

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE LIQUIDATION OF LWP CAPITAL INC.
PURSUANT TO SECTION 211 OF THE CANADA BUSINESS
CORPORATIONS ACT, R.S.C. 1985, c. C-44, AS AMENDED

and

KSV ADVISORY INC. IN ITS CAPACITY AS LIQUIDATOR OF LWP
CAPITAL INC.

Applicant

**FACTUM OF THE APPLICANT
(Final Distribution, Termination and Discharge)**

November 29, 2024

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TO: SERVICE LIST

PART I - NATURE OF THIS MOTION

1. On November 9, 2015, the shareholders of LWP Capital Inc. (the “**Company**”) approved, by way of special resolution, the voluntary liquidation of the Company pursuant to the *Canada Business Corporations Act*,¹ along with a plan of liquidation and distribution (the “**Liquidation Plan**”), which, among other things, appointed KSV Advisory Inc. as the liquidator of the Company (the “**Liquidator**”). On January 11, 2016, this Court (the “**Court**”) granted an order (the “**Liquidation Order**”) continuing the voluntary liquidation of the Company under the supervision of the Court (the “**Liquidation Proceedings**”).

2. The Liquidation Proceedings have run their course. The Company’s affairs have been fully wound-up, a claims process has been run, and all claims against the Company have been resolved. Following the proposed Final Distribution (as defined below) to the Company’s shareholders and the proposed dissolution of the Company, the Company will have no remaining known assets, and the wind-up of the Company will be complete.

3. The Liquidator therefore seeks an order (the “**Final Distribution, Termination and Discharge Order**”), which will, among other things:

- (a) approve the Final Accounts (as defined below) and the Final Distribution;
- (b) direct the Director (as defined in the CBCA) to issue a certificate of dissolution;
- (c) terminate the Liquidation Proceedings and discharge the Liquidator upon service of the Liquidator’s Termination Certificate (as defined below) on the service list;

¹ RSC 1985, c C-44 [CBCA].

- (d) grant the Releases to the Released Parties (each as defined below); and
- (e) approve the Fourth Report of the Liquidator dated April 20, 2017 and the Fifth Report (as defined below) (collectively, the “**Liquidator’s Reports**”), the activities and conduct of the Liquidator set out therein, and the fees and disbursements of the Liquidator and its counsel.

4. The Final Distribution, Termination and Discharge Order should be granted so that the Liquidation Proceedings can be brought to an orderly close, thereby providing certainty and finality for all stakeholders.

PART II - SUMMARY OF THE FACTS

5. The facts are more fully set out in the Fifth Report of the Liquidator (the “**Fifth Report**”).²

A. Background to the Liquidation Proceedings

6. Prior to the Liquidation Proceedings, the Company operated in Canada, the U.S., and China, and was comprised of two operating segments: (i) the “Special Crops” segment, which provided primary processing for special crops received from growers and some secondary processing; and (ii) the “Oilseed Processing” segment, which was involved in the processing of Canola oilseed.³

7. On September 14, 2015, the Company entered into an Asset Purchase Agreement with The Scouler Company (“**Scouler**”), whereby substantially all of the assets comprising the Company’s

² Fifth Report of the Liquidator dated November 28, 2024. Capitalized terms not otherwise defined have the same meaning as in the Fifth Report. Dollar amounts are given in Canadian dollars unless otherwise specified.

³ Fifth Report at para. 2.0.1.

Special Crops division were to be sold to Scoular for gross proceeds of \$94 million, plus working capital of approximately \$71.5 million, subject to closing and post-closing adjustments (the “**Transaction**”).⁴

8. At a special meeting of shareholders convened on November 9, 2015, the shareholders of the Company passed a special resolution which approved, among other things: (i) the Transaction; (ii) the voluntary liquidation and dissolution of the Company pursuant to the CBCA; and (iii) the Liquidation Plan. The Transaction closed on November 23, 2015, and the Liquidation Plan became effective on December 31, 2015. Pursuant to the Liquidation Plan, certain shareholders were appointed as inspectors (collectively, the “**Inspectors**”).⁵

9. The Liquidation Proceedings were intended to focus on post-closing issues with Scoular, and in particular resolving the significant purchase price adjustment and other claims advanced by Scoular, which exceeded \$25 million. Ultimately, all issues between the Company and Scoular were resolved by various settlement agreements, effective October 20, 2016.⁶

10. In addition, the Liquidator administered a claims procedure (the “**Claim Procedure**”) in accordance with the Claims Procedure Order granted by the Court on January 11, 2016. Thirteen claims (including the claim filed by Scoular) were filed in the Claims Procedure. All claims have been accepted or settled over the course of the Liquidation Proceedings, and there are no outstanding matters in the Claims Procedure.⁷

⁴ Fifth Report at para. 2.1.1.

⁵ Fifth Report at paras. 1.0.1-1.0.4, 2.1.2-2.1.3.

⁶ Fifth Report at paras. 2.2.1-2.2.3.

⁷ Fifth Report at paras. 3.0.1-3.0.3.

11. For some time, the only potential material outstanding issue in the Liquidation Proceedings has been a potential claim against the Company and/or its U.S. subsidiaries by the Internal Revenue Service (the “**IRS**”), which did not file a claim in the Claims Procedure. At this point, given that the IRS did not file a claim in the Claims Procedure, the U.S. Subsidiaries have all been wound-up and/or dissolved since 2016/2017,⁸ and the Liquidator has not received any correspondence from the IRS for several years, the Liquidator does not believe it is appropriate to further delay the completion of these proceedings, including the proposed Final Distribution.⁹

B. The Proposed Final Distribution

12. As of the date of the Fifth Report, there is approximately \$413,000 cash on deposit in the Company’s bank account. Following the payment of required fees and sundry expenses, approximately \$300,000 will remain to be distributed to shareholders.¹⁰

13. There are presently 16,294,635 issued and outstanding common shares in the capital of the Company, in favour of whom the Liquidator proposes to make a distribution (the “**Final Distribution**”) of approximately \$300,000 (which will equal \$0.02 per share). As the Liquidator has already made distributions totalling approximately \$18.2 million (or \$1.12 per share), the Final Distribution will bring total distributions paid by the Liquidator to approximately \$1.14 per share.¹¹ Pursuant to the Liquidation Plan, distributions to shareholders are to be paid either by way

⁸ See Appendix “C” to the Fifth Report, which sets out the dissolution dates of the U.S. Subsidiaries.

⁹ Fifth Report at paras. 3.1.1-3.1.3.

¹⁰ Fifth Report at paras. 4.0.1-4.0.3. Attached as Appendix “E” to the Fifth Report is a final statement of receipts and disbursements, which provides an accounting of all activity in the Liquidator’s accounts since the Effective Date of the Liquidation Plan (December 31, 2015) (the “**Final Accounts**”).

¹¹ Fifth Report at para. 4.0.4.

of a return of capital (subject to satisfying the applicable solvency tests in the CBCA) or a taxable dividend. The Inspectors have advised the Liquidator that the proposed Final Distribution, subject to Court approval, shall be treated as a return of capital.¹²

PART III - ISSUES AND THE LAW

14. This Factum addresses the following issues:

- (a) the Final Accounts and Final Distribution should be approved;
- (b) the Company should be dissolved, the Liquidator should be discharged, and the Liquidation Proceedings should be terminated (including the Stay Period and the Administration Charge, as defined in the Liquidation Order);
- (c) the Releases should be granted; and
- (d) the Liquidator's Reports, the Liquidator's activities and conduct set out therein, and the fees and disbursements of the Liquidator and its counsel, should be approved.

A. The Final Accounts and Final Distribution Should be Approved

15. Section 217 of the CBCA authorizes the court to make "any order it thinks fit" in connection with the liquidation and dissolution of a corporation, including an order "approving any proposed interim or final distribution to shareholders in money or property."¹³ Section 217

¹² Fifth Report at paras. 4.2.1-4.2.3.

¹³ CBCA, s. 217.

empowers the court to make a “wide range” of orders,”¹⁴ and grants the court “broad discretionary powers” to supervise the conduct of a liquidation, up to and including dissolution.¹⁵

16. The power of the court to order a final distribution is further set out in s. 223 of the CBCA, which, among other things, requires that the liquidator pay or make adequate provision for all claims against the corporation,¹⁶ and provide the required notice of their intention to make an application.¹⁷ Section 223(2)(a) authorizes the liquidator, once they have paid or made adequate provision for all claims against the corporation, to apply to the court for approval of its final accounts, and for an order permitting the liquidator to distribute the remaining property of the corporation to its shareholders, either in money or in kind.¹⁸

17. These prerequisites have been fulfilled. The Liquidator has provided the Court with the Final Accounts, which have been reviewed and unanimously approved by the Inspectors. The Inspectors have also unanimously approved the Final Distribution, which approval is required under the Liquidation Plan. There are no known outstanding claims or potential obligations for which a holdback would be required, as all claims under the Claims Procedure have been dealt with and clearance certificates were obtained from the Canada Revenue Agency in October 2017.¹⁹

¹⁴ *Growthworks Commercialization Fund Ltd. v. Growthworks WV Management Ltd.*, [2019 ONCA 371](#) at para. 7.

¹⁵ *Hollinger v. Prados-Hollinger*, [2012 QCCA 1682](#) at para. 15; *Syndic de Construction Frank Catania & Associés inc.*, [2018 QCCS 2063](#) at para. 25. See also *Turner v. Turner*, [2009 ABQB 746](#) at para. 20, in which the court held that s. 218 of the *Alberta Business Corporations Act*, RSA 2000, c B-9 (which mirrors s. 217 of the CBCA), was “extremely broad,” and covered “the whole process of liquidation up to and including an order of dissolution.”

¹⁶ CBCA, s. 223(1).

¹⁷ CBCA, s. 223(4).

¹⁸ CBCA, s. 223(2)(a).

¹⁹ Fifth Report at para. 4.1.1.

18. With respect to notice, the Liquidator has served and provided notice of this application to the Director and the Inspectors, and has issued a press release providing broad notice that such application will be sought in advance of the hearing.²⁰

19. The proposed Final Distribution, Termination and Discharge Order provides that, by taking these steps, the Liquidator has satisfied its obligations to provide notice of this application. The authority to grant such relief is provided by s. 223(4) of the CBCA, which states that the Liquidator may fulfill its notice obligations “as otherwise directed by the court.” Further, the broad discretionary powers granted by s. 217 provide the court the discretion to authorize alternative forms of notice where reasonable in the circumstances, by permitting the court to make “an order determining the notice to be given to any interested person, or dispensing with notice to any person.”²¹

20. The steps taken by the Liquidator to provide notice of this application are reasonable and appropriate in the circumstances and should be authorized by the Court. Given the length of these proceedings, the publishing of a newspaper notice would only add further costs and unnecessarily reduce the amount of the Final Distribution. Further, it would not be practical or cost effective in the circumstances for the Liquidator to provide individualized notice to each of the Company’s shareholders. This approach is supported both by the Inspectors, and by shareholders with whom the Liquidator has discussed the issue.²²

²⁰ Fifth Report at para. 4.3.1. A link to the press release can be found here: <https://www.newswire.ca/news-releases/lwp-capital-inc-announces-court-hearing-date-for-approval-of-the-final-accounts-of-the-liquidator-the-final-distribution-to-shareholders-and-dissolution-874634561.html>

²¹ CBCA, s. 217(d).

²² Fifth Report at paras. 4.3.2-4.3.3.

21. The Liquidator therefore submits that the Final Accounts and the Final Distribution should be approved by the Court. The payment of distributions by the Liquidator is contemplated under both the Liquidation Plan and the CBCA, and the Company's shareholders have been required to wait for a distribution since the Liquidation Proceedings commenced in January 2016.²³ The Company satisfies the applicable solvency tests under Part V of the CBCA and will continue to satisfy these tests following the Final Distribution.²⁴

B. The Company should be Dissolved, the Liquidator Should be Discharged, and the Liquidation Proceedings should be Terminated

22. The Final Distribution, Termination and Discharge Order provides that, in accordance with s. 223 of the CBCA, upon the Liquidator sending a certified copy of the Final Distribution, Termination and Discharge Order to the Director, the Director will issue a certificate of dissolution in respect of the Company, which shall be dissolved without further order of the court. The Final Distribution, Termination and Discharge Order further provides that, upon service of a certificate (the "**Liquidator's Termination Certificate**"), the Liquidator will be discharged and the Liquidation Proceedings will be terminated (including the termination of the Stay Period and Administration Charge), without any further act or formality.

23. The dissolution of the Company, the discharge of the Liquidator, and the termination of the Liquidation Proceedings are appropriate in the circumstances and should be approved. Where the court approves the final accounts of a liquidator pursuant to s. 223, the CBCA provides that the court shall then make an order: (i) directing the Director to issue a certificate of dissolution;

²³ Fifth Report at para. 4.1.1(b), (e).

²⁴ Fifth Report at para. 4.2.2.

(ii) directing to custody or disposal of the documents and records of the corporation; and (iii) discharging the liquidator.²⁵ Similarly, s. 4.3(l) of the Liquidation Plan provides that the Liquidator may, at any time after the Company's affairs have been wound up, apply for an order dissolving the Company.²⁶

24. Once the Final Distribution has been made, the Liquidator intends to file the Liquidator's Termination Certificate, at which point its duties and responsibilities will be substantially complete. As discussed above, there are no outstanding claims against the Company or any of its present or former directors and officers, and CRA clearance certificates were obtained over seven years ago. The Company's affairs have been fully wound-up, and, once the Final Distribution has been paid, the Company will have no remaining known assets. The Inspectors, who been involved with and have approved all substantive actions taken by the Liquidator, support the Company's dissolution at this time. No other matters remain to be attended to in the Liquidation Proceedings.²⁷

25. The proposed Final Distribution, Termination and Discharge Order also includes an obligation on the Liquidator to retain the documents and records of the Company and its subsidiaries and affiliates in the Liquidator's possession and control for a period of not less than six years following the termination of these proceedings, and an obligation on the Liquidator to maintain its case website for these proceedings publicly available for a period of not less than two years following the termination of these proceedings.²⁸

²⁵ CBCA, s. 223(5).

²⁶ Fifth Report at para. 5.0.1.

²⁷ Fifth Report at paras. 5.0.2(a)-(d), (f)-(g), 6.0.2, 6.0.6-6.0.7.

²⁸ Fifth Report at para. 5.02(e).

C. The Releases Should be Granted

26. The Final Distribution, Termination and Discharge Order contains certain releases (the “Releases”) in favour of: (i) the Liquidator and its counsel; (ii) the Company’s directors and officers; and (iii) the Inspectors (together, the “Released Parties”).

27. The Releases are appropriate in the circumstances and should be granted. Courts have granted similar releases in respect of liquidations or reorganizations proceedings occurring under business corporation legislation.²⁹ Further, the case law dealing with third-party releases under the *Companies Creditors Arrangement Act*³⁰ remains relevant, as it illustrates the circumstances in which the court will exercise its discretion to release parties from liability.³¹ When considering whether to grant a release under the CCAA, the court asks:³²

- (a) whether the parties being released were necessary to the restructuring of the debtor;
- (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;

²⁹ See, in respect of liquidators and their counsel, *First Hamilton Holdings Inc. et al. (Re)*, (March 2, 2022), Ont. S.C.J. [Commercial List], CV-20-00641372-00CL ([Dissolution and Discharge Liquidator](#)) at para. 5 [*First Hamilton Holdings*]; *Novelion Therapeutics Inc. (Re)*, (August 18, 2021), B.C.S.C., No. S1913050, Vancouver Registry (Order Made After Application) at para. 13 [*Novelion*]; *Oxford Golf and Country Club, Limited. (Re)*, (September 4, 2018), Ont. S.C.J., 330-18 (Distribution Approval, Discharge and Release Order) [*Oxford Golf*]. See, in respect of inspectors, *Morrison Laurier Mortgage Corporation. (Re)*, (August 9, 2024), Ont. S.C.J. [Commercial List], CV-21-00661144-00CL ([Interim Distribution Order](#)) at para. 8. See, in respect of directors and officers, *Xplore Inc. (Re)*, [2024 ONSC 5250](#) at paras. 70-74 [*Xplore*].

³⁰ R.S.C. 1985, c. C-36 [CCAA].

³¹ The CCAA case law has been considered outside of the CCAA context in the past, including in respect of CBCA arrangements: see, i.e., *Concordia International Corp. (Re)*, 2018 ONSC 4165 at para. 39; *Xplore* at para. 71.

³² *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 54.

- (c) whether the restructuring could succeed without the release;
- (d) whether the parties being released contributed to the restructuring; and
- (e) whether the releases benefit the debtors as well as the creditors generally.

28. It is not necessary for each of these factors to apply in order for a release to be granted.³³ Further, releases in favour of third parties, such as the directors and officers of a liquidated company, may be granted outside of a CBCA or CCAA plan of arrangement, including in circumstances in which no plan is proposed or anticipated.³⁴

29. The proposed Releases satisfy these factors. The Released Parties have carried out their respective duties and obligations in accordance with the Liquidation Plan and have provided material contributions, such that it is unlikely that the Liquidation Proceedings would have achieved their purpose without the involvement of each of the Released Parties. Further, the proposed Releases are appropriately limited in scope as they do not apply in respect of any claim or liability arising out of gross negligence or willful misconduct on the part of the Released Parties. Finally, it is in the interest of all parties that the Releases be granted, as once the Liquidation Proceedings are brought to a close, the Releases will provide certainty and finality to all parties.³⁵

³³ *Green Relief Inc. (Re)*, [2020 ONSC 6837](#) at para. 28.

³⁴ See, i.e., *ENTREC Corporation (Re)*, [2020 ABQB 751](#) at paras. 5-9 and *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#) at paras. 91-95. In each case the directors and officers of the debtor were released from liability.

³⁵ Fifth Report at paras. 6.0.4-6.0.5.

D. The Liquidator's Activities, and the Fees and Disbursements of the Liquidator and its Counsel, Should be Approved

30. The proposed Final Distribution, Termination and Discharge Order approves the Liquidator's Reports, along with the activities and conduct of the Liquidator detailed therein.

31. The requested relief is a standard element of orders terminating corporate liquidation proceedings and should be approved. As has been noted by the court in the context of monitors appointed in CCAA proceedings, requests to approve the activities and reports of a court officer are not unusual, and there are good policy and practical reasons for the court to do so, including:³⁶

- (a) allowing a monitor to move forward with the next steps;
- (b) allowing a monitor to bring its activities before the Court;
- (c) enabling the Court to satisfy itself that a monitor's activities have been conducted in a prudent and diligent manner;
- (d) providing protection for a monitor not otherwise provided by the CCAA; and
- (e) preventing delay that may be caused by re-litigation of steps.

32. Subsequent case law has confirmed that these considerations apply equally to the reports and activities of other court officers,³⁷ and such approval is commonly granted as part of orders

³⁶ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23.

³⁷ See i.e., *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at para. 15, in which the same principles were applied to the activities and reports of a receiver.

terminating liquidation proceedings under business corporation legislation.³⁸ The Liquidator's reports and activities should therefore be approved, as the Liquidator has acted reasonably and in good faith throughout these Liquidation Proceedings, and in accordance with its obligations under the Liquidation Order and Liquidation Plan.

33. The Final Distribution, Termination and Discharge Order also approves the fees and disbursements of the Liquidator for the eight-year period from November 1, 2016 to October 31, 2024, and for the Liquidator's counsel, Osler Hoskin & Harcourt LLP ("Osler") for the period from November 1, 2016 to November 26, 2024, plus an accrual of \$75,000 for unbilled fees and disbursements incurred or to be incurred by the Liquidator and Osler through the completion of the Liquidation Proceedings.³⁹

34. In considering whether to approve fees and disbursements, the court has regard to the "overriding principle of reasonableness," and does not engage in a docket-by-docket or line-by-line assessment of the accounts.⁴⁰ Fee approvals are routinely given as part of orders terminating liquidation proceedings under business corporation legislation,⁴¹ and should be granted in the present case. The Liquidator and Osler have acted with diligence throughout these Liquidation

³⁸ See, i.e., *First Hamilton Holdings*, at para. 1; *Novelion*, at para. 16; *Oxford Golf*, at para. 3.

³⁹ The Fee Affidavits are attached as Appendices "F" and "G" to the Fifth Report.

⁴⁰ *Nortel Networks Inc. (Re)*, [2022 ONSC 668](#) at para. 10.

⁴¹ See, i.e., *First Hamilton Holdings*, at para. 2; *Novelion*, at para. 11; *Oxford Golf*, at paras. 4-5.

Proceedings, and the Liquidator views Osler's fees as reasonable and appropriate in the circumstances.⁴²

PART IV - NATURE OF THE ORDER SOUGHT

35. The Applicant therefore requests the Final Distribution, Termination and Discharge Order substantially in the form attached at **Tab 2** to the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of November, 2024.



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⁴² Fifth Report at para. 8.0.5.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Concordia International Corp. (Re)*, 2018 ONSC 4165
2. *Green Relief Inc. (Re)*, [2020 ONSC 6837](#)
3. *Growthworks Commercialization Fund Ltd. v. Growthworks WV Management Ltd.*, [2019 ONCA 371](#)
4. *ENTREC Corporation (Re)*, [2020 ABQB 751](#)
5. *First Hamilton Holdings Inc. et al. (Re)*, (March 2, 2022), Ont. S.C.J [Commercial List], CV-20-00641372-00CL ([Dissolution and Discharge Liquidator](#))
6. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
7. *Hollinger v. Prados-Hollinger*, [2012 QCCA 1682](#)
8. *LWP Capital Inc. (Re)*, (December 19, 2016), Ont. S.C.J. [Commercial List], Court File No. CV-16-1242-00CL ([Order \(Motion Returnable December 19, 2016\)](#))
9. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
10. *Morrison Laurier Mortgage Corporation. (Re)*, (August 9, 2024), Ont. S.C.J [Commercial List], CV-21-00661144-00CL ([Interim Distribution Order](#))
11. *Nortel Networks Inc. (Re)*, [2022 ONSC 668](#)
12. *Novelion Therapeutics Inc.. (Re)*, (August 18, 2021), B.C.S.C., No. S1913050, Vancouver Registry (Order Made After Application)
13. *Syndic de Construction Frank Catania & Associés inc.*, [2018 QCCS 2063](#)
14. *Oxford Golf and Country Club, Limited. (Re)*, (September 4, 2018), Ont. S.C.J, 330-18 (Distribution Approval, Discharge and Release Order)
15. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
16. *Turner v. Turner*, [2009 ABQB 746](#)
17. *UrtheCast Corp. (Re)*, [2021 BCSC 1819](#)
18. *Xplore Inc. (Re)*, [2024 ONSC 5250](#)

**SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

CANADA BUSINESS CORPORATIONS ACT

R.S.C., 1985, c. C-44, as amended

Powers of court

217 In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing the liquidator’s remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the corporation;
- (f) an order, at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation, except as permitted by the court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;
- (i) an order disposing of or destroying the documents and records of the corporation;

- (j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;
- (l) subject to section 223, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) on the application of any director, officer, security holder, creditor or the liquidator,
 - (i) an order staying the liquidation on such terms and conditions as the court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property; and
- (o) after the liquidator has rendered a final account to the court, an order dissolving the corporation.

[...]

Costs of liquidation

223 (1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

Final accounts

(2) Within one year after appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the court

(a) for approval of the final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

Shareholder application

(3) If a liquidator fails to make the application required by subsection (2), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

Publication

(4) A liquidator shall give notice of their intention to make an application under subsection (2) to the Director, to each inspector appointed under section 217, to each shareholder and to any person who provided a security, fidelity bond or fidelity insurance for the liquidation, and shall publish the notice in a newspaper published or distributed in the place where the corporation has its registered office, or as otherwise directed by the court.

Final order

(5) If the court approves the final accounts rendered by a liquidator, the court shall make an order

- (a) directing the Director to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the corporation; and
- (c) subject to subsection (6), discharging the liquidator.

Delivery of order

(6) The liquidator shall forthwith send a certified copy of the order referred to in subsection (5) to the Director.

Certificate of dissolution

(7) On receipt of the order referred to in subsection (5), the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

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KSV ADVISORY INC. IN ITS CAPACITY AS LIQUIDATOR OF LWP CAPITAL INC.

Court File No. CV-16-11242-00CL

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

FACTUM OF THE APPLICANT

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