

**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. (the "**Applicant**")

**MOTION RECORD
RETURNABLE OCTOBER 30, 2024
(STAY EXTENSION AND ACTIVITIES AND FEES APPROVAL)**

October 23, 2024

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TO: The Service List

**ONTARIO
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TAB 1

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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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.

NOTICE OF MOTION

Skylink Express Inc. (the “**Applicant**”) will make a motion to a Judge of the Superior Court of Justice (Commercial List), on **Wednesday, October 30th, 2024 at 11:00 a.m.** or as soon after that time as the motion can be heard, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Lauren Archibald at lauren.archibald@nortonrosefulbright.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging and validating the time for service and filing of this notice of motion and motion record;
- 2 Extending the Stay Period (as defined below) up to and including to January 31, 2025;
- 3 Approving the Sixth Report (as defined below) and the Monitor’s (as defined below) activities described therein;
- 4 Approving the fees of the Monitor and its legal counsel; and
- 5 Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1 On March 11, 2024, the Applicant sought and obtained an initial order (as amended and restated, the “**Initial Order**”) granting it protection pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCA**”) and granting an initial stay period (“**Stay Period**”) to March 21, 2024;

2 Pursuant to the Initial Order, KSV Restructuring Inc. (“**KSV**”) was appointed as the monitor of the Applicant (in such capacity, the “**Monitor**”) in the CCA proceedings;

3 On March 21, 2024, the Court granted an amended and restated initial order (the “**ARIO**”), pursuant to which, among other things, the Stay Period was extended to April 26, 2024;

4 In connection with the CCA proceedings, the Applicant and TD Bank, the Applicant’s senior secured creditor, have entered into an escrow agreement and a forbearance agreement (together, the “**TD Stand Still Agreements**”);

5 On April 25, 2024, the Court granted an Order approving the terms of the TD Stand Still Agreements and extending the Stay Period up to and including May 31, 2024;

6 On May 30, 2024, the Court further extended the Stay Period up to and including July 31, 2024 and approved a sale process (the “**Sale Process**”) for the sale of the various aircraft and certain other assets owned by the Applicant (the “**Fleet**”);

7 Subsequently, on July 29, 2024, the Court approved the sale of certain of the Fleet and further extended the Stay Period up to and including October 31, 2024;

Stay Extension

8 From the outset, the principal purpose of the Applicant's CCAA proceedings was to provide it with time to restructure its primary customer contract with United Parcel Services Canada Ltd. ("**UPS**");

9 As set out in the Sixth Report, those negotiations were unsuccessful and as such, the Applicant entered into a wind down agreement dated as of July 31, 2024 setting out the terms of the agreed on wind down of the Applicant's performance of that contract;

10 Those wind down services have now been completed;

11 Given the completion of the wind down services for UPS, the primary remaining activity in the CCAA proceedings is to complete the Sale Process;

12 Accordingly, the Applicant is seeking an extension of the Stay Period up to and including January 31, 2025 to continue to advance the Sale Process with respect to the balance of the Fleet;

13 The Applicant, with the Agent (as defined in the Sixth Report), continues to pursue prospective purchasers in respect of the balance of the Applicant's unsold Fleet, including its operating license;

14 The Applicant is hopeful it may be in a position to seek approval of one or more transactions prior to the end of the extension of the Stay Period;

15 The Applicant has worked on a revised cash flow forecast with the Monitor, to be attached to the Sixth Report, which indicates that the Applicant will be able to fund its liabilities as they come due during the Stay Period;

16 The Applicant has acted, and continues to act, in good faith and with due diligence during the course of these CCAA proceedings and intends to comply with the TD Stand Still Agreements during the extension period, including debt servicing obligations;

17 The Monitor supports the proposed extension to the Stay Period;

Activities and Fees

18 The activities of the Monitor since the fifth report of the Monitor dated July 22, 2024 are set out in the sixth report of the Monitor dated October 23, 2024 (the “**Sixth Report**”) and are consistent with its mandate pursuant to the ARIO;

19 The fees of KSV in its capacity as Monitor are more particularly set out in the affidavit of Robert Kofman sworn October 21, 2024, for the period from July 1, 2024 to September 30, 2024, totalling \$60,891.75, excluding disbursements and HST;

20 The fees of Cassels Brock & Blackwell (“**Cassels**”) as more particularly set out in the affidavit of Monique Sassi sworn October 21, 2024, for the period from July 1, 2024 to September 30, 2024, totalling \$23,093.25, excluding disbursements and HST;

21 The fees incurred by KSV in its capacity as Monitor and Cassels are reasonable and appropriate in the circumstances and the hourly rates of Cassels are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market;

Other Grounds

22 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

23 Rules 1.04 and 37 of the *Rules of Civil Procedure* (Ontario); and

24 Such further and other grounds as counsel may advise and this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1 The Affidavit of David Atkins sworn October 23, 2024;
- 2 The Sixth Report, to be filed; and
- 3 Such further and other evidence as counsel may advise and this Court may permit.

October 23, 2024

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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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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Lawyers for the Applicant

TAB 2

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

**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 SKYLINK EXPRESS INC. (the "**Applicant**")

**AFFIDAVIT OF DAVID ATKINS
(sworn October 23, 2024)**

I, David Atkins, of the City of Kelowna, in the Province of British Columbia, MAKE OATH
AND SAY:

1. I am the President and Chief Operating Officer of the Applicant, Skylink Express Inc. ("**Skylink**" or the "**Applicant**"). I am also the Vice President of Operations & Regulatory Affairs of Momentum Decisive Solutions Canada Inc. ("**Momentum**"), the sole shareholder of the Applicant and the debtor-in-possession lender in these proceedings. I have been with Momentum since 2023. As such, I have knowledge of the following matters, except where otherwise stated.

2. I swear this affidavit in support of the Applicant's motion for an order, among other things, extending the Stay Period (as defined below) up to and including to January 31, 2025.

I. INTRODUCTION

3. The background and circumstances leading up to Skylink's CCAA proceedings are set out in the affidavit of Kyle Dennhardt sworn March 8, 2024, the affidavit of Kyle Dennhardt sworn April 20, 2024, the affidavit of Kyle Dennhardt sworn May 24, 2024 (collectively, the "**Prior Affidavits**") and therefore are not repeated herein.

Previous Orders

4. Pursuant to an application of the Applicant brought on March 11, 2024, the Applicant sought and obtained an initial order (the “**Initial Order**”) granting it protection pursuant to the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and granting an initial stay period (“**Stay Period**”) to March 21, 2024. Pursuant to the Initial Order, KSV Restructuring Inc. (“**KSV**”) was appointed as the monitor of the Applicant (in such capacity, the “**Monitor**”) in the CCAA proceedings.

5. At the initial hearing, the Bank (as defined in the Prior Affidavits) also brought a Receivership Application (as defined in the Prior Affidavits) returnable on the same day. However, at the initial hearing on March 11, 2024, the Applicant and the Bank advised that they had agreed to terms and a proposed endorsement pursuant to which the Receivership Application would be adjourned and provided that, among other things, the parties would work to negotiate an escrow agreement and forbearance agreement (together, the “**TD Stand Still Agreements**”).

6. On March 21, 2024, the Court granted an amended and restated initial order, pursuant to which, among other things, the Stay Period was extended to April 26, 2024. On April 25, 2024, the Court granted an Order approving the terms of the executed TD Stand Still Agreements and extending the Stay Period up to and including May 31, 2024. The Receivership Application was also further adjourned.

7. On May 30, 2024, this Court further extended the Stay Period up to and including July 31, 2024, and approved a sale process (the “**Sale Process**”) for the sale of the various aircraft and certain other assets owned by the Applicant (the “**Fleet**”).

8. Subsequently, on July 29, 2024, the Court approved the sale of certain of the Fleet and further extended the Stay Period up to and including October 31, 2024.

II. EXTENSION OF THE STAY PERIOD

9. From the outset, the principal purpose of the Applicant's CCAA proceedings was to provide the Applicant with time to restructure its primary customer contract, with United Parcel Services Canada Ltd. ("**UPS**"). As set out in the affidavit of Kyle Dennhardt sworn May 24, 2024, those negotiations were unsuccessful and as such, the Applicant entered into a wind down agreement dated as of July 31, 2024 setting out the terms of the agreed on wind down of the Applicant's performance of that contract. Those wind down services have now been completed.

10. Given the completion of the wind down services for UPS, the primary remaining activity in the CCAA proceedings is to complete the Sale Process. As such, the Applicant is seeking an extension of the Stay Period up to and including January 31, 2025 to continue to advance the Sale Process with respect to the balance of the Fleet, subject to the approval of the Sale Process by the Court.

11. The Applicant, with the Agent (as defined in the Sixth Report), continues to pursue prospective purchasers in respect of the balance of the Applicant's unsold Fleet, including its operating license. The Applicant is hopeful it may be in a position to seek approval of one or more transactions prior to the end of the extension of the Stay Period.

12. The Applicant has worked on a revised cash flow forecast with the Monitor, to be attached to the Sixth Report, which indicates that the Applicant will be able to fund its liabilities as they come due during the Stay Period.

13. The Applicant has acted, and continues to act, in good faith and with due diligence during the course of these CCAA proceedings and intends to comply with the TD Stand Still Agreements during the extension period, including debt servicing obligations.

III. CONCLUSION

14. For the reasons set out above, the Applicant respectfully requests that the proposed order be granted.

SWORN by David Atkins at the City of Kelowna, in the Province of British Columbia, before me at the City of Toronto, in the Province of Ontario, on October 23, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Lauren Archibald

Commissioner for Taking Affidavits
(or as may be)

LAUREN ARCHIBALD LSO#: 87151U

David Atkins

David Atkins

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

AFFIDAVIT OF DAVID ATKINS

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Lawyers for the Applicant

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 30 th
)	
JUSTICE STEELE)	DAY OF OCTOBER, 2024

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.

**ORDER
(Stay Extension and Activities and Fees Approval)**

THIS MOTION, made by the Applicant, Skylink Express Inc. (the "**Applicant**"), for an order, among other things, (a) extending the Stay Period (as defined in the Amended and Restated Initial Order dated March 21, 2024, as amended on March 21, 2024, the "**ARIO**") to and including January 31, 2025; and (b) approving the Sixth Report (as defined below) and the activities and fees of the Monitor (as defined below) and its legal counsel, was heard this day by Zoom videoconference.

ON READING the affidavit of David Atkins sworn October 23, 2024 and the exhibits attached thereto (the "**Atkins Affidavit**") and the Sixth Report of KSV Restructuring Inc. in its capacity as the monitor of the Applicant (in such capacity, the "**Monitor**") dated October 23, 2024 (the "**Sixth Report**") and on hearing the submissions of the lawyers for the Applicant, and those other parties present although duly served as appears from the affidavit of service of Lauren Archibald sworn October ____, 2024.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Sixth Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period, as defined in the ARIO, be and is hereby extended up to and including January 31, 2025.

APPROVAL OF REPORT AND ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the Sixth Report and the activities of the Monitor referred to therein be and are hereby approved; provided, however, that only the Monitor in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the fees of the Monitor for the period from July 1, 2024 to September 30, 2024, as set out in the affidavit of Robert Kofman sworn October 21, 2024, are hereby approved.

5. **THIS COURT ORDERS** that the fees of Cassels Brock & Blackwell LLP, in its capacity as legal counsel to the Monitor, for the period from July 1, 2024 to September 30, 2024, as set out in the affidavit of Monique Sassi sworn October 21, 2024, are hereby approved.

GENERAL

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying

out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Stay Extension and Activities and Fees Approval)**

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