



**Seventh Report to Court of
KSV Restructuring Inc. as
Monitor of
Skylink Express Inc.**

January 23, 2025

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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.

SEVENTH REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

January 23, 2025

1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on March 11, 2024 (the “**Filing Date**”), Skylink Express Inc. (the “**Company**”) 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 (the “**Monitor**”).
2. Pursuant to the terms of the Initial Order, among other things, the Court granted:
 - a) a stay of proceedings until March 21, 2024, being the date of the comeback motion in these proceedings (the “**Comeback Motion**”);
 - b) the following charges on the Company's current and future assets, property and undertaking, in the order of priority provided below, each of which is subordinate to secured credit facilities (the “**TD Loan Facilities**”) provided to the Company by The Toronto-Dominion Bank (“**TD**”):
 - i. a charge in favour of the Company's counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”), the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), in the amount of \$350,000 to secure their fees and disbursements in these proceedings;
 - ii. a charge in favour of the Company's sole shareholder, Momentum Decisive Solutions Canada Inc. (“**Momentum**”, in such capacity, the “**DIP Lender**”), to secure advances made under a DIP facility (the “**DIP Facility**”) pursuant to an interim financing term sheet (the “**DIP Term Sheet**”), which advances were limited to \$1.35 million until the Comeback Motion (the “**DIP Lender's Charge**”); and
 - iii. a charge in the amount of \$480,000 in favour of the sole director and the officers of the Company (the “**Directors' Charge**”).

3. On March 21, 2024, the Court issued an amended and restated initial order (the “**ARIO**”), which approved:
 - a) an extension of the stay of proceedings to April 26, 2024;
 - b) an increase in the Directors’ Charge to \$970,000; and
 - c) an increase in the Company’s permitted borrowings under the DIP Facility to \$2.5 million, which amounts are secured by the DIP Lender’s Charge.

A copy of the ARIO is provided in Appendix “A”.

4. On April 25, 2024, the Court issued an order, which approved:
 - a) an extension of the stay of proceedings to May 31, 2024;
 - b) a forbearance agreement dated April 19, 2024 among the Company, Momentum and TD (the “**Forbearance Agreement**”); and
 - c) an escrow agreement dated April 19, 2024 among Momentum, TD, the Monitor and Norton Rose.
5. On May 30, 2024, the Court issued an order (the “**Sale Process Order**”) which approved:
 - a) an extension of the stay of proceedings to July 30, 2024;
 - b) a sale process (the “**Sale Process**”) for certain of the Company’s assets, primarily being the Company’s aircraft, aircraft parts inventory and its air operator certificate (the “**AOC**”);
 - c) the retention of 1262396 Alberta Ltd. (dba Pollock Aviation) to act as sales agent (the “**Agent**”) in the Sale Process;
 - d) an increase in the Company’s permitted borrowings under the DIP Facility to \$3 million, which amounts are secured by the DIP Lender’s Charge; and
 - e) the activities and reports of the Monitor and the fees of the Monitor and Cassels.
6. The Sale Process is set out in the Monitor’s third report to Court dated May 24, 2024 (the “**Third Report**”), a copy of which is provided in Appendix “B”, without appendices. Since the date of the Sale Process Order, the Company, with the assistance of the Agent and under the supervision of the Monitor, has been marketing the Company’s assets for sale in accordance with the Sale Process Order.

7. On July 5, 2024, the Court issued an order (the “**First Aircraft AVO**”) approving a transaction between LAD Inc. and the Company for one of the Company’s Cessna Grand Caravan aircraft and one Pratt and Whitney Canada engine and certain other assets, as set out in the Monitor’s fourth report to Court dated June 28, 2024 (the “**Fourth Report**”).
8. On July 29, 2024, the Court issued orders (collectively, the “**July 29 AVOs**”) approving transactions:
 - a) between Randigo LLC and the Company for two of the Company’s Cessna Grand Caravan aircraft and two Pratt and Whitney Canada engines and certain other assets, as set out in the Monitor’s fifth report to Court dated July 22, 2024 (the “**Fifth Report**”); and
 - b) between Gingras Équipement Inc. and the Company for one of the Company’s Cessna Grand Caravan aircraft and one Pratt and Whitney Canada engine and certain other assets, as also set out in the Fifth Report.
9. On July 29, 2024, the Court also issued an order which approved, among other things:
 - a) an extension of the stay of proceedings to October 31, 2024;
 - b) an increase in the Company’s permitted borrowings under the DIP Facility and the DIP Lender’s Charge to \$4.55 million; and
 - c) the Fourth Report and Fifth Report, the Monitor’s activities detailed therein and the fees of the Monitor and Cassels to June 30, 2024.
10. On October 30, 2024, the Court issued an order which approved, among other things:
 - a) an extension of the stay of proceedings to January 31, 2025;
 - b) the Monitor’s sixth report to Court dated October 23, 2024 (the “**Sixth Report**”); and
 - c) the Monitor’s activities set out in the Sixth Report and the fees of the Monitor and Cassels to September 30, 2024.
11. The Affidavit of Kyle Dennhardt, the Company’s former Chief Financial Officer, sworn March 8, 2024 in support of the CCAA application and KSV’s pre-filing report dated March 8, 2024 (the “**Pre-Filing Report**”) filed in connection with the initial application, provide, *inter alia*, background information concerning the Company, its business and the reasons for the commencement of these proceedings. Court materials filed in these proceedings, including the affidavits filed by the Company’s representatives in these proceedings and the Monitor’s reports and the Pre-Filing Report (collectively, the “**Monitor’s Reports**”) can be found on the Monitor’s case website at www.ksvadvisory.com/experience/case/skylink.

1.1 Purposes of this Report

1. The purposes of this report (the “**Report**”) are to:
 - a) discuss the Company’s request for an extension of the stay of proceedings from January 31 to April 30, 2025;
 - b) provide the Court with an update of the Sale Process;
 - c) summarize the Company’s updated cash flow forecast from January 18 to April 30, 2025 (the “**Updated Cash Flow Forecast**”);
 - d) summarize the Monitor’s and the Company’s activities since the date of the Sixth Report; and
 - e) recommend that the Court:
 - i. issue an order:
 - increasing the Company’s permitted borrowings under the DIP Facility from \$4.55 million to \$5.9 million in accordance with an amended DIP Term Sheet dated January 22, 2025 (the “**Third Amended DIP Term Sheet**”), which borrowings are to be secured by the DIP Lender’s Charge;
 - extending the stay of proceedings from January 31 to April 30, 2025 (the “**Stay Extension Period**”); and
 - approving this Report and the Monitor’s activities, as described in this Report.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the Company’s unaudited financial information, books and records and discussions with the Company’s management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this 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. An examination of the Updated Cash Flow Forecast as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Company'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 the Updated Cash Flow Forecast will be achieved.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company is an Ontario corporation which operated for over 25 years providing regional air cargo services throughout North America. Until autumn 2024, the Company operated one of Canada's largest air cargo services, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. Momentum is the Company's sole shareholder.
2. The Company's registered office is 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
3. As of the Filing Date, the Company employed 79 full-time employees, seven part-time employees and 11 independent contractors. The Company's pilots are members of UNIFOR. The Company does not maintain any registered pension plans.
4. Pursuant to the ARIO, Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to the Company's obligations to TD under the TD Loan Facilities. As of the date of this Report, Momentum had advanced \$3.6 million to the Company under the DIP Facility.
5. The Company provided "last mile" services to secondary (remote) locations, primarily in Canada. At the commencement of these proceedings, the Company operated from hangars in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City. The Company has since terminated all flight operations.
6. As a result of the transactions described in paragraphs 1.7 and 1.8 above (the "**Completed Sale Transactions**"), the Company now owns a fleet of 10 aircraft, comprised of 10 1900C aircraft. The Company also leases two 1900D aircraft from Momentum but has never paid leasing costs, given those two aircraft have not been used by the Company.
7. As of the commencement of these proceedings, United Parcel Services Canada Ltd. ("**UPS**") was the Company's primary customer. The Company and UPS were party to a long-term feeder aircraft charter agreement pursuant to which the Company provided cargo services for UPS throughout Canada (the "**UPS Contract**"). Historically, the Company generated almost all its revenue from the UPS Contract.

8. The UPS Contract was unprofitable. As discussed in the Monitor's Reports, the Company tried to renegotiate the UPS Contract earlier in these proceedings. The negotiations were unsuccessful, and the Company and UPS entered into a wind-down agreement dated July 31, 2024. The wind-down services have now been completed and the Company is no longer providing cargo services to UPS or any other party. Accordingly, the Company is not presently carrying on active business operations, and all but 12 employees have been terminated.
9. Additional background information about the Company, the causes of the Company's financial challenges and the reasons the Company sought protection under the CCAA are provided in the Company's CCAA application materials and the Monitor's Reports filed in these proceedings.

2.1 TD

1. TD is the only creditor with a registration filed against the Company in the applicable provincial personal property security registration systems. The Monitor understands that TD is the Company's only secured creditor, other than the DIP Lender and the beneficiaries of the Court-ordered charges issued in these proceedings.
2. The Company is indebted to TD pursuant to a credit facilities letter agreement dated November 2, 2020. TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec (collectively, the "**TD Loan Security**"). Momentum provided a limited recourse guarantee of the TD Loan Facilities in the amount of \$15 million and provided security in connection with its guarantee. In addition to paying the net proceeds from the Completed Sale Transactions to TD in accordance with the First Aircraft AVO and the July 29 AVOs, the Company has continued to make principal and interest payments to TD during these proceedings in accordance with the Forbearance Agreement. As at the date of this Report, the balance on the TD Loan Facilities was approximately \$6.0 million.
3. Cassels has provided the Monitor with an opinion confirming the validity and enforceability of the TD Loan Security, subject to standard assumptions and qualifications.

3.0 Sale Process

1. The Company, with the Agent, continues to carry out the Sale Process for the Company's unsold aircraft and other assets including its operating license. The Company is hopeful to seek approval of one or more transactions prior to the end of the extension period. The Company has made progress in this regard and is corresponding with interested parties, including two parties that have expressed an interest in a transaction for the majority of the Company's remaining fleet and other assets, including, in one case, the AOC.
2. As described in the Third Report, the Agent's engagement was for an initial six-month term ending on November 23, 2024. The Company negotiated an extension of this agreement to August 23, 2025.

4.0 Cash Flow

1. A comparison of the Company's actual cash flow from October 21, 2024 to January 17, 2025 (the "Forecast Period") to the cash flow forecast provided in the Sixth Report is provided below.

| (unaudited; \$) | Forecast | Actual | Variance |
|-------------------------------------|--------------------|--------------------|----------------|
| Receipts | | | |
| UPS revenues | - | - | - |
| GST/HST/QST refunds | 28,319 | - | (28,319) |
| Return of security deposits | - | 139,332 | 139,332 |
| | 28,319 | 139,332 | 111,013 |
| Disbursements | | | |
| Payroll | 390,764 | 350,858 | 39,906 |
| Leases | 139,683 | 123,011 | 16,672 |
| Insurance | 5,000 | 5,282 | (282) |
| Maintenance | 148,535 | 61,491 | 87,044 |
| Other general expenses | 173,956 | 92,893 | 81,063 |
| GST/HST/QST on expenditures | 46,717 | 54,083 | (7,366) |
| TD Loan - principal repayment | 734,489 | 734,489 | - |
| TD Loan – interest | 130,034 | 120,723 | 9,311 |
| | 1,769,178 | 1,542,830 | 226,348 |
| Net cash flow before the undernoted | (1,740,859) | (1,403,498) | 337,361 |
| Professional fees | 650,000 | 181,712 | 468,288 |
| Net Cash Flow | (2,390,859) | (1,585,210) | 805,649 |
| Opening Cash Balance | 98,748 | 98,748 | - |
| Net Cash Flow | (2,390,859) | (1,585,210) | 805,649 |
| DIP Financing | 2,300,000 | 1,550,000 | (750,000) |
| Ending Cash Balance | 7,889 | 63,538 | 55,649 |

2. As of the date of this Report, the Company had borrowed \$3.6 million¹ under the DIP Facility. As noted above, the Company is not carrying on active business operations, which is reflected by the revenue line item, which shows cash receipts. Substantially all of the variances are positive, as operating costs and professional fees have been less than forecasted.

4.1 Updated Cash Flow Forecast

1. The Company, with the assistance of the Monitor, has prepared the Updated Cash Flow Forecast. The Updated Cash Flow Forecast is provided in Appendix "C". The Company's and the Monitor's statutory reports on the Updated Cash Flow Forecast are attached as Appendices "D" and "E", respectively.
2. Based on the Monitor's review of the Updated Cash Flow Forecast, the cash flow assumptions appear reasonable.

¹ Includes amounts advanced under the DIP Facility before the Forecast Period.

3. The Updated Cash Flow Forecast reflects that the Company is projected to require advances of \$2.35 million under the DIP Facility during the Forecast Period. As at the date of this Report, the Company has borrowed \$3.6 million under the DIP Facility. As the authorized borrowing under the DIP Facility is \$4.55 million, the Company is seeking an increase in the DIP Facility from \$4.55 million to \$5.9 million and a corresponding increase in the DIP Lender's Charge.
4. The majority of the additional funding under the DIP Facility is to be used to continue to service the TD debt (approximately \$833,000, comprised of approximately \$734,000 of principal and \$99,000 of interest).
5. The Monitor understands that the DIP Lender is prepared to fund the Company and these proceedings in accordance with the Updated Cash Flow Forecast, subject to: (a) the Court's approval of an increase in the permitted borrowings under the DIP Facility to \$5.9 million; (b) the Court's approval of a corresponding increase in the DIP Lender's Charge; and (c) the Company remaining in compliance with the terms and conditions of the Third Amended DIP Term Sheet, a copy of which is provided in the affidavit of David Atkins, the Company's President and Chief Operating Officer, sworn on January 22, 2025.
6. The only material change to the Third Amended DIP Term Sheet from the original DIP Term Sheet is the increase in the amount of the permitted borrowings.

4.2 DIP Facility Recommendation

1. For the following reasons, the Monitor recommends that the Court issue an order approving the increase in the amount of the permitted borrowings under the DIP Facility and the Third Amended DIP Term Sheet:
 - the increase in the permitted borrowings is required for the Company to carry out the Sale Process and maintain its remaining aircraft during the Stay Extension Period;
 - without the cash to be provided under the DIP Facility, the Company may not have sufficient cash flow to carry out the Sale Process and service its debt owing to TD, pursuant to the Forbearance Agreement;
 - as set out in the Pre-Filing Report, KSV has compared the terms of the DIP Facility to other interim financing facilities approved by Canadian courts in recent CCAA proceedings. The comparison was appended to the Pre-Filing Report. The DIP Lender is not seeking an increase in the cost of the DIP Facility. The cost of the proposed DIP Facility is within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;
 - the DIP Facility ranks subordinate to TD's security interest, which is a requirement of TD;
 - the Monitor believes it is unlikely that any other lender would provide DIP funding on a subordinated basis to TD;

- TD does not oppose the proposed increase in the DIP Facility and corresponding increase in the DIP Lender's Charge; and
- there are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility.

5.0 Company's Activities

1. The Company's activities since the Sixth Report have included:
 - a) maintaining its remaining aircraft;
 - b) communicating with suppliers to secure goods and services during these proceedings;
 - c) dealing with human resource matters;
 - d) corresponding with Norton Rose and the Monitor regarding vendor issues, the Sale Process, and other matters;
 - e) corresponding with the Agent regarding the Sale Process and facilitating due diligence by prospective purchasers, including arranging for inspections of its aircraft and other assets;
 - f) corresponding with prospective purchasers;
 - g) reviewing the Company's cash flow forecast and comparing actual results to projected results;
 - h) reporting weekly to TD in accordance with the Forbearance Agreement; and
 - i) preparing the Updated Cash Flow Forecast.

6.0 Monitor's Activities

1. Since the date of the Sixth Report, the Monitor has been, among other things:
 - a) corresponding with the Company's management, the Agent, Norton Rose and Cassels regarding the Sale Process;
 - b) monitoring the Company's receipts and disbursements;
 - c) reviewing the Company's weekly cash flow and reporting same to msi Spergel Inc., TD's financial advisor, as required under the Forbearance Agreement;
 - d) working with the Company and the Agent to carry out the Sale Process;
 - e) assisting the Company to deal with creditors;

- f) reviewing and commenting on the Company's motion materials for this motion; and
- g) preparing this Report and reviewing and commenting on the related motion materials and draft order.

7.0 Stay Extension

1. The stay of proceedings expires on January 31, 2025. The Company is requesting an extension of the stay of proceedings to April 30, 2025.
2. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the Updated Cash Flow Forecast reflects that the Company is projected to have sufficient liquidity to fund its post-filing obligations;
 - c) it will allow the Company to continue the Sale Process;
 - d) TD does not oppose the stay extension and Momentum supports it;
 - e) the Monitor believes that the extension is appropriate and in the best interests of the Company's stakeholders and that no stakeholder will be prejudiced by extending the stay of proceedings. In this regard, the primary purpose of the increase in the DIP Facility is to continue to service the TD debt, which is the Company's primary arm's length obligation and continue the sales process; and
 - f) as of the date of this Report, neither the Company nor the Monitor is aware of any party opposed to an extension of the stay of proceedings.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make orders granting the relief requested in this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
SKYLINK EXPRESS INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)
JUSTICE CAVANAGH)
MONDAY, THE 11TH
DAY OF MARCH, 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. (the "**Applicant**")

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kyle Dennhardt sworn March 8, 2024 and the Exhibits thereto, the Pre-Filing report of KSV Restructuring Inc. ("**KSV**") in its capacity as the proposed monitor of the Applicant (in such capacity, the "**Monitor**"), the first report of KSV in its capacity as Court-appointed Monitor dated March 18, 2024, the supplementary affidavit of Kyle Dennhardt sworn March 9, 2024, the affidavit of Kathryn Furfaro sworn March 8, 2024, the supplementary affidavit of Kathryn Furfaro sworn March 10, 2024 and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, Momentum Decisive Solutions Canada Inc. ("**Momentum**"), The Toronto-Dominion Bank ("**TD Bank**") and those other parties present although duly served as appears from the affidavits of service of Katie Parent sworn March 9, 11 and 18, 2024 and on reading the consent of KSV to act as the Monitor,

SERVICE

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

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant shall have authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant is authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges; and

- (c) with the consent of the Monitor, amounts owing in respect of the Applicant's corporate credit cards in respect of charges incurred prior to this Order up to a maximum amount of \$250,000 if, in the opinion of the Applicant and the Monitor, such payments are critical to the preservation of the Business.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and

which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court:

- (a) Except with respect to payments on account of the TD Bank Credit Facilities (as defined in the Affidavit of Kathryn Furfaro sworn March 8, 2023), to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$300,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate; and

- (c) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

11. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant’s entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable Secured Creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such Secured Creditors. If the Applicant disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicant’s claim to the fixtures in dispute.

12. THIS COURT ORDERS that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours’ prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. THIS COURT ORDERS that until and including April 26, 2024, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all

Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

Notwithstanding the foregoing or any other provision of this Order, the rights and remedies of TD Bank shall not be stayed during the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

14. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicant, except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicant, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicant, and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicant in

accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

19. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

20. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$970,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

21. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 19 of this Order.

APPOINTMENT OF MONITOR

22. THIS COURT ORDERS that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

23. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel on a periodic basis of financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (d) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis;
- (e) advise the Applicant in its development of the Plan and any amendments to the Plan;

- (f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

25. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

26. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

28. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of this Order, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a monthly basis or as may otherwise be agreed on.

29. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$350,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 37 and 39 hereof.

DIP FINANCING

31. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Momentum (the "**DIP Lender**") in order to finance

the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$2.5 million unless permitted by further Order of this Court.

32. THIS COURT ORDERS THAT such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of March 8, 2024 (the "**DIP Term Sheet**"), filed.

33. THIS COURT ORDERS that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 business days notice to the Applicant and the Monitor, may exercise any and all of its rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to cease making advances to the Applicant and set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender's

Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

36. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. THIS COURT ORDERS that the priorities of the Directors’ Charge, the Administration Charge and the DIP Lender’s Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$350,000);

Second – DIP Lender’s Charge; and

Third – Directors’ Charge (to the maximum amount of \$970,000).

38. THIS COURT ORDERS that the filing, registration or perfection of the Directors’ Charge, the Administration Charge or the DIP Lender’s Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

39. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person however, the Charges shall rank subordinate to the TD Loan Security (as defined in the Affidavit) and provided that the Charges shall rank behind Encumbrances in favour of any Persons that have

not been served with notice of this application. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority ahead of such Encumbrances on notice to those parties.

40. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

41. THIS COURT ORDERS that the Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SERVICE AND NOTICE

43. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in the *Globe and Mail* (national edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

44. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL www.ksvadvisory.com/experience/case/skylink .

45. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicant and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

46. THIS COURT ORDERS that the Applicant, the Monitor and their respective counsel are at liberty to serve or distribute this Order, and other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicants' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation and notice requirements

GENERAL

47. THIS COURT ORDERS that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. 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.

50. THIS COURT ORDERS that each of the Applicant and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.



Digitally signed
by Mr. Justice
Cavanagh

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.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

AMENDED AND RESTATED INITIAL ORDER

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Appendix “B”



**Third Report to Court of
KSV Restructuring Inc. as
Monitor of
Skylink Express Inc.**

May 24, 2024

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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.

THIRD REPORT OF KSV RESTRUCTURING INC.
AS MONITOR

MAY 24, 2024

1.0 Introduction

1. Pursuant to an order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on March 11, 2024 (the “**Filing Date**”), Skylink Express Inc. (the “**Company**”) 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 (the “**Monitor**”).
2. Pursuant to the terms of the Initial Order, among other things, the Court granted:
 - a) a stay of proceedings until March 21, 2024, being the date of the comeback motion in these proceedings (the “**Comeback Motion**”);
 - b) the following charges on the Company’s current and future assets, property and undertaking (collectively, the “**Property**”), in the order of priority provided below, each of which is subordinate to secured credit facilities provided to the Company by TD Bank (“**TD**”) (the “**TD Loan Facilities**”):
 - i. a charge in favour of the Company’s counsel, Norton Rose Fulbright Canada LLP (“**Norton Rose**”), the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), in the amount of \$350,000 to secure their fees and disbursements in these proceedings (the “**Administration Charge**”);
 - ii. a charge in favour of the Company’s sole shareholder, Momentum Decisive Solutions Canada Inc. (“**Momentum**” and, in such capacity, the “**DIP Lender**”), to secure advances made under a DIP facility (the “**DIP Facility**”) pursuant to an interim financing term sheet (the “**DIP Term Sheet**”) which advances were limited to \$1.35 million until the Comeback Motion (the “**DIP Lender’s Charge**”); and
 - iii. a charge in the amount of \$480,000 in favour of the sole director and officers of the Company (the “**Directors’ Charge**”).

3. On March 21, 2024, the Court issued an amended and restated initial order (the “**ARIO**”), which granted:
 - a) an extension of the stay of proceedings to April 26, 2024;
 - b) an increase in the Directors’ Charge to \$970,000; and
 - c) an increase in the Company’s permitted borrowings under the DIP Facility to \$2.5 million, which amounts are secured by the DIP Lender’s Charge.

A copy of the ARIO is provided in Appendix “A”.

4. On April 25, 2024, the Court issued an order (the “**Stay Extension Order**”), which approved:
 - a) an extension of the stay of proceedings to May 31, 2024 (the “**Stay Extension Period**”);
 - b) a forbearance agreement dated April 19, 2024 among the Company, Momentum and TD (the “**Forbearance Agreement**”); and
 - c) an escrow agreement dated April 19, 2024 among Momentum, TD, the Monitor and Norton Rose (the “**Escrow Agreement**” and with the Forbearance Agreement, the “**TD Stand Still Agreements**”).¹
5. To date, the principal purpose of these proceedings has been to provide the Company an opportunity, in the context of the stabilized environment created by CCAA protection, to address its liquidity challenges resulting largely from its contract (the “**UPS Contract**”) with United Parcel Service Canada Ltd. (“**UPS**”), which is integral to the Company’s business. The UPS Contract is uneconomic for the Company.
6. As discussed below, since the outset of these proceedings, the Company has attempted to reach a solution with UPS that provides a framework for a future business relationship; however, as of the date of this Report, the Company and UPS have not been able to agree on a long-term arrangement that would see the Company continue to provide services to UPS. The Monitor understands that the Company and UPS are in advanced discussions concerning a short-term arrangement pursuant to which the Company will continue to operate for UPS, on a reduced basis, until July 31, 2024, unless an agreement is reached for the Company to provide services beyond that date.
7. Based on the status of the Company’s negotiations with UPS and the uncertainty with respect to a long-term arrangement, the Company intends to commence a sale process and to seek the retention of 1262396 Alberta Ltd. DbA Pollock Aviation (the “**Agent**”) to act as its sales agent to market and sell its assets, which consist primarily of the Company’s aircraft (the “**Fleet**”), aircraft parts inventory and potentially its air

¹ The key terms of the TD Stand Still Agreements were summarized in the Second Report (as defined below) and copies of the TD Stand Still Agreements were appended to the Second Report.

operator certificate (the “**AOC**”) (the “**Sale Process**”). The Sale Process is discussed in Section 5 below.

8. The Affidavit of Kyle Dennhardt, the Company’s CFO, sworn March 8, 2024 in support of the CCAA application (the “**Dennhardt Affidavit**”) and KSV’s pre-filing report dated March 8, 2024 (the “**Pre-filing Report**”) filed in connection with the initial application, provide, *inter alia*, background information concerning the Company, its business and the reasons for the commencement of these proceedings. Mr. Dennhardt swore his third affidavit on May 24, 2024 in support of the relief sought by the Company in its present motion (the “**Third Dennhardt Affidavit**”).
9. The Dennhardt Affidavit, the Pre-filing Report, the Monitor’s first report to Court dated March 18, 2024 (the “**First Report**”), the Monitor’s second report to Court dated April 22, 2024 (the “**Second Report**”), this report (the “**Report**”, with the Pre-filing Report, First Report and Second Reports, the “**Monitor’s Reports**”), the affidavit of Mr. Dennhardt sworn April 20, 2024 and the Third Dennhardt Affidavit, as well as other Court materials filed in these proceedings, can be found on the Monitor’s case website at www.ksvadvisory.com/experience/case/skylink.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide the Court with an update on the Company’s:
 - i. business and operations since the commencement of these proceedings; and
 - ii. negotiations with UPS;
 - b) summarize the proposed Sale Process and the material terms of the Pollock Engagement Letter (as defined below);
 - c) summarize the Company’s cash flow forecast for the period May 18, 2024 to July 30, 2024 (the “**Updated Cash Flow Forecast**”);
 - d) provide the Court with an update on the Monitor’s and the Company’s activities since the date of the Second Report;
 - e) detail the fees and disbursements of the Monitor and counsel to the Monitor, Cassels Brock and Blackwell LLP (“**Cassels**”), for the period ending April 30, 2024 and seek approval of same; and
 - f) provide the Monitor’s recommendation that the Court issue an Order:
 - i. extending the stay of proceedings from May 31 to July 30, 2024;
 - ii. approving the Sale Process and the retention of the Agent pursuant to its engagement letter dated May 23, 2024 (the “**Engagement Letter**”);

- iii. increasing the Company's permitted borrowings under the DIP Facility from \$2.5 million to \$3 million in accordance with an amendment to the DIP Term Sheet dated May 23, 2024 (the "**Amended DIP Term Sheet**"), which borrowings are to be secured by the DIP Lender's Charge;
- iv. approving the fees of the Monitor and Cassels through April 30, 2024; and
- v. approving the Reports and the Monitor's activities described therein.

1.2 Restrictions

1. In preparing this Report, the Monitor has relied upon the Company's unaudited financial information, books and records and discussions with the Company's management and legal counsel.
2. The Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the financial information relied upon to prepare this 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. An examination of the Cash Flow Forecast (defined below) as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Company'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 the Cash Flow Forecast will be achieved.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The Company is an Ontario corporation and has operated for over 25 years providing regional air cargo services throughout North America. The Company is one of Canada's largest air cargo operators, specializing in regional courier feeder operations and time-sensitive, cost effective, air cargo charters throughout North America. The Company's focus is to provide "last mile" services to secondary (remote) locations, primarily in Canada. As of the commencement of these proceedings, the Company operated from hangars in Vancouver, Winnipeg, Hamilton, Montreal-Mirabel and Québec City. The Company is in the process of reducing the number of hangars from which it operates. Momentum is the Company's sole shareholder.

2. The Company has a fleet of 16 aircraft, comprised of 208B (4), 1900C (10) and 1900D (2) all-cargo aircraft, of which 14 are owned by the Company. The two 1900D aircraft were acquired by Momentum at the request of, and for the use of, the Company and must be converted to cargo planes before they can be flown by the Company. Conversion of one of the 1900D aircraft, C-FSXH (Serial Number UE-268) has started and was paused at the commencement of this CCAA proceeding. Conversion of the other 1900D aircraft has not started.
3. UPS is the Company's primary customer. The Company and UPS are party to the UPS Contract, a long-term feeder aircraft charter agreement pursuant to which the Applicant provides cargo services for UPS throughout Canada. The Applicant generates almost all its revenue from the UPS Contract. The UPS Contract expires in 2027. A principal focus of these proceedings has been to renegotiate the UPS Contract.
4. The Company's registered office is 55 St. Clair Avenue West, Suite 210, Toronto, Ontario.
5. As of the Filing Date, the Company employed 79 full-time employees, seven part-time employees and 11 independent contractors. The Company's pilots (37) are members of UNIFOR. The Company does not maintain any registered pension plans. Since the Filing Date, the Company's headcount has increased by one due to three terminations, two resignations and six new hires.
6. Momentum acquired the Company in 2020. At that time, the Company was performing well and forecasting significant growth. The Monitor understands that since acquisition, Momentum has provided financial and other support to the Company, including injecting working capital of \$7 million on acquisition, funding expenses of approximately \$1 million prior to these proceedings and, as noted, making certain of its aircraft available to the Company at no cost. Momentum's employees also support the Company's business with no overhead or management fee charged to the Company.
7. Pursuant to the ARIO, Momentum has been funding these proceedings under the DIP Facility, which ranks subordinate to the Company's obligations to TD under the TD Loan Facilities. As of the date of this Report, Momentum has advanced \$1.8 million to the Company under the DIP Facility.
8. The Company began experiencing liquidity challenges in late 2022. The Company's financial performance was impacted by higher-than-expected capital expenditures and, in 2023, the loss of a material customer. The Company is presently operating on a cash flow negative basis as a result of several factors, including i) a reduction in demand for cargo delivery services; ii) increased turnover in the Company's staff, notably for aircraft maintenance engineers and pilots due to regulatory changes, labour shortages and the recent unionization of the Company's pilot group; iii) increases in the cost and decreases in availability of aircraft parts; and iv) material increases in capital expenditures due to, among other things, regulatory changes.
9. The revenue escalation provisions of the UPS Contract are not sufficient to compensate the Company for its cost increases and, accordingly, the Company is unable to generate sufficient cash flow to operate its business unless the UPS Contract can be renegotiated.

10. Additional background information about the Company and these proceedings is provided in the various Dennhardt affidavits and Monitor's reports filed in these proceedings.

2.1 TD

1. TD is the only party with a registration filed against the Company in the applicable provincial personal property security registration systems and the Monitor understands it is the Company's only secured creditor, other than the DIP Lender.
2. The Company is indebted to TD pursuant to a credit facilities letter agreement dated November 2, 2020. TD was granted security over all of the Company's assets pursuant to a general security agreement, aircraft security, assignment of insurance and hypothec (the "**TD Loan Security**"). Momentum has also provided a limited recourse guarantee of the TD Loan Facilities in the amount of \$15 million and provided security in connection with its guarantee. As at the date of this Report, the balance on the TD Loan Facilities was approximately \$12.4 million which is net of an insurance refund in the amount of approximately \$780,000 which was recently paid to TD and applied against the Company's obligations owing to it.
3. As of the date of this Report, Cassels is continuing to review TD's security.
4. Prior to the Filing Date, TD served and filed court materials for, among other things, the appointment of a receiver and manager over all the assets, property and undertaking of the Company.
5. The Company, Momentum and TD, with the assistance of the Monitor, reached a consensual agreement prior to the Filing Date and TD did not oppose the relief sought in the Initial Order based on terms reflected in the Endorsement, which included:
 - a) the receivership application that had been brought by TD would be adjourned to the Comeback Motion;
 - b) the Company, Momentum and TD would negotiate in good faith the terms of a forbearance agreement pending the Comeback Motion;
 - c) the Administration Charge would be subordinated to the TD Loan Security; and
 - d) Momentum would post \$2 million of cash collateral (the "**Additional Cash Collateral**") in escrow to be held in trust with Norton Rose, subject to agreeing on the terms of an escrow agreement.
6. Momentum also agreed that the Additional Cash Collateral would be sourced from an injection of fresh capital and not from its existing working capital. TD agreed to allow the Company to continue to use its cash management system with TD.
7. Following the Filing Date, the Company repaid from the DIP Facility the full amount owing under an operating line provided by TD. The Company no longer has access to this facility.
8. As noted above, the Forbearance Agreement and the Escrow Agreement were executed on April 19, 2024 and approved by the Court on April 25, 2024.
9. Pursuant to the terms of the Escrow Agreement, Momentum has posted the Additional Cash Collateral with Norton Rose.

10. Pursuant to the terms of the Forbearance Agreement, the Monitor has provided TD with the Company's weekly cash flow reporting.
11. The Company has also continued to make scheduled debt service payments to TD from advances under the DIP Facility.
12. During these CCAA proceedings, the Monitor has provided TD with routine updates regarding the status of the Company's negotiations with UPS and information on the proposed Sale Process, as well as cash flow reporting.

3.0 UPS Update

1. Immediately following the Filing Date, the Company contacted UPS to continue discussions concerning the UPS Contract which were ongoing at that time. The Company advised UPS that the Company was facing a liquidity crisis that necessitated the CCAA filing and that absent amendments to the financial terms of the UPS Contract, the Company would not be able to continue to service the UPS Contract. UPS was also advised that Momentum was funding the Company's business and was not prepared to continue to fund the Company's losses beyond the April 26, 2024 stay extension date. The Monitor also contacted UPS and its external counsel to impress the urgency of the situation.
2. As discussed in the Second Report, the Company provided UPS with several proposals for an amended contract which UPS advised were not acceptable to UPS. UPS has also provided proposals to the Company, but those proposals were not acceptable to the Company. Also, as discussed in the Second Report, the Company planned to use the stay extension period through May 31, 2024 to develop a contingency plan which would include the sale of its assets and/or its business and that the proposed sale process would be discussed with TD. As noted in the Second Report, the Company's intention was to seek approval of a sale process prior to the end of the May 31, 2024 stay extension period.
3. As of the date of this Report, no agreement has been reached with respect to a long-term arrangement between the Company and UPS; however, there is an ongoing dialogue between UPS and the Company. In this regard, as of the date of this Report, the Company and UPS are in advanced discussions concerning a short-term arrangement pursuant to which the Company is prepared to continue to operate on a reduced basis until July 31, 2024, which could be extended if the Company and UPS can negotiate acceptable terms. The Company's ability to perform the UPS Contract is also contingent on its ability to retain the required personnel, including a sufficient number of pilots. An update concerning this issue will be provided to the Court on the return of this motion.
4. The Company has advised the Monitor that it remains open to further discussions with UPS concerning a new contract.

4.0 Cash Flow

1. A comparison of the Company's actual cash flow for the period April 20 to May 17, 2024 (the "**Forecast Period**") to the cash flow forecast provided in the Second Report is provided below.

| (unaudited; \$) | Forecast | Actual | Variance |
|-------------------------------------|------------------|------------------|-----------------|
| Receipts | | | |
| UPS revenues | 1,916,231 | 2,029,226 | 112,995 |
| GST/HST/QST refunds | - | 10,090 | 10,090 |
| | <u>1,916,231</u> | <u>2,039,316</u> | <u>123,085</u> |
| Disbursements | | | |
| Payroll | 512,475 | 458,772 | (53,703) |
| Capital expenditures | 77,520 | 78,569 | 1,049 |
| Leases | 125,713 | 125,713 | - |
| Insurance | - | - | - |
| Maintenance | 228,515 | 221,902 | (6,614) |
| Aircraft operating expenses | 683,835 | 643,614 | (40,221) |
| Other general expenses | 41,179 | 40,920 | (259) |
| GST/HST/QST on expenditures | 145,650 | 113,130 | (32,520) |
| TD Loan - principal repayment | 244,830 | 244,830 | - |
| TD Loan – interest | 101,301 | 135,504 | 34,203 |
| | <u>2,161,018</u> | <u>2,062,954</u> | <u>(98,064)</u> |
| Net cash flow before the undernoted | (244,787) | (23,638) | 221,149 |
| Professional fees | 425,000 | 158,410 | (266,590) |
| Net Cash Flow | <u>(669,787)</u> | <u>(182,048)</u> | <u>487,739</u> |
| Opening Cash Balance | 359,023 | 359,023 | - |
| Net Cash Flow | (669,787) | (182,048) | 487,739 |
| DIP Financing | 500,000 | 300,000 | (200,000) |
| Ending Cash Balance | <u>189,236</u> | <u>476,975</u> | <u>287,739</u> |

2. As reflected above, as of May 17, 2024, the Company borrowed \$300,000 during the Forecast Period versus forecasted borrowings of \$500,000. Since the commencement of these proceedings, borrowings under the DIP Facility have totalled \$1.8 million compared to the forecasted borrowings of \$2 million. The variances generally relate to revenue slightly exceeding the forecast, while expenses, including professional fees, have been less than the forecast, as discussed below:

- UPS revenues: due to lower than expected route cancellations.
- Payroll: due to the termination of certain members of the senior management team early in these proceedings.
- Aircraft operating expenses: due to a lower than projected sub-charter costs resulting from less than forecasted aircraft maintenance.
- Professional fees: the involvement of Norton Rose, the Monitor and Cassels has been less than projected, resulting in lower than projected fees and costs.

4.1 Updated Cash Flow Forecast

1. The Company, with the assistance of the Monitor, has prepared the Updated Cash Flow Forecast. The Updated Cash Flow Forecast is provided in Appendix "B". The Company's and the Monitor's statutory reports on the Updated Cash Flow Forecast are attached as Appendices "C" and "D", respectively.

2. Based on the Monitor's review of the Updated Cash Flow Forecast, the cash flow assumptions appear reasonable.
3. The Updated Cash Flow Forecast reflects that the Company is projected to require advances of \$1.2 million under the DIP Facility during the Updated Cash Flow Forecast period. As the authorized borrowing under the DIP Facility is \$2.5 million, the Company is seeking an increase in the DIP Facility from \$2.5 million to \$3 million and corresponding increase in the DIP Lender's Charge.
4. The Monitor understands that the DIP Lender is prepared to fund the Company and these proceedings in accordance with the Updated Cash Flow Forecast, subject to: (a) the Court's approval of an increase in the permitted borrowings under the DIP Facility to \$3 million; (b) the Court's approval of a corresponding increase in the DIP Lender's Charge; and (c) the Company remaining in compliance with the terms and conditions of the Amended DIP Term Sheet, a copy of which is appended to the Third Dennhardt Affidavit.
5. The only material change to the Amended DIP Term sheet from the original DIP Term Sheet is the increase in the amount of the permitted borrowings.

4.2 DIP Facility Recommendation

1. For the following reasons, the Monitor recommends that the Court issue an order approving the increase in the amount of the permitted borrowings under the DIP Facility and the Amended DIP Term Sheet:
 - a) the Company is projected to require the increase in the permitted borrowings to fund its business and operations during the Stay Extension Period;
 - b) without the cash to be provided under the DIP Facility, the Company may not have sufficient cash flow to continue operating and carry out the Sale Process;
 - c) as set out in the Pre-Filing Report, KSV has compared the terms of the DIP Facility to other interim financing facilities approved by Canadian courts in recent CCAA proceedings. The comparison was appended to the Pre-Filing Report. The cost of the proposed DIP Facility is within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;
 - d) the DIP Facility ranks subordinate to TD's security interest, which is a requirement of TD;
 - e) the Monitor believes it is unlikely that any other lender would provide DIP funding on a subordinated basis to TD;
 - f) TD does not oppose the proposed increase in the DIP Facility and corresponding DIP Lender's Charge; and
 - g) there are no structuring, facility, standby or other fees being charged by the DIP Lender under the DIP Facility.

5.0 Sale Process

1. The purpose of the Sale Process is to market the Company’s assets and business for sale, including the Fleet, parts inventory and the AOC.
2. The Agent is an experienced sales agent and broker of aircraft and is well known in the aviation industry, including to the Company and Momentum. Background information concerning the Agent is included as Appendix “E”.
3. Subject to Court-approval, the Company engaged the Agent pursuant to an engagement letter dated May 23, 2024 (the “**Pollock Engagement Letter**”). A copy of the Pollock Engagement Letter is included as Appendix “F”.
4. Pursuant to the Pollock Engagement Letter, the Agent is to receive a 2% commission on the sale of any assets subject to the Sale Process, plus HST and disbursements.
5. The Sale Process has been developed based on consultation among the Agent, the Company and the Monitor. TD has also been provided the Sale Process and a copy of the Pollock Engagement Letter.

5.1 Sale Process

1. The Sale Process provides that the Fleet will be marketed for sale on a one-off or en-bloc basis without a specific bid deadline. The Agent is of the view that certain of the aircraft will be sold quickly, while some aircraft may require several months to complete a sale.
2. The Company intends to maintain, to the extent possible, the personnel required to maintain, service and preserve the value of the Fleet and the parts inventory, while also securing and safeguarding the books and records related to the Fleet, which is critical to preserve value.
3. The Sale Process is set out in the table below².

| Summary of Sale Process | | |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Milestone | Description of Activities | Timeline |
| Retention of Agent | <ul style="list-style-type: none"> • Company to retain the Agent to conduct the Sale Process for the Fleet, which will be marketed and sold on an en bloc, bulk or individual aircraft basis. • Agent will also market the AOC and aircraft inventory owned by the Company. | Complete, subject to Court approval. |
| Marketing | <ul style="list-style-type: none"> • Agent, with input from the Company and the Monitor, to prepare a list of potentially interested buyers. • Agent to prepare marketing material concerning the opportunity, including an Information Memorandum (the Information Memorandum) detailing the aircraft available for sale and details of each aircraft. The Agent will market the opportunity on its website, in publications such as Jetnet, Amstat, Global Air, Planefax, MyAirtrade and Wingslist among other publications and sites suitable to | <p>Approximately 4 weeks to prepare marketing materials and buyer’s list.</p> <p>Data room will be prepared during</p> |

² The description of the Sale Process below is slightly different than the one appended to the Engagement Letter. The Sale Process in this section is the prevailing process.

| Summary of Sale Process | | |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| Milestone | Description of Activities | Timeline |
| | <p>this type of aircraft. Agent will contact an established base of clients operating these aircraft and draw on extensive network of brokers and dealers specializing in these aircraft.</p> <ul style="list-style-type: none"> • Agent, with the assistance of the Company, to establish a data room, with key information for each aircraft. | the pre-marketing period. |
| Prospect Identification | <ul style="list-style-type: none"> • Interested buyers will execute a confidentiality agreement (“CA”) in order to be provided access to the Company’s confidential information, to the extent relevant, in the discretion of the Monitor. | |
| Diligence | <ul style="list-style-type: none"> • Interested buyers shall be provided copies of the Information Memorandum and access to non-confidential information in the data room. • Interested parties wanting access to information determined to be confidential by the Company or the Monitor (such as employee information or historical financial information), will only be provided to parties who sign a CA. • Interested parties may be permitted to take aircraft for test flights. | |
| Offers | <ul style="list-style-type: none"> • Offers may be received and considered at any time. • To be a qualified offer, it must include the following (a “Qualified Offer”): <ul style="list-style-type: none"> – identify which Aircraft are included in the offer for purchase; – indicate the consideration payable for the Aircraft; – include a 15% deposit to the Monitor to be held in trust within 24 hours of being notified that its offer is accepted; – not be conditioned on: (i) the outcome of any further due diligence; or (ii) financing; – indicate the estimated closing date; – provide sufficient financial information to determine that the buyer has the ability to satisfy and perform any liabilities or obligations assumed pursuant to the Qualified Offer; – provide that the Qualified Offer shall remain irrevocable for 45 days; – include acknowledgements and representations that confirm that the transaction is on an “as is, where is” basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the Qualified Offer and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the executed Qualified Offer; and – include any other terms or conditions the bidder believes are material to the transaction. | |

| Summary of Sale Process | | |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| Milestone | Description of Activities | Timeline |
| Offer Review | <ul style="list-style-type: none"> Upon receipt of any offer, the Agent, the Company and the Monitor shall review such offer to determine whether such offer constitutes a Qualified Offer. The Monitor and Company shall consult with TD with respect to any offers received. Provide TD with copies of any offers within 48 hours of receipt. | |
| Sale Approval | <ul style="list-style-type: none"> Upon acceptance of one or more Qualified Offers, the Company shall seek Court-approval of such transactions. | |

4. Additional terms of the Sale Process include:

- a) the Agent, Company and the Monitor shall not be required to accept Qualified Offers and shall be entitled to seek further clarification or further negotiation of any offer received;
- b) if multiple Qualified Offers are received for the same Aircraft, the Agent, Company and the Monitor may establish further bidding procedures, including to hold an auction; and
- c) the Agent, with the consent of the Monitor and the Company, shall be entitled to waive strict compliance with any of the terms of the Sale Process provided that any material variation shall require further approval of the Court.

5.2 Recommendation

1. The Monitor recommends that the Court issue an order approving the Sale Process and the retention of the Agent pursuant to the Engagement Letter for the following reasons:
 - a) the Agent is an experienced aircraft sales agent and broker, and is well known to the Company and Momentum;
 - b) the Sale Process is a fair, open and transparent process and is intended to canvass the market broadly to obtain the highest and best price for the Company's assets, and therefore maximize value for the Company's creditors;
 - c) the Sale Process is flexible and provides the Company with the timelines, procedures and discretion that it believes are necessary to maximize value;
 - d) the Sale Process will be carried out contemporaneously while the Company continues to provide services to UPS and will provide the Company additional time to determine whether a long-term arrangement can be agreed with UPS;
 - e) the Agent's fee is success-based and is to be paid on the sale of any of the assets subject to the Sale Process. The amount of the fee (2%) is reasonable considering the time, cost and effort that will be required to sell the assets. It is also reasonable when considering the fees of other types of sales agents normally retained by debtor companies in insolvency proceedings, including liquidators, realtors and investment bankers;

- f) TD, the Company's only secured creditor, does not oppose the Sale Process;
- g) Momentum, as the guarantor of the TD debt and the DIP Lender, consents to the Sale Process; and
- h) the Monitor is of the view that no party will be prejudiced by the Sale Process.

6.0 Company's Activities

1. The Company's activities since the Second Report have included:
 - a) operating its business, subject to the terms of the ARIO, in the ordinary course;
 - b) communicating with employees and other stakeholders regarding these proceedings and dealing with all human resource matters;
 - c) corresponding extensively with UPS in the context of its daily operations and the negotiation of the UPS Contract;
 - d) corresponding with Norton Rose and the Monitor regarding UPS, critical vendors, the Sale Process, and other issues;
 - e) corresponding with the Agent regarding the proposed Sale Process;
 - f) communicating with suppliers to secure goods and services during these proceedings and to address payment terms;
 - g) considering cost-saving initiatives;
 - h) reviewing the Company's cash flow forecast and comparing actual results to projected results;
 - i) reporting weekly on its financial performance during these proceedings;
 - j) preparing the Updated Cash Flow Forecast.

7.0 Monitor's Activities

1. Since the date of the Second Report, the Monitor has been, among other things:
 - a) meeting and corresponding regularly with the Company's management team regarding operating issues and CCAA matters;
 - b) monitoring the Company's receipts and disbursements and attending weekly calls with the Company regarding same;
 - c) reviewing the Company's weekly cash flow reporting;
 - d) engaging with Cassels concerning TD, UPS, the Sale Process and this motion;
 - e) corresponding with UPS and its external counsel;
 - f) dealing with Norton Rose regarding all aspects of these proceedings, including UPS, TD and the Sale Process;

- g) considering the Sale Process and the retention of the Agent;
- h) assisting the Company to deal with key suppliers;
- i) reviewing and commenting on the Company's materials to be filed in support of the relief sought at this motion; and
- j) preparing this Report.

8.0 Professional Fees

1. The Monitor's fees (excluding disbursements and HST) from February 15 to April 30, 2024 total approximately \$110,325.
2. Cassels' fees (excluding disbursements and HST) from February 28 to April 30, 2024 total approximately \$67,187.
3. The average hourly rates for the Monitor and Cassels for the referenced billing periods were \$696.50 and \$748.18, respectively.
4. Detailed invoices in respect of the fees and disbursements of the Monitor and Cassels are provided as exhibits to the affidavits (the "Fee Affidavits") sworn by representatives of the Monitor and Cassels, attached as Appendices "G" and "H", respectively.
5. 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 this CCAA proceeding and are reasonable and appropriate in the circumstances.

9.0 Stay Extension

1. The stay of proceedings currently expires on May 31, 2024. The Company is requesting an extension of the stay of proceedings to July 30, 2024.
2. The Monitor supports the request for an extension of the stay of proceedings for the following reasons:
 - a) the Company is acting in good faith and with due diligence;
 - b) the Updated Cash Flow Forecast reflects that the Company is projected to have sufficient liquidity to fund its post-filing obligations;
 - c) it will provide the Company the opportunity to carry out the Sale Process and provide it with additional time to consider whether there is a workable long-term business model for the UPS Contract while concurrently implementing the proposed Sale Process and winding down its business, if necessary;
 - d) TD does not oppose the stay extension and Momentum supports it;

- e) the Monitor believes that the extension is in the best interest of the Company's stakeholders and that no stakeholder will be prejudiced by extending the stay of proceedings; and
- f) as of the date of this Report, neither the Company nor the Monitor is aware of any party opposed to an extension of the stay of proceedings.

10.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court make an Order granting the relief detailed in Section 1.1(1) (f) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS MONITOR IN THE CCAA PROCEEDINGS OF
SKYLINK EXPRESS INC.
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “C”

Skylink Express Inc. (the "Company")
Projected Statement of Cash Flow
For the Period ended April 30, 2025
(Unaudited; \$C)

| Week | Notes | 24-Jan-25 | 31-Jan-25 | 07-Feb-25 | 14-Feb-25 | 21-Feb-25 | 28-Feb-25 | 07-Mar-25 | 14-Mar-25 | 21-Mar-25 | 28-Mar-25 | 04-Apr-25 | 11-Apr-25 | 18-Apr-25 | 25-Apr-25 | 30-Apr-25 | Total |
|--------------------------------------------|----------------------|----------------|----------------|----------------|----------------|-----------------|----------------|------------------|----------------|-----------------|----------------|----------------|-----------------|---------------|-----------------|----------------|------------------|
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | |
| <i>Receipts</i> | | | | | | | | | | | | | | | | | |
| Revenues | 2 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| GST/HST/QST returns | 1 | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| DIP loan | | 150,000 | 350,000 | 250,000 | 100,000 | - | 200,000 | 250,000 | 200,000 | - | 100,000 | 350,000 | 100,000 | 50,000 | 50,000 | 150,000 | 2,300,000 |
| Total Receipts | | 150,000 | 350,000 | 250,000 | 100,000 | - | 200,000 | 250,000 | 200,000 | - | 100,000 | 350,000 | 100,000 | 50,000 | 50,000 | 150,000 | 2,300,000 |
| <i>Disbursements</i> | | | | | | | | | | | | | | | | | |
| Payroll | 3 | - | 39,487 | - | 39,487 | - | 39,487 | - | 39,487 | - | 39,487 | - | 39,487 | - | 39,487 | - | 276,409 |
| Leases | 4 | - | - | 46,561 | - | - | - | 46,561 | - | - | - | 46,561 | - | - | - | - | 139,683 |
| Insurance | 5 | - | 11,737 | - | - | - | 35,212 | - | - | - | 7,485 | - | - | - | - | - | 54,435 |
| Maintenance | 6 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 11,426 | 171,386 |
| Other general expenses | 7 | 99,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 9,920 | 238,796 |
| GST/HST/QST on expenditures | 2 | 13,635 | 3,308 | 16,791 | 2,135 | 2,135 | 5,656 | 6,791 | 12,135 | 2,135 | 2,883 | 6,791 | 12,135 | 2,135 | 2,135 | 12,135 | 102,930 |
| TD Loan - Principal Repayment | 8 | - | 244,830 | - | - | - | - | 244,830 | - | - | - | 244,830 | - | - | - | - | 734,489 |
| TD Loan - Interest | 8 | - | 35,414 | - | - | - | - | 30,682 | - | - | - | 32,524 | - | - | - | - | 98,620 |
| Total Disbursements | | 124,980 | 356,122 | 84,697 | 62,967 | 23,480 | 101,701 | 350,208 | 72,967 | 23,480 | 71,201 | 352,050 | 72,967 | 23,480 | 62,967 | 33,480 | 1,816,747 |
| <i>Net cash flow before the undernoted</i> | | 25,020 | (6,122) | 165,303 | 37,033 | (23,480) | 98,299 | (100,208) | 127,033 | (23,480) | 28,799 | (2,050) | 27,033 | 26,520 | (12,967) | 116,520 | 483,253 |
| Professional fees | 9 | 25,000 | - | 100,000 | - | - | - | - | 100,000 | - | - | - | 100,000 | - | - | 100,000 | 425,000 |
| Net cash flow | | 20 | (6,122) | 65,303 | 37,033 | (23,480) | 98,299 | (100,208) | 27,033 | (23,480) | 28,799 | (2,050) | (72,967) | 26,520 | (12,967) | 16,520 | 58,253 |
| Opening Cash Balance | | 63,538 | 63,558 | 57,436 | 122,739 | 159,772 | 136,292 | 234,591 | 134,383 | 161,416 | 137,936 | 166,736 | 164,685 | 91,718 | 118,238 | 105,271 | 63,538 |
| Net cash flow | | 20 | (6,122) | 65,303 | 37,033 | (23,480) | 98,299 | (100,208) | 27,033 | (23,480) | 28,799 | (2,050) | (72,967) | 26,520 | (12,967) | 16,520 | 58,253 |
| Closing Cash Balance | | 63,558 | 57,436 | 122,739 | 159,772 | 136,292 | 234,591 | 134,383 | 161,416 | 137,936 | 166,736 | 164,685 | 91,718 | 118,238 | 105,271 | 121,791 | 121,791 |
| DIP Loan advances | Opening 3,600,000 | 3,750,000 | 4,100,000 | 4,350,000 | 4,450,000 | 4,450,000 | 4,650,000 | 4,900,000 | 5,100,000 | 5,100,000 | 5,200,000 | 5,550,000 | 5,650,000 | 5,700,000 | 5,750,000 | 5,900,000 | 5,900,000 |

Purpose and General Assumptions

The cash flow projection assumes that the Company continues to be afforded protection under the *Companies' Creditors Arrangement Act* ("CCAA") to April 30, 2025.

The cash flow projection has been prepared based on hypothetical and most probable assumptions developed and prepared by the Company.

The cash flow does not reflect the sale of any aircraft due to the uncertain timing of these transactions. The net proceeds of sale of each aircraft will be paid to TD Bank until paid in full.

Hypothetical Assumptions

1. The Company is typically in an HST/QST refundable position. Due to uncertainty regarding timing, excludes receipt of HST refunds including approximately \$200,000 which is being held until completion of CRA's audit.

Probable Assumptions

2. No revenues are projected as the Company has discontinued all flight operations.
3. Payroll is paid on the 15th and last day of each month and is assumed to be paid three business days in advance of the payroll payment date.
4. Lease expenses are comprised of hangar lease costs, which are payable on the first of each month.
5. Aircraft insurance and aviation general liability insurance is due quarterly on March 23, June 23, September 23 and December 23 of each year.
6. Includes the cost of consumable and non-consumable parts, outsourced labour, tools and shop supplies.
7. Includes telephone, office expenses, non-restructuring legal fees, annual audit instalments, etc.
8. Represents principal and interest payments on the TD Bank term facility. Principal and interest are paid on the 1st of each month.
9. Professional fees are estimated.

Appendix “D”

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.

APPLICANT

MANAGEMENT'S REPORT ON CASH FLOW STATEMENT
(paragraph 10(2)(b) of the CCAA)

The management of Skylink Express Inc. (the "**Applicant**") has developed the assumptions and prepared the attached statement of projected cash flow as of the 22nd day of January, 2025 for the period January 18 to April 30, 2025 (the "**Cash Flow**"). All such assumptions are disclosed in the notes to the Cash Flow.

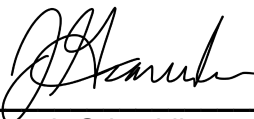
The hypothetical assumptions are reasonable and consistent with the purpose of the Cash Flow as described in the notes to the Cash Flow, and the probable assumptions are suitably supported and consistent with the plans of the Applicant and provide a reasonable basis for the Cash Flow.

Since the Cash Flow is based on assumptions regarding future events, actual events will vary from the information presented and the variations may be material.

The Cash Flow has been prepared solely for the purpose outlined in the Cash Flow using a set of hypothetical and probable assumptions set out therein. Consequently, readers are cautioned that the Cash Flow may not be appropriate for other purposes.

Dated at Toronto, Ontario this 22nd day of January, 2025.

Skylink Express Inc.



Joseph Grimaldi

Appendix “E”

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.

MONITOR'S REPORT ON CASH FLOW STATEMENT
(paragraph 23(1)(b) of the CCAA)

The attached statement of projected cash-flow of Skylink Express Inc. (the "**Applicant**") as of the 20th day of January, 2025, consisting of a weekly projected cash flow statement for the period January 18 to April 30, 2025 (the "**Cash Flow**") has been prepared by management of the Applicant for the purpose described in the notes, using probable and hypothetical assumptions set out in the notes to the Cash Flow.

Our review consisted of inquiries, analytical procedures and discussions related to information supplied by management. We have reviewed the support provided by management for the probable and hypothetical assumptions and the preparation and presentation of the Cash Flow.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects:

- a) the hypothetical assumptions are not consistent with the purpose of the Cash Flow;
- b) as at the date of this report, the probable assumptions developed by management are not suitably supported and consistent with the plans of the Applicant or do not provide a reasonable basis for the Cash Flow, given the hypothetical assumptions; or
- c) the Cash Flow does not reflect the probable and hypothetical assumptions.

Since the Cash Flow is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material. Accordingly, we express no assurance as to whether the Cash Flow will be achieved. We express no opinion or other form of assurance with respect to the accuracy of any financial information presented in this report, or relied upon in preparing this report.

The Cash Flow has been prepared solely for the purpose described in the notes and readers are cautioned that it may not be appropriate for other purposes.

Dated at Toronto this 20th day of January, 2025.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS CCAA MONITOR OF
SKYLINK EXPRESS INC.
AND NOT IN ANY OTHER CAPACITY**