

**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 SKYLINK EXPRESS INC.

AIDE MEMOIRE OF THE APPLICANT, SKYLINK EXPRESS INC.

1. This Aide Memoire is filed by the Applicant, Skylink Express Inc. (the "**Applicant**"), in support of its motion heard on Wednesday, October 30, 2024 at 11:00 a.m. before Justice Steele by judicial videoconference via Zoom at Toronto, Ontario, requesting the following relief, among other things:

- (a) an extension of the stay period ("**Stay Period**") up to and including January 31, 2025;
- (b) the approval of the Sixth Report of KSV Restructuring Inc. ("**KSV**") as Monitor of the Applicant (in such capacity, the "**Monitor**") dated October 23, 2024 (the "**Sixth Report**") and the Monitor's activities described therein; and
- (c) the approval of the fees of the Monitor and its counsel for the period from July 1, 2024 to September 30, 2024.

Background

2. The background to these proceedings (the "**Proceedings**") is set out in the affidavit of David Atkins sworn October 23, 2024 and the Sixth Report. Capitalized terms used herein and not otherwise defined have the meaning given to them in the Sixth Report.

Statement of Issues, Law & Authorities

i. Extension of the Stay Period:

3. Under section 11.02 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"),¹ the Court may make a stay order for any period that the court considers necessary, if the applicant satisfies the Court that: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence.

4. The extension of the Stay Period up to and including January 31, 2025 should be approved for the following reasons, among other things:

- (a) the extension of the Stay Period will enable the Applicant to advance the Sales Process for the remaining Fleet;²
- (b) the Applicant has worked on a revised cash flow forecast with the Monitor, attached as Appendix "C" to the Sixth Report, which indicates that the Applicant will be able to fund its liabilities as they come due during the Stay Period;³
- (c) the Applicant has acted, and continues to act, in good faith and with due diligence during the course of the Proceedings;⁴
- (d) the Monitor supports the proposed extension to the Stay Period;⁵ and
- (e) no other party opposes the proposed extension.⁶

¹ [Companies' Creditors Arrangement Act, R.S.C., 1985, c. C-36](#) at ss. 11.02(2)-11.02(3).

² Affidavit of David Atkins sworn October 23, 2024 ("**Atkins Affidavit**") at para 10, Motion Record of the Applicant returnable October 30, 2024 ("**MR**"), Tab 2, p 9.

³ Atkins Affidavit at para 12, MR, Tab 2, p 9; see also Appendix "C" to the Sixth Report to Court of KSV Restructuring Inc. as Monitor of Skylink Express Inc. dated October 23, 2024 ("**Sixth Report**"), pp 50-51.

⁴ Atkins Affidavit at para. 13, MR, Tab 2, p 10.

⁵ Sixth Report, p 11 at para 7.0.2.

⁶ Sixth Report, p 11 at para 7.0.2(f).

ii. The Sixth Report and the Monitor's Activities:

5. In *Re Target Canada Co.*, the Court noted that there are good policy and practical reasons to grant the approval of a court-appointed officer's report and the activities described therein.⁷

6. The activities of the Monitor, as detailed in the Sixth Report, were conducted in good faith and served the best interests of the Applicant and its stakeholders. Furthermore, the Monitor's activities were undertaken in accordance with its mandate set forth in the previous Orders issued in the Proceedings and the CCAA more generally.

iii. The Monitor's and its Counsel's Fees:

7. Lastly, the question for this Court in deciding to approve KSV's fees in its capacities as the Monitor, and its counsel, Cassels Brock & Blackwell ("**Cassels**"), is whether the fees were fair and reasonable in all the circumstances, with an emphasis on what was accomplished, and not on how much it took.⁸ This Court has provided a non-exhaustive list of factors to consider when determining whether the fees and disbursements are fair and reasonable, including, *inter alia*, the time spent and the cost of comparable services when performed in a prudent and economical manner.⁹

8. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by law firms practicing corporate insolvency and restructuring in the Toronto market, and that the overall fees charged by Cassels and the Monitor are validly incurred in accordance with the provisions of the Orders in the Proceedings and are reasonable and appropriate in the circumstances.¹⁰

⁷ *Re Target Canada Co.*, 2015 ONSC 7574 at para 22; see also *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 at para 65.

⁸ *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 45.

⁹ See *Re Nortel Networks Corporation, et al.*, 2017 ONSC 673 at para 14.

¹⁰ Sixth Report, p 12 at para 8.0.5.

Conclusion

9. For the reasons set out above, the Applicant respectfully requests that the proposed Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of October, 2024.



Jennifer Stam

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7
Fax: 416.216.3930

Jennifer Stam LSO#: 46735J
Tel: 416.202.6707
jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO# 87151U
Tel: 416.278.3787
lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

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

Court File No. CV-24-00716267-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SKYLINK EXPRESS INC.

Applicant

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AIDE MEMOIRE OF THE APPLICANT, SKYLINK EXPRESS
INC.**

NORTON ROSE FULBRIGHT CANADA LLP

222 Bay Street, Suite 3000
Toronto ON M5K 1E7

Jennifer Stam LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lauren Archibald LSO# 87151U

Tel: 416.278.3787

lauren.archibald@nortonrosefulbright.com

Lawyers for the Applicant

