (“SISP”). In this regard, the Applicant entered into an asset purchase agreement with BMO, the Applicant’s largest customer, which provided for a purchase price of US\$160 million, subject to certain adjustments, plus the assumption of certain liabilities, to be used as a “stalking horse” bid in the SISP (as amended, the “BMO APA”).
4. At a hearing on May 12, 2023, the Court issued an Approval and Vesting Order (the “AVO”), among other things approving the transaction contemplated by the BMO APA (the “Transaction”) and, following the Monitor’s delivery of the Monitor’s certificate substantially in the form attached as Schedule “A” to the AVO (the “Monitor’s Certificate”), transferring and vesting all of the Applicant’s right, title and interest in and to all of the issued and outstanding shares in the capital of Travel Services to an affiliate of BMO, and all of the Applicant’s right, title and interest in and to the balance of the Purchased Assets (as defined in the BMO APA) to another BMO affiliate, in each case free and clear from any encumbrances, except for certain permitted encumbrances.
 5. The Transaction closed on June 1, 2023 (the “Closing”).
 6. All Court materials filed in this proceeding, including the Monitor’s reports, are available on the Monitor’s website at the following link: <https://www.ksvadvisory.com/experience/case/loyaltyone>.
 7. All US Court materials filed in the US Proceedings are available at the following link: <https://cases.ra.kroll.com/LVI/Home-Index>.

1.1 Purposes of this Report

1. The purposes of this report (the “Sixth Report”) are to report to the Court on the Applicant’s and Monitor’s motion for a sealing order in respect of certain portions of the Hageman Affidavit and the Harington Report (each as defined below) adduced by the Applicant in connection with the TMA Motion and the Bread Disclaimer Motion², and to provide the Monitor’s support for such request.

1.2 Restrictions

1. In preparing this Sixth Report, the Monitor has relied upon the Applicant’s audited and unaudited financial information, books and records and discussions with the Applicant’s legal counsel (Cassels Brock & Blackwell LLP).

² Each as defined in the Fifth Report of the Monitor dated November 23, 2023 (the “Fifth Report”).

2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied on to prepare this Sixth Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own diligence.
3. Future oriented financial information relied upon in this Sixth Report is based upon the Applicant’s assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Monitor expresses no opinion or other form of assurance on whether these results will be achieved.

1.3 Currency

1. Unless otherwise noted, all currency references in this Sixth Report are in Canadian dollars.

2.0 Sealing Request

1. As described in the Fifth Report, the Applicant is currently engaged in a litigation process with Bread Financial Holdings Inc. (“Bread”) in respect of the TMA Motion and the Bread Disclaimer Motion. Those motions are scheduled to be heard by the Court on June 13 and 14, 2024.
2. In connection with the TMA Motion and the Bread Disclaimer Motion, the Applicant has adduced, among other evidence, the Fresh as Amended affidavit of Cynthia Hageman affirmed March 8, 2024 and April 17, 2024 (the “Hageman Affidavit”) and the Affidavit of Andrew Harington affirmed March 13, 2024, attaching an expert report (the “Harington Report”).
3. Each of the Hageman Affidavit and the Harington Report contain certain information pertaining to the AIR MILES® business. BMO has advised the Applicant’s counsel and the Monitor that it considers certain of that information to be confidential and commercially sensitive, and that the public disclosure of such information would result in harm to BMO and the AIR MILES® business.
4. BMO has further advised the Applicant’s counsel and the Monitor that disclosure of this information on the public record in this CCAA proceeding would, in its view, be a breach of Section 12.1 of the BMO APA, pursuant to which the Applicant agreed as follows:

From and after the Closing, the [Applicant] shall, and shall cause its affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, the Purchased Assets and Assumed Liabilities [...]³

³ Capitalized terms in this paragraph are as defined in the BMO APA.

5. Over the course of the past several weeks, the Applicant's counsel and BMO, with input from the Monitor and its counsel, have engaged in discussions regarding the proposed sealing of certain portions of the Hageman Affidavit and the Harington Report having regard to BMO's concerns outlined above. In the course of these discussions, the Monitor, assisted by its counsel, has been mindful of the relevant legal framework for sealing, including the Court's guidance to minimize information to be sealed in Court materials.
6. The result of these discussions is the Applicant's and Monitor's motion, supported by BMO, seeking to seal certain identified portions of the Hageman Affidavit and the Harington Report, while making redacted versions of each of the Hageman Affidavit and the Harington Report publicly available. The sealing motion also provides for a similar process to deal with additional materials, such as cross-examination transcripts and factums, that reference the sealed portions of these affidavits.
7. In the view of the Monitor:
 - a) the proposed sealing sought on the Applicant's motion is limited to commercially sensitive information pertaining to the AIR MILES® business which the Applicant is obligated to hold confidential under the BMO APA; and
 - b) the public interest element of the test for sealing is met in this case – there is a public interest in CCAA proceedings that enable a debtor to restructure and maximize the value of its assets and creditor recoveries.⁴ As is a typical feature of CCAA transactions, in the BMO APA the Applicant agreed to hold confidential information pertaining to the business being sold, facilitating the value maximizing sale in this CCAA proceeding by giving comfort to BMO that commercially sensitive information pertaining to the purchased business would not later be made publicly available, to the detriment of the AIR MILES® business.
8. Accordingly, the Monitor is supportive of the sealing request.

3.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that the Court make the requested sealing order.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS MONITOR OF
LOYALTYONE, CO.
AND NOT IN ITS PERSONAL CAPACITY**

⁴ *Urbancorp Cumberland 1 GP Inc. (Re)*, 2020 ONSC 7920 at para 24.