



**Eighth Report to Court of
KSV Restructuring Inc. as Proposal
Trustee of 2505243 Ontario Limited**

August 18, 2023

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2505243 ONTARIO LIMITED,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO

EIGHTH REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF
2505243 ONTARIO LIMITED

AUGUST 18, 2023

1.0 Introduction

1. This report (“Report”) has been prepared by KSV Restructuring Inc. (“KSV”) in its capacity as proposal trustee (“Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed on September 24, 2020 by 2505243 Ontario Limited (the “Company”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”).
2. The Company commenced these proceedings in response to a bankruptcy application (the “Bankruptcy Application”) filed against the Company by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, “PGH”) and certain other creditors. The Bankruptcy Application was stayed pursuant to an order issued by Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated October 9, 2020 (the “October 9th Order”).
3. The initial principal purposes of these restructuring proceedings were to provide the Company with the opportunity to: (a) advance its litigation against PGH within the timelines of these proceedings; and (b) make a proposal to its creditors.
4. On March 1, 2021, the Court issued an order, *inter alia*, extending the stay of proceedings to 15 business days after the day on which the Court releases its final decision (the “Decision”) with respect to the Company’s litigation against PGH (bearing Court File No. CV-20-644262).
5. On July 5, 2021, the Court issued the Decision which, among other things, ordered PGH to pay to the Proposal Trustee:
 - a) “reliance damages” forthwith in the net amount of \$6,388,645.07 (the “PGH Litigation Funds”), being \$7,124,524.92 less \$735,879.85 by way of set-off for amounts owed by the Company to PGH; and

- b) employee compensation damages of \$2.063 million (the “PGH Litigation Employee Funds”) within 30 days of the Decision. Pursuant to the Decision, PGH Litigation Employee Funds are impressed with a trust in favour of the Company’s former employees and are to be used exclusively to make distributions to those former employees entitled to such funds (the “Former Employees”), through a claims process to be established and approved by the Court. The PGH Litigation Employee Funds amount does not form part of the Company’s estate and is not available for distribution to the Company’s other creditors. Any PGH Litigation Employee Funds not paid to the Former Employees are to be paid to PGH.

A copy of the Decision is provided as Appendix “A”.

6. On July 26, 2021, the Company filed a proposal (the “Proposal”) with the Official Receiver in accordance with Section 62(1) of the BIA. A copy of the Proposal is attached as Appendix “B”.
7. On August 4, 2021, PGH served a notice of appeal of the Decision requesting, among other things, that the Decision be set aside and judgment be granted in favour of PGH in the amount of \$735,879.85 (the “PGH Appeal”).
8. On August 10, 2021 Justice Gilmore awarded the Company \$921,494 in costs.
9. The Proposal was unanimously approved by the creditors voting in person or by proxy at the meeting held on August 16, 2021. Pursuant to an Order dated August 30, 2021, the Court approved the Proposal.
10. The Proposal Trustee prepared and filed its [Seventh Report](#) to the Court dated August 20, 2021, (the “Seventh Report”) in connection with the Company’s motion on August 30, 2021 approving the Proposal. The Proposal Trustee did not specifically seek approval of the Seventh Report at the time and, therefore, seeks such approval on this motion. A copy of the Seventh Report (without appendices) is attached as Appendix “C”.
11. Pursuant to an Order dated November 29, 2022 (the “Court of Appeal Order”), the Court of Appeal for Ontario (“Court of Appeal”) dismissed the PGH Appeal. The Court of Appeal awarded the Company \$90,000 in costs related to the PGH Appeal.
12. On November 29, 2022, PGH sought leave to appeal the Court of Appeal Order to the Supreme Court of Canada (the “SCC”).
13. On April 21, 2023, PGH wired the full amount of the PGH Litigation Employee Funds (among other funds) to the Proposal Trustee.
14. On May 4, 2023, the SCC dismissed the application for leave to appeal the Court of Appeal Order. The Decision is therefore final and conclusive and the Proposal Trustee can now commence a claims process in respect of the PGH Litigation Employee Funds in its trust account.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Company and these proceedings;
 - b) summarize the Employee Compensation Claims Process developed by the Proposal Trustee, in consultation with the Company and Cavalluzzo LLP (“Cavalluzzo”), counsel representing certain of the Company’s former employees, including in the Class Action (as defined and described below);
 - c) summarize the Proposal Trustee’s rationale for supporting the appointment of Cavalluzzo as representative counsel on behalf of the Former Employees (“Representative Counsel”) on the terms described below;
 - d) summarize the Proposal Trustee’s activities since August 20, 2021, the date of the Proposal Trustee’s Seventh Report to Court dated August 20, 2021 (the “Seventh Report”); and
 - e) recommend that the Court make an order:
 - in this proceeding:
 - i. approving the Employee Compensation Claims Process (as defined and described below);
 - ii. appointing Cavalluzzo as Representative Counsel;
 - iii. approving this Report and the activities of the Proposal Trustee, as described herein;
 - iv. approving the Seventh Report and the activities of the Proposal Trustee, as described therein;
 - in the Class Action Proceeding (as defined below):
 - i. discontinuing the class action (the “Class Action”) on behalf of the Former Employees commenced on March 16, 2022 by Cavalluzzo, as class counsel, against PGH, among others, and bearing court file number CV-22-678525-CP (the “Class Action Proceeding”).

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company’s books and records and discussions with the Company’s management. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.

2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Other than the Court, any party wishing to place reliance on the Company's financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

1.3 Court Materials

1. Court materials filed in these proceedings can be found on the Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/2505243-ontario-limited>.

2.0 Background

1. The Company is part of a hospitality services group (the "Group") that operates under the business name "byPeterandPauls.com". The Group is privately owned and has operated in the local hospitality industry for close to forty years. The Group operates several facilities across Ontario, including Eaton Hall, The Savoy, Vue, The Clubhouse, Bellagio, Paramount, Universal, The Manor, The Kortright Centre, Black Creek Pioneer Village, Menaggio Restaurant, David Duncan House and PeterandPaulsEventCatering.
2. In 2017, the Company was contracted by PGH to provide food, beverage and catering services at Hotel X, which is located on the Exhibition Grounds in downtown Toronto ("Hotel X").
3. The agreements between the Company and PGH include two leases in relation to the restaurants at Hotel X (Maxx's Kitchen ("Maxx's") and Petros 82 ("Petros")) and a food and beverage agreement for the Company to operate and provide services to Hotel X's banquet facilities, conference halls, a roof top patio and other facilities.
4. The Company invested millions of dollars in leasehold improvements at Hotel X, including in Maxx's and Petros. The restaurants opened in March 2018 and September 2019, respectively. On March 23, 2020, Hotel X and both restaurants closed due to the Covid-19 pandemic.
5. On July 2, 2020, PGH terminated the agreements between PGH and the Company.
6. On July 20, 2020, the Company filed a Statement of Claim against PGH seeking over \$60 million in damages and costs.
7. On September 9, 2020, PGH and a small number of other creditors filed the Bankruptcy Application and on September 24, 2020, the Company filed the NOI.
8. Pursuant to the October 9th Order, the Bankruptcy Application was stayed.

9. After a lengthy trial, the Court issued the Decision on July 5, 2021. As referenced above, PGH's appeal of the Decision to the Court of Appeal was dismissed, as was its leave application to the SCC.
10. As of the date of this Report, PGH has paid the Proposal Trustee: (i) \$2,819,639 towards the PGH Litigation Funds (the balance of which funds are payable monthly through July 2024); and (ii) \$2.063 million, representing the full amount of the PGH Litigation Employee Funds. In accordance with the Decision, the PGH Litigation Employee Funds were deposited into a separate trust account being maintained by the Proposal Trustee and do not form part of the Company's estate. Any amounts from the PGH Litigation Employee Funds not paid to employees are to be returned to PGH.

3.0 Employee Compensation Claims Process

3.1 Background

1. The Company employed approximately 275 salaried and hourly individuals prior to March 2020¹.
2. As described in more detail in Section 3.2.3 below, the Proposal Trustee understands that the employees were laid off in March 2020 and given notice of termination on July 25, 2020.
3. The Proposal Trustee understands that employees were paid their outstanding wages and vacation pay following their termination, but that no amounts have been paid in respect of severance and termination pay.
4. As noted above, Justice Gilmore ordered in the Decision that to address the claims for severance and termination pay owing to the employees, the amount of \$2.063 million be paid to the Proposal Trustee and be set aside in a trust account for the benefit of the employees.
5. The Court did not, however, make any determination as to the accuracy of this \$2.063 million (or any other amount). Rather, the Court made clear that the task of determining the appropriate amount of the employees' claims and the process for so doing would be left to the Proposal Trustee. Ultimately, the amount owing to the Former Employees may be less than the \$2.063 million (in which case any excess, after paying the applicable fees shall be returned to PGH) or may be greater than \$2.063 million (provided that PGH shall not be responsible for any such greater amount).
6. The Court's discussion of the process for determining the PGH Employee Litigation Funds is contained in the following paragraphs from the Decision:

[449] While 250 claims these damages under a separate heading, they form part of the overall compensatory damages claimed. 250 claims employee termination damages of between \$1.799M and \$2.063M based on four different scenarios plus four decisions already rendered under the *Employment Standards Act*.

¹ The Decision references 250 employees.

[450] It is this Court's view that the termination damages were a reasonably foreseeable consequence of the termination of the Agreement without notice when 250 had several hundred employees working at the Hotel. I do not accept the Hotel's argument that these damages cannot be awarded because they are conditional and therefore the court has no jurisdiction to award them. 250's former employees should not suffer from the foreseeable consequence of the Hotel's conduct. A fair process for dealing with these damages must be determined.

[451] The difficulty with such a process is not knowing exactly how much will actually be claimed. Therefore, \$2.063M (the highest of the four scenarios calculated by the Plaintiffs) will be paid by the Hotel to the Trustee within 30 days of the date of this judgment. The Trustee will run a form of claims process over a six-month period and pay out the claims as they are received upon confirmation by the Trustee of the validity of the claim. Any amounts left after the claims process period will be returned to the Hotel. If the claims exceed the amounts paid to the Trustee, 250 will not be permitted to claim more from the Hotel.

[457] The Trustee's fees for the administration of the employee claims process shall be brought back to me for approval and in any event cannot exceed 10% of the amount of the paid out claims.

7. The Proposal Trustee has not yet commenced an employee claims determination process as a result of PGH's appeal of the Decision to the Court of Appeal and then its leave application to the SCC. With the SCC's dismissal of the leave application, the Proposal Trustee is now commencing a process to determine the employee claims (the "Employee Compensation Claims Process"), as set out below.
8. In developing the Employee Compensation Claims Process described in this report, the Proposal Trustee and its counsel, Paliare Roland Rosenberg Rothstein LLP ("Paliare") consulted with; a) Norton Rose Fulbright Canada LLP ("Norton Rose"), the Company's counsel; and b) Cavalluzzo, a labour and employment law firm that represents certain of the Former Employees in the Class Action.
9. Cavalluzzo also sought intervenor status with the Court of Appeal prior to issuance of the Court of Appeal Order. Cavalluzzo advised the Proposal Trustee that it has individual retainers with nearly 100 Former Employees related to the intervention motion at the Court of Appeal. An email from Cavalluzzo dated June 20, 2023 (the "Cavalluzzo Email") regarding its history with these proceedings and the services it proposes to offer as Representative Counsel is provided as Appendix "D".

3.2 The Methodology for Calculating Former Employee Claims

1. The Proposal Trustee has conducted a review of the Company's books and records relating to the Former Employees' work history. The Proposal Trustee has also consulted with Norton Rose and Cavalluzzo regarding the Company's obligations to these Former Employees pursuant to the *Employment Standards Act* (Ontario) ("ESA").
2. Based on the Proposal Trustee's discussions with counsel noted above and the Proposal Trustee's understanding of the circumstances and timing surrounding the employees' termination (as described in this Report), the Proposal Trustee is of the view that the following methodology for calculating the Former Employees' termination pay is most consistent with the ESA:

- a) for **salaried employees**: the employee's regular gross weekly wage in 2020 (not including holiday pay, overtime, gratuities, or other payments statutorily excluded from the definition of "wages") multiplied by 12 weeks;
 - b) for **hourly employees who worked the same number of hours a week**: the employee's hourly wage in 2020 multiplied by the number of contracted hours per week multiplied by 12 weeks; and
 - c) **for hourly employees who worked variable hours (described more particularly in 3.2.3 immediately below)**:
 - i. the employee's average actual weekly gross wages (not including weeks not worked) between May 2, 2020 – July 25, 2020 multiplied by 12 weeks; or
 - ii. the employee's average actual weekly gross wages (not including weeks not worked) between February 7, 2020 – May 1, 2020 multiplied by 12 weeks if the employee in question had no wages during the period set out in item (i) immediately above.
3. In proposing the methodology for the hourly employees who worked variable hours, the Proposal Trustee notes the following:
- a) although the Former Employees were given notice of layoff in March 2020: (i) they were deemed to be on unpaid infectious disease emergency leave ("IDEL") from March 2020 to July 1, 2020; and (ii) their status converted to a layoff from July 2, 2020 onward after the Company lost the contract with PGH and had no work for its employees;
 - b) the Proposal Trustee understands that the Former Employees were notified on July 25, 2020 that they were being laid off via WhatsApp message and were given formal notice of termination on August 21, 2020. The Proposal Trustee further understands that the Director of Employment Standards was never given notice of termination per s. 58(1) of the ESA. In the circumstances, the Proposal Trustee believes that it is appropriate under the ESA to treat July 25, 2020 as the effective date of notice of termination; and
 - c) as the Former Employees have no wages during their unpaid IDEL leave and layoff period, there are no wages during the 12-week period preceding their termination to perform the averaging required under s. 60(2) of the ESA. The Proposal Trustee understands that the Ministry of Labour's position is that if there are no wages at all during the 12 weeks immediately before notice was given, the employer is to "look back in blocks of 12 weeks, until a 12-week period can be found in which the employee has weeks worked and then average the wages earned over that 12-week period." The Proposal Trustee believes that it is appropriate to incorporate this approach into the methodology.

3.3 Notifying Former Employees and Resolving the Claims

1. The Proposal Trustee recommends the following process for notifying Former Employees of their claims to the PGH Litigation Employee Funds (a “Claim”) and, as may be necessary, resolving any disputes in relation to those Claims (a “Disputed Claim”):
 - a) the Proposal Trustee will send a letter to each Former Employee (the “Claim Letter”) advising of the status of these proceedings and the employee claims procedure by email and regular mail, based on information in the Company’s records;
 - b) the Claim Letter will also advise each Former Employee: (i) of their Claim to the PGH Litigation Employee Funds; (ii) that their compensation claims resulting from their termination are limited to the PGH Litigation Employee Funds and cannot exceed ESA guidelines; and (iii) that any other claims must be made against the PGH Litigation Funds in accordance with the terms of the Proposal;
 - c) a proof of claim form (the “POC Form”) will be completed and sent by the Proposal Trustee to each Former Employee (other than the 2020 Employees defined and described below), with a schedule detailing the calculation of the Claim based on the methodology described above;
 - d) except as addressed in (e) below, a Former Employee will be deemed to accept the calculation of their Claim (as set out in the POC Form) 30 days after the POC Form is sent to them by email;
 - e) if a Former Employee does not agree with the calculation of their Claim, then they will be required, within 30 days of the date the letter is sent, to send a notice of dispute (by letter or email) to the Proposal Trustee with their calculation of the claim (a “Notice of Dispute”). Permitted disputes will be limited to any incorrect information or miscalculation but may not, for greater certainty, be based on an objection to the methodology itself. The Proposal Trustee will provide a copy of any Notice of Dispute to Cavalluzzo who will attempt to resolve the Disputed Claim with the Former Employee and the Proposal Trustee within 30 days. If the dispute is not resolved in 30 days, then the Proposal Trustee will bring a motion to have the Disputed Claim determined by the Court or the Proposal Trustee may, in its sole discretion, select and appoint a claims officer to resolve any Disputed Claims whose decision shall be final and binding. For certainty, the Proposal Trustee will not be bound to accept any resolution proposed by Cavalluzzo and any Former Employee;
 - f) the Proposal Trustee will also send a separate letter to those Former Employees (27 in total) who, based on the Company’s records, either quit or were terminated for cause in early 2020, before the restaurants closed (the “2020 Employees”). This letter will advise the 2021 Employees of the Decision and provide them with an opportunity to file a claim within 30 days, while also advising them that based on the Company’s records, they do not have a Claim to the PGH Litigation Employee Funds. The Proposal Trustee will refer these employees to Cavalluzzo if they require additional information. The Proposal Trustee will work with Cavalluzzo to the extent that Cavalluzzo believes that any of these claims have any merit;

- g) if there are any other individuals who believe they are entitled to participate in the Employee Compensation Claims Process (but don't receive a POC Form from the Proposal Trustee), they may submit a claim to the Proposal Trustee for consideration. The Proposal Trustee will refer these individuals to Cavalluzzo if the Proposal Trustee requires additional information. If Cavalluzzo believes that any of these claims have any merit, then the Proposal Trustee will review and consider the claim in accordance with the contemplated methodology described in this Report;
- h) the Proposal Trustee may make one or more distributions as expeditiously as possible. As the PGH Employee Litigation Funds do not form part of the Company's estate, it is the Proposal Trustee's view that a levy would not be payable to the Office of the Superintendent of Bankruptcy on any distributions of these funds to the Former Employees; and
- i) consistent with the Decision, any residual funds in the PGH Litigation Employee Funds will be returned to PGH.

3.4 Discontinuance of Class Action

1. As noted above, the Class Action was commenced on March 16, 2022. The Statement of Claim was served on the Company but, given the stay of proceedings resulting from the proposal process, no steps have been taken in connection with the Class Action.
2. Cavalluzzo maintained a website to periodically provide updates to the class members. The most recent update dated January 24, 2023 advises the prospective class members that:
 - a) the Class Action was commenced to preserve the rights of the class members to obtain damages for the July 2020 termination without notice or severance;
 - b) the Court ordered PGH to pay \$2.063 million on behalf of the class members; and
 - c) once the funds were distributed, the "outcome we were seeking in the Class Action will have been achieved and the process can be brought to a close".
3. Accordingly, since the class members will receive compensation through the Employee Compensation Claims Process, there is no further purpose to the Class Action and it is appropriate that the Class Action be discontinued.
4. Contemporaneous with the Proposal Trustee's motion to this Court, Cavalluzzo, as class counsel, is seeking the discontinuance of the Class Action. The Proposal Trustee consents to an Order discontinuing the Class Action.

3.5 Recommendation

1. The Proposal Trustee recommends that the Court approve the Employee Compensation Claims Process as set out above for the following reasons:
 - a) it is similar to the employee claims process pursuant to the *Wage Earner Protection Program Act* (“WEPPA”) whereby pre-completed claim forms are sent by a receiver or licensed insolvency trustee to eligible employees;
 - b) reverse claims processes are commonly used to improve the efficiency and timeliness of claim processes and to reduce the costs for creditors seeking professional assistance to complete their claims;
 - c) in the Proposal Trustee’s view, the methodology to quantify the claims is consistent with the ESA for the reasons set out above;
 - d) it does not affect the Company’s other unsecured creditors who do not have recourse to the PGH Litigation Employee Funds and, therefore, the Former Employees ought not to have recourse to the PGH Litigation Funds other than for claims unrelated to their compensation and the termination of their employment; and
 - e) it is supported by both the Company and Cavalluzzo, as proposed Representative Counsel. Cavalluzzo has provided the Proposal Trustee with a letter dated August 16, 2023 (a copy of which is attached as Appendix “E” confirming that, in its view, the proposed methodology forming part of the Employee Compensation Claims Process is fair, reasonable and accords with the ESA.

4.0 Representative Counsel

1. In order to facilitate the administration of the Employee Compensation Claims Process on a timely and cost-efficient basis, and to provide the Former Employees with assistance to consider their claims, the Proposal Trustee is of the view that the Former Employees should have Representative Counsel.
2. The Representative Counsel mandate would be as follows:
 - a) explaining the insolvency process and assisting the Former Employees to understand their rights related to the Employee Compensation Claims Process;
 - b) assisting the Former Employees to determine and quantify their claims if they do not agree with the calculation provided to them by the Proposal Trustee;
 - c) assisting the Proposal Trustee to locate any Former Employees that have moved or who otherwise do not respond to the Proposal Trustee’s Claim Letter;

- d) assisting to resolve disputes between the Proposal Trustee and the Former Employees concerning Former Employee claims; and
 - e) responding to inquiries from Former Employees regarding their claims.
3. As set out in the Cavalluzzo Email, Cavalluzzo's mandate would be subject to a fee cap of \$35,000 (inclusive of disbursements and HST). This fee cap would be paid from distributions to the Former Employees and is not to be part of the limit on the fees set out in the Decision (i.e., "10% of the amount of the paid out claims"). The Proposal Trustee is of the view that if its costs, and the costs of Paliare and Norton Rose (to the extent it is involved in this matter) exceed 10% of the amount paid to Former Employees, then the excess amount should be paid from the PGH Litigation Funds. If necessary, this issue will be addressed at a later date once the quantum of the fees is known.
4. The Proposal Trustee supports Cavalluzzo's appointment as Representative Counsel for the following reasons:
- a) Cavalluzzo has advised the Proposal Trustee that it has experience representing employees in insolvency proceedings.²
 - b) Cavalluzzo has been in contact with a large number of Former Employees regarding these proceedings and their claims;
 - c) the arrangement will assist to streamline the claims process which will reduce the fees and costs of the Proposal Trustee and Paliare;
 - d) the fees and costs of the Proposal Trustee and Paliare to perform the services that Cavalluzzo is contemplated to perform would likely exceed \$35,000;
 - e) the arrangement will expedite distributions to the Former Employees as the Proposal Trustee and Paliare will be dealing with one law firm as opposed to dealing with self-represented individuals or multiple law firms if certain of the Former Employees are individually represented; and
 - f) the Proposal Trustee is of the view that the fee structure is reasonable and appropriate.
5. Based on the foregoing, the Proposal Trustee recommends that the Court approve the appointment of Cavalluzzo as Representative Counsel for the Former Employees.

5.0 Overview of the Proposal Trustee's Activities

1. The Proposal Trustee's activities since August 20, 2021, the date of the Seventh Report, have included:
- a) reviewing the materials filed by the Company and PGH related to the PGH Appeal;

² In July 2020, Cavalluzzo was appointed representative counsel for members of the Canadian Union of Postal Workers in the Foodora Inc. insolvency proceeding. Cavalluzzo advises the Proposal Trustee that it has also acted on behalf of employee groups in insolvency proceedings involving Royal Crest Lifecare Group Inc., Air Canada, Aveos Fleet Performance Inc. and Stelco Inc.

- b) reviewing the Court of Appeal Order;
- c) reviewing the materials filed by the Company and PGH related to PGH's appeal to the SCC;
- d) corresponding with Paliare and Norton Rose regarding, among other things, the Employee Compensation Claims Process and the Company's reconciliation of advances made under the debtor-in-possession loan facility previously approved by the Court in this proceeding;
- e) working with Paliare and Norton Rose to take steps to enforce the judgment against PGH, including filing of writs of execution and garnishment notices;
- f) settling payments with PGH in respect of the PGH Litigation Funds;
- g) corresponding with Cavalluzzo regarding its proposed appointment as Representative Counsel;
- h) corresponding with creditors;
- i) corresponding with Former Employees;
- j) reviewing proofs of claim, as filed;
- k) reviewing claims against the Company, including intercompany claims;
- l) maintaining the Proposal Trustee's website established for these proceedings; and
- m) preparing this Report.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE
PROPOSAL OF
2505243 ONTARIO LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MADAM JUSTICE CORY GILMORE)
MONDAY, THE 5th
DAY OF JULY, 2021



BETWEEN:

2505243 ONTARIO LIMITED o/a BYPETERANDPAUL.COM

Plaintiff

- and -

PRINCES GATES GP INC. IN ITS CAPACITY AS GENERAL PARTNER OF PRINCES
GATES HOTEL LIMITED PARTNERSHIP

Defendant

JUDGMENT

THIS ACTION was heard on March 1, 2, 3, 4, 5, 8, 9, 11, 12, 17, April 12, 13, 14, and May 26, 2021 and with a costs endorsement made August 10, 2021, without a jury, virtually at the courthouse, 330 University Avenue, Toronto, Ontario M5G 1E6 in the presence of the lawyers for all parties.

ON READING THE PLEADINGS AND HEARING THE EVIDENCE and the submissions of the lawyers for the parties,

THIS COURT ORDERS that the Defendant, Princes Gates GP Inc. in its capacity as General Partner of Princes Gates Hotel Limited Partnership ("PGH"), shall forthwith pay to KSV Restructuring Inc. in its capacity as proposal trustee (the "Trustee") in the proceedings bearing

Court File No./Estate No. 31-2675288, the sum of \$7,124,524.92 less \$735,879.85 in damages owed to PGH by the Plaintiff, 2505243 Ontario Limited o/a ByPeterandPaul.com ("250").


THIS COURT ORDERS that PGH shall within 30 days, pay to the Trustee the sum of \$2,063,000.00 in employee compensation damages. The \$2,063,000.00 paid to the Trustee is impressed with a trust in favour of the employees and does not form part of the Estate and are not available to other creditors. Subject to further order of the Court, the Trustee will run a form of claims process over a six-month period and pay out claims as they are received upon confirmation by the Trustee of the validity of the claim. Any amounts left after the claims process will be returned to PGH. If the employees' claims exceed the amount paid to the Trustee, 250 will not be permitted to claim more from PGH.

THIS COURT ORDERS THAT 250 shall provide to the Trustee any required employment records in order to facilitate the employee claims process.

THIS COURT ORDERS that the Trustee's fees for the administration of the employee claims process shall be brought back to the Court for approval and in any event cannot exceed 10% of the amount paid out in claims.

THIS COURT ORDERS that the Trustee shall be entitled to seek further advice and direction in relation to the employee's claims process.

THIS COURT ORDERS that PGH shall pay costs to 250 in the amount of \$921,494.43.



JUSTICE GILMORE

Farhad Rahaman
Registrar

2505243 ONTARIO LIMITED o/a BYPEETERANDPAUL.COM -and-

PRNCES GATES GP INC. IN ITS CAPACITY AS GENERAL PARTNER OF PRNCES GATES HOTEL LIMITED PARTNERSHIP

Court File No. CV-20-00644262

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

JUDGMENT

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Lawyers for the Plaintiff

Appendix “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO**

PROPOSAL

2505243 Ontario Limited (the “**Company**”) hereby submits the following Proposal under Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

ARTICLE 1- INTERPRETATION

1.01 Definitions

In this Proposal, capitalized terms have the following meanings:

- (a) “**Administrative Fees and Expenses**” means the Proposal Trustee’s and the Company’s fees and expenses, including legal fees and disbursements incurred by the Proposal Trustee and the Company, on or incidental to the appointment of the Proposal Trustee, the NOI Proceedings, negotiations, preparation, presentation, consideration and implementation of this Proposal, and any subsequent proposals and any proceedings relating to, arising out of, or under this Proposal including advice to the Company.
- (b) “**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the law (or any part) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation.
- (c) “**Business Day**” means any day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein.
- (d) “**Claim**” means any claim against the Company and includes any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of the Company to any Person, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, by surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Filing Date, and including Director Claims and Employee Claims, but excluding Unaffected Claims.
- (e) “**Company**” has the meaning given to it in the preamble.

- (f) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) (Commercial List) or any other court with jurisdiction in respect of the PGH Litigation.
- (g) “**Creditor**” means any Person holding a Claim.
- (h) “**Crown**” means Her Majesty in Right of Canada or of any Province of Canada and their agents.
- (i) “**Crown Claim**” means any Claim arising from amounts that were outstanding at the time of the Filing Date and are of a kind that could be subject to a demand under Subsection 224(1.2) of the *Income Tax Act* or under provincial legislation or the *Canada Pension Plan* or *Employment Insurance Act*, in each case to the extent described in Section 60(1.1) of the BIA.
- (j) “**Director**” has the meaning given to it in the BIA.
- (k) “**Director Claim**” means any Claim against the Directors that relates to the obligations of the Company where Directors are by law liable in their capacity as directors for the payment of such obligations and, for greater certainty, excludes any claim which cannot be compromised under the BIA.
- (l) “**Employee Claim**” means any Claim of current or former employees of the Company for any amounts but excluding, for greater certainty, Unaffected Employee ESA Claims.
- (m) “**Employee ESA Claim**” means any Claim arising from or in relation to the Company’s liability or obligation to remit termination and/or severance payments to its former employees pursuant to Applicable Law.
- (n) “**Filing Date**” means the date on which the NOI Proceedings were commenced.
- (o) “**Final Order**” means an order of the Court, as the same has become final and non-appealable, directing payment of damages by PGH in connection with the Judgment.
- (p) “**Governmental Entity**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.
- (q) “**Judgment**” means the trial judgment of the Ontario Superior Court of Justice issued on July 5, 2021, in relation to the PGH Litigation, as the same may be upheld or varied on appeal.
- (r) “**Levy**” means any amounts payable to the Superintendent of Bankruptcy in respect of the levy payable pursuant to Section 147 of the BIA in respect of distributions under this Proposal.
- (s) “**Meeting**” means a meeting of the Unsecured Creditors of the Company called for the purpose of considering and voting in respect of this Proposal.
- (t) “**NOI Proceedings**” means the proceedings initiated by the Company’s filing of a notice of intention to make a proposal on September 24, 2020, pursuant to Section 50.4 of the BIA.
- (u) “**Person**” means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status.

- (v) “**PGH**” means Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership.
- (w) “**PGH Litigation**” means the Company’s litigation proceedings commenced against PGH on July 20, 2020, bearing court file number CV-20-00644262.
- (x) “**PGH Litigation Funds**” means funds received by the Proposal Trustee pursuant to the Final Order, but not including any PGH Litigation Employee Funds.
- (y) “**PGH Litigation Employee Funds**” means funds received by the Proposal Trustee pursuant to the Final Order in respect of Employee ESA Claims.
- (z) “**Preferred Claim**” means any Claim set out in Sections 136(1)(a) to 136(1)(g) of the BIA, outstanding as of the Filing Date against the Company, if any.
- (aa) “**Preferred Creditors**” means those persons with Claims that are Preferred Claims.
- (bb) “**Proposal**” means this Proposal made pursuant to the BIA, as may be further amended or supplemented from time to time.
- (cc) “**Proposal Approval Motion**” has the meaning given to it in Section 9.01 hereof.
- (dd) “**Proposal Approval Order**” has the meaning given to it in Section 9.02 hereof.
- (ee) “**Proposal Implementation Date**” means the date on which this Proposal is implemented as evidenced by the service of the Proposal Trustee’s certificate as contemplated by Section 9.04.
- (ff) “**Proposal Implementation Time**” means the time designated as the effective time of the Proposal as set out in the Proposal Trustee’s certificate contemplated by Section 9.04.
- (gg) “**Proposal Trustee**” means KSV Restructuring Inc., in its capacity as proposal trustee in this Proposal.
- (hh) “**Released Parties**” has the meaning given to it in Section 7.01 hereof.
- (ii) “**Required Majority**” means the required majority of Unsecured Creditors entitled to vote on the Proposal as contemplated by Section 54 of the BIA.
- (jj) “**Unaffected Claims**” means:
 - i. any Claims secured by Court-ordered charges granted in the NOI Proceedings against the estate of the Company;
 - ii. Unaffected Employee ESA Claims; and
 - iii. Crown Claims.
- (kk) “**Unaffected Creditor**” means a Person holding one or more Unaffected Claims in respect of and to the extent of such Unaffected Claim.
- (ll) “**Unaffected Employee ESA Claims**” means those Employee ESA Claims, and any portions thereof, to the extent they have been or will be paid with the PGH Litigation Employee Funds.
- (mm) “**Unsecured Claims**” means the Claims of Unsecured Creditors.
- (nn) “**Unsecured Creditors**” means those Persons with unsecured Claims, except for those Claims that:
 - i. have been finally and conclusively disallowed;

- ii. are Preferred Claims; and
 - iii. are Unaffected Claims.
- (oo) **“Unsecured Creditor Pool”** means those funds available for distribution on account of Unsecured Claims after payment of the other amounts hereunder, Unaffected Claims and Administrative Fees and Expenses.

1.02 Headings

The division of this Proposal, into parts, paragraphs and subparagraphs, and the insertion of headings, is for convenience only and is not to affect the construction or interpretation of this Proposal.

1.03 Business Days

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

1.04 Inclusiveness

The words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive.

1.05 Successors and Assigns

This Proposal will be binding upon and will enure to the benefit of all Persons named or referred to herein including all Unsecured Creditors and their heirs, estate administrators, personal representatives, successors and assigns as the case may be.

ARTICLE 2 – PURPOSE AND EFFECT OF THIS PROPOSAL

2.01 Purpose

The primary purpose of this Proposal is to effect one or more distributions from the Unsecured Creditor Pool to holders of proven Unsecured Claims in accordance with their *pro rata* share, meaning the value that such proven Unsecured Claim bears to the total value of all proven Unsecured Claims.

2.02 Unaffected Claims

Unaffected Claims will not be affected by this Proposal and are to continue in the ordinary course under their present arrangements unless otherwise agreed to by an Unaffected Creditor. For greater certainty, to the extent that the PGH Litigation Employee Funds are insufficient to pay in full the Unaffected Employee ESA Claims, the unpaid Unaffected Employee ESA Claims shall be Unsecured Claims under this Proposal.

ARTICLE 3 – DISTRIBUTIONS

3.01 All Administrative Fees and Expenses and Unaffected Claims shall be paid in priority to all Claims of Preferred Creditors and Unsecured Creditors.

3.02 Any Preferred Claims that may arise shall be paid in full as set forth in Section 136(1) of the BIA in priority to all Claims of Unsecured Creditors.

3.03 Crown Claims shall be paid in full within six months after the Proposal Approval Order is granted, or as agreed to by Her Majesty.

3.04 The Levy shall be paid in respect of Preferred Claims and Unsecured Claims.

3.05 After payment of the foregoing amounts, the Proposal Trustee may make distributions from the Unsecured Creditor Pool, including interim distributions, on account of proven Unsecured Claims from time to time in its discretion.

ARTICLE 4 – VOTING ON THE PROPOSAL

4.01 For the purpose of voting on the Proposal, the Unsecured Creditors shall comprise one class of creditors.

4.02 In order to be eligible to vote at the Meeting, each Unsecured Creditor shall file a proof of claim with the Proposal Trustee in accordance with the applicable provisions of the BIA and thereafter the Proposal Trustee shall administer the claims in accordance with the provisions of section 135 of the BIA.

ARTICLE 5 – CLAIMS AGAINST DIRECTORS

5.01 In accordance with Section 50(13) of the BIA, at the Proposal Implementation Time, the Proposal shall be deemed, for all purposes whatsoever, to constitute the complete compromise, release and discharge of all Director Claims, provided however that nothing in this section shall release or discharge or be deemed to have released or discharged any claims against any Director that cannot be released or discharged pursuant to Section 50(14) of the BIA.

ARTICLE 6 – PREFERENCES, TRANSFERS AT UNDERVALUE, ETC.

6.01 In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal.

6.02 As a result of and in accordance with Section 6.01 hereof and all of the rights, remedies, recourses and Claims described therein:

- (a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Unsecured Creditor against the Company, any of the Company's assets or property or any other Person whatsoever; and
- (b) the Proposal Trustee and all of the Unsecured Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Company's assets and property or any other Persons.

ARTICLE 7 – RELEASE

7.01 Release

At the Proposal Implementation Time, the Company, the Proposal Trustee and each of their present and former employees and contractors and each of their respective financial advisors, legal counsel and agents (all in such capacities herein referred to as the “**Released Parties**”) shall be released and discharged from any and all rights and Claims of any Person against a Released Party, including without limitation any Unsecured Claim, provided, however, that nothing in this Section 7.01 will release or discharge:

- (a) Any Unaffected Claims against the Company;
- (b) the Company or the Proposal Trustee of, or from, any obligation under this Proposal or under any Order; or
- (c) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.

ARTICLE 8 – PROPOSAL TRUSTEE

8.01 KSV Restructuring Inc. is acting in its capacity as Proposal Trustee under this Proposal and not in its personal capacity, and:

- (a) shall not incur any personal liabilities or obligations in connection with this Proposal or in respect of the business, liabilities, obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto, except for liabilities arising out of gross negligence or wilful misconduct; and
- (b) shall have those powers granted to it by this Proposal and the BIA.

ARTICLE 9 – COURT APPROVAL, CONDITIONS PRECEDENT AND IMPLEMENTATION

9.01 Application for Approval Order

After acceptance of this Proposal by the Required Majority at the Meeting, in accordance with the provisions of the BIA, the Proposal Trustee will present a motion (the “**Proposal Approval Motion**”) to the Court seeking the Proposal Approval Order on a date to be set out in the mailing to creditors provided by the Proposal Trustee.

9.02 Proposal Approval Order

The order approving the Proposal (the “**Proposal Approval Order**”) shall, among other things, declare that:

- (a) this Proposal is fair and reasonable;
- (b) this Proposal has been approved pursuant to Section 60 of the BIA and will be binding and effective as herein set out on the Company, all Preferred and Unsecured Creditors and any other Person to the extent provided for in this Proposal or in the Proposal Approval Order;

- (c) grant to the Proposal Trustee, in addition to its rights and obligations under the BIA and any other Court Order, the powers, duties and protections contemplated by and required under the Proposal;
- (d) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery as described in Section 7.01 hereof shall be permanently enjoined; and
- (e) compromise, discharge and release the Company from any and all Claims in accordance with this Proposal, and declare that the ability of any Person to proceed against the Company in respect of or relating to any such claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such claims be permanently stayed.

9.03 Conditions to Implementation

The implementation of this Proposal shall be conditional upon the fulfillment, satisfaction or waiver (to the extent permitted by this Proposal) of the following conditions:

- (a) the Proposal shall have been approved by the Required Majority at the Meeting;
- (b) the Court shall have granted the Proposal Approval Order, the operation and effect of which shall not have been stayed, reversed or amended, or in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;
- (c) no Applicable Law shall have been passed and become effective, the effect of which makes the consummation of this Proposal illegal or otherwise prohibited;
- (d) all documents necessary to give effect to all material provisions of this Proposal shall have been executed and/or delivered by all relevant Persons;
- (e) the PGH Litigation Funds shall have been received by the Proposal Trustee;
- (f) the Unsecured Creditor Pool shall have been created; and
- (g) all required stakeholder, regulatory and Court approvals, consents, waivers and filings shall have been obtained or made, as applicable, and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated.

9.04 Proposal Trustee's Certificate of Proposal Implementation

Upon written notice from the Proposal Trustee that the conditions to implementation set out in Section 9.03 have been satisfied or waived, the Proposal Trustee shall, as soon as possible following receipt of such written notice, serve on the service list, and file with the Court, a certificate which states that all conditions precedent set out in Section 9.03 have been satisfied or waived and that the Proposal Implementation Date has occurred or will occur on a future date at a specific time specified in the certificate.

ARTICLE 10 – TERMINATION

10.01 The Company may, with the consent of the Proposal Trustee, provide notice of termination of this Proposal in the event that the Company, in its reasonable business judgment, determines that the PGH Litigation Funds (or some portion thereof) will not be paid pursuant to the Final Order and no distributions on account of Unsecured Claims will be able to be made.

10.02 In the event that the Proposal is terminated in accordance with Section 10.01, the Company shall be in default of this Proposal, the Proposal Trustee shall file a certificate of termination with the Court and the Superintendent of Bankruptcy and thereafter the Company shall be deemed bankrupt.

ARTICLE 11 – MISCELLANEOUS

11.01 On receipt of the Proposal Approval Order, all Unsecured Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety, including the terms of the Proposal Approval Order. For greater certainty, each such Unsecured Creditor will be deemed to have waived any default by the Company in any provision, express or implied, in any agreement existing between the Unsecured Creditor and the Company that has occurred on or prior to the Filing Date, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of the Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

11.02 The payment, compromise or other satisfaction of any Claim under this Proposal will be binding on all Preferred Creditors and Unsecured Creditors and their respective heirs, executors, administrators, successors and assigns for all purposes.

11.03 The Proposal shall be governed by and construed in accordance with the Laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

[The remainder of this page has been left intentionally blank.]

Dated at Toronto this 26th day of July, 2021.

2505243 ONTARIO LIMITED

Per:



Peter Eliopoulos

President

(I have the authority to bind the Company)

Appendix “C”



**Seventh Report to Court of
KSV Restructuring Inc. as Proposal
Trustee of 2505243 Ontario Limited**

August 20, 2021

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COURT FILE NO.: 31-2675288

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2505243 ONTARIO LIMITED,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO

SEVENTH REPORT OF KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE OF
2505243 ONTARIO LIMITED

AUGUST 20, 2021

1.0 Introduction

1. This report (“Report”) has been prepared by KSV Restructuring Inc. (“KSV”) in its capacity as proposal trustee (“Proposal Trustee”) in connection with a Notice of Intention to Make a Proposal (“NOI”) filed on September 24, 2020 by 2505243 Ontario Limited (the “Company”) pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“BIA”).
2. The Company commenced these proceedings in response to a bankruptcy application (the “Bankruptcy Application”) filed against the Company by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, “PGH”) and certain other creditors. The Bankruptcy Application was stayed pursuant to an order issued by Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated October 9, 2020 (the “October 9th Order”).
3. The principal purposes of these restructuring proceedings are to provide the Company with the opportunity to: (a) advance its litigation against PGH within the timelines of these proceedings; and (b) formulate and make a proposal to its creditors.
4. On March 1, 2021, the Court issued an order, *inter alia*, extending the stay of proceedings to 15 business days after the day on which the Court releases its final decision (the “Decision”) with respect to the Company’s litigation against PGH (bearing Court File No. CV-20-644262).
5. On July 5, 2021, the Court issued the Decision which, among other things, ordered:
 - a) PGH to pay to the Proposal Trustee forthwith “reliance damages” in the net amount of \$6,388,645.07 (the “PGH Litigation Funds”), being \$7,124,524.92 less \$735,879.85 by way of set-off for amounts owed to PGH; and

- b) PGH to pay to the Proposal Trustee \$2.063 million in employee compensation damages (the “PGH Litigation Employee Funds”) within 30 days of the Decision. Pursuant to the Decision, PGH Litigation Employee Funds are impressed with a trust in favour of the Company’s former employees and are to be used exclusively to make distributions to employees entitled to such funds (the “Employee Compensation Claims Process”), through a claims process to be established and approved by the Court. The PGH Litigation Employee Funds amount does not form part of the Company’s estate and is not available for distribution to the Company’s other creditors.
- 6. On July 26, 2021, the Company filed a proposal (the “Proposal”) with the Official Receiver in accordance with Section 62(1) of the BIA. A Certificate of Filing a Proposal was issued by the Office of the Superintendent of Bankruptcy (Canada) (“OSB”) on July 27, 2021. An Amended Certificate of Filing was issued on July 28, 2021 (the “Amended Certificate”). Copies of the Proposal and the Amended Certificate are attached as Appendices “A” and “B”, respectively.
 - 7. On August 4, 2021, PGH served a notice of appeal (the “Notice of Appeal”) of the Decision requesting, among other things, that the Decision be set aside and judgment be granted in favour of PGH in the amount of \$735,879.85 (the “PGH Appeal”). A copy of the Notice of Appeal is attached as Appendix “C”.
 - 8. On August 10, 2021 Justice Gilmore awarded the Company \$921,494.43 in costs in relation to its litigation with PGH (the “Cost Award”). A copy of the Cost Award is attached as Appendix “D”.

1.1 Purposes of this Report

- 1. The purposes of this Report are to:
 - c) provide background information about the Company and these proceedings;
 - d) summarize the results of the meeting of creditors held on August 16, 2021 to consider and vote on the Proposal (the “Meeting”);
 - e) provide the statutory disclosure required under Sections 58(d) and 59(1) of the BIA;
 - f) report on the Company’s weekly cash flow projections for the period August 30, 2021 to March 31, 2022¹ (the “Cash Flow Forecast”);
 - g) discuss the need for an increase in the DIP Facility;
 - h) summarize the Proposal Trustee’s activities since May 21, 2021, the date of the Proposal Trustee’s Sixth Report to Court (the “Sixth Report”); and

¹ For the purpose of preparing the statutory cash flow forecast, the Proposal Trustee has used June 30, 2021 as the outside date to file a proposal.

- i) recommend that the Court make an order:
- approving the Proposal (including the releases contained therein);
 - authorizing a \$500,000 increase in the DIP Facility on the terms set out in the Fifth DIP Amendment (as defined below); and
 - approving this Report and the activities of the Proposal Trustee, as described herein.

1.2 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Company, the Company's books and records and discussions with the Company's management. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other level of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Company's financial information should perform its own due diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.
3. An examination of the 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.

1.3 Court Materials

1. Court materials filed in these proceedings can be found on the Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/2505243-ontario-limited>.

2.0 Background

1. The Company is part of a hospitality services group (the "Group") that operates under the business name "byPeterandPauls.com". The Group is privately owned and has operated in the local hospitality industry for close to forty years. The Group operates several restaurants across Ontario, including Eaton Hall, The Savoy, Vue, The Clubhouse, Bellagio, Paramount, Universal, The Manor, The Kortright Centre, Black Creek Pioneer Village, Menaggio Restaurant, David Duncan House and PeterandPaulsEventCatering.

2. In 2017, the Company was contracted by PGH to provide food, beverage and catering services at Hotel X, which is located on the Exhibition Grounds in downtown Toronto (“Hotel X”).
3. The agreements between the Company and PGH include two leases in relation to the restaurants at Hotel X (Maxx’s Kitchen (“Maxx’s”) and Petros 82 (“Petros”)) and a food and beverage agreement for the Company to operate and provide services to Hotel X’s banquet facilities, conference halls, a roof top patio and other facilities.
4. The Company invested millions of dollars in leasehold improvements at Hotel X, including in Maxx’s and Petros. The restaurants opened in March 2018 and September 2019, respectively. On March 23, 2020, Hotel X and both restaurants closed due to the Covid-19 pandemic crisis.
5. On July 2, 2020, PGH terminated the agreements between PGH and the Company. The terminations coincided with PGH’s announcement of its plans to host National Hockey League players who were booked to stay at Hotel X when the 2019/2020 NHL season resumed following the initial onset of the Covid-19 pandemic. PGH contracted with Harlo Entertainment to provide the food and beverage services at Hotel X that were formerly provided by the Company.
6. On July 20, 2020, the Company filed a Statement of Claim against PGH seeking over \$60 million in damages and costs.
7. On September 9, 2020, PGH and a small number of other creditors filed the Bankruptcy Application and on September 24, 2020, the Company filed the NOI.
8. Pursuant to the October 9th Order, the Bankruptcy Application was stayed.
9. In order to try to resolve the litigation, the Company and PGH agreed to a mediation and retained the Honourable Justice Warren Winkler to act as mediator. The mediation took place on November 27, 2020; however, the mediation did not resolve the disputes between the Company and PGH.
10. The Company and PGH also participated in a case conference that was convened on February 9, 2021 with the Honourable Justice Glenn Hainey; however, the case conference was also unsuccessful in advancing settlement discussions.
11. After a lengthy trial, the Court issued the Decision on July 5, 2021.
12. In response to the Decision, PGH filed the Notice of Appeal on August 4, 2021.

3.0 Financial Position

1. The following is a summary of the Company's financial position as of the date of the Proposal. A list of creditors is attached as Appendix "E".

(Unaudited)	Amount (\$000s)
Assets	
Cash	106
PGH Litigation Employee Funds receivable ²	2,063
PGH Litigation Funds receivable ³	6,389
Total Assets	8,558
Liabilities	
Administrative Charges under the NOI	232
DIP Facility	1,227
Unaffected Employee ESA Claims ³	2,063
Unsecured Creditors	10,450
Total Liabilities ⁴	13,972
Equity / (Deficit)	(5,414)
Total Shareholders' Deficit and Liabilities	8,558

2. As is evident from the table above, the Company's only material assets are the amounts receivable from PGH in relation to the PGH Litigation Funds.

4.0 The Proposal⁵

1. The terms of the Proposal were detailed in the Report to Creditors dated August 5, 2021 (the "Report to Creditors") and are not repeated herein. A copy of the Report to Creditors, which includes the Proposal, the Amended Certificate, a proof of claim form and proxy, a Notice of Proposal to Creditors ("Notice"), a Statement of Affairs summary and a list of creditors, is provided in Appendix "F".
2. The Proposal Trustee posted on its website a creditors' package, including a proof of claim form, voting letter and the Proposal Trustee's Report to Creditors.
3. The primary purpose of the Proposal is to effect distributions from the Unsecured Creditor Pool to holders of proven Unsecured Claims in accordance with their pro rata share, meaning the value that such proven Unsecured Claim bears to the total value of all proven Unsecured Claims.

² To be paid by PGH to the Proposal Trustee and to be impressed with a trust in favour of the Unaffected ESA Employee Claims.

³ These amounts are based on the potential maximum liability in respect of employee termination and severance claims, as described in the Decision.

⁴ Total liabilities include certain intercompany and related party liabilities reflected on the Company's books and records, as well as \$894,400 of corporate overhead costs which were pleaded at trial but not previously recorded in the Company's books and records. The Proposal Trustee has not yet reviewed these corporate overhead costs and accordingly, the claims remain subject to review by the Proposal Trustee.

⁵ Terms not defined in this section have the meaning provided to them in the Proposal, unless otherwise defined herein.

4. Recoveries for Unsecured Creditors under the Proposal are contingent on the Proposal Trustee's receipt of PGH Litigation Funds. A recovery of approximately 44% for Unsecured Creditors was estimated in the Report to Creditors based on: (i) the full amount of the PGH Litigation Funds being paid to the Company; (ii) an estimated \$500,000 of additional advances under the DIP Facility; and (iii) the Unsecured Claims being approximately \$10,450,000. Since the date of the Report to Creditors, the Cost Award was issued and the estimated distribution to creditors increased correspondingly to approximately 53% of the claims, subject to the factors noted above.

4.1 Statutory Disclosure

1. On August 6, 2021, the Proposal Trustee provided the Notice by email and regular mail to the Company and to every known creditor, as reflected on the debtor's books and records, that was eligible to file a proof of claim and vote at the Meeting. The Proposal Trustee also posted the Notice (with all attachments) on its website.
2. Out of an abundance of caution, copies of the Proposal Mailing were emailed to current and former employees of the Company on August 7, 2021.
3. On August 12, 2021, the Proposal Trustee e-filed the Notice with the OSB⁶.
4. In order to attend the Meeting and/or vote on the Proposal, creditors were required to submit a proof of claim to the Proposal Trustee in advance of the Meeting.

4.2 The Meeting

1. The Meeting was convened on August 16, 2021.
2. Thirteen creditors voted on the Proposal. The Proposal was accepted by 100% of the creditors voting on the Proposal, representing 100% of the value of the claims of creditors voting on the Proposal. A copy of the voting register is attached as Appendix "G".
3. A copy of the minutes of the Meeting, excluding the Proposal, is attached as Appendix "H".

4.3 Recommendation

1. The Proposal Trustee recommends that the Court issue an order approving the Proposal for the following reasons:
 - a) it was unanimously approved by the creditors voting in person or by proxy at the Meeting. Thirteen creditors with claims totaling \$1.36 million voted in favour of the Proposal and no creditors voted against the Proposal; and

⁶ This was late filed; however, the Proposal Trustee discussed it with the Official Receiver and the Official Receiver did not raise a concern.

- b) in the Proposal Trustee’s view, for the reasons set out in the Report to Creditors, the Proposal will provide creditors with greater recovery than they would receive in a bankruptcy. In the Proposal Trustee’s view, the Proposal is fair, reasonable and provides creditors with their best opportunity to have a recovery on their claims.

5.0 Cash Flow Forecast

1. The Company has prepared a supplemental cash flow forecast for the period August 30, 2021 to March 31, 2022 (the “Period”).⁷ The Company’s Cash Flow Forecast and Management’s Report on the Cash Flow Statement, as required by Section 50.4(2)(c) of the BIA, is provided in Appendix “I”.
2. The Company is not presently operating. The Company has one remaining employee. All disbursements other than professional costs relate to payroll. The Company’s only projected receipts during the Period are anticipated to be from the collection of wage subsidies under a Government of Canada program enacted in response to the Covid-19 Pandemic and HST refunds. Minimal contingent payments are also projected. This contingency has been included in all prior cash flows filed in these proceedings.
3. The Company shares head office space and administrative support services with related companies. The Company is not charged for the use of the shared services or office space. Accordingly, there are no such costs presented in the Cash Flow Forecast.
4. Based on the Proposal Trustee’s review of the Cash Flow Forecast, there are no material assumptions which seem unreasonable. The Proposal Trustee’s Report on the Company’s Cash Flow Statement as required by Section 50.4(2)(b) of the BIA is attached as Appendix “J”.

5.1 Increase in the DIP Facility⁸

1. Pursuant to a DIP term sheet dated October 16, 2020 (the “DIP Term Sheet”), the original borrowing limit under the DIP Facility was \$300,000 (the “Original DIP Amount”). Pursuant to four Court-approved amendments to the DIP Term Sheet, the maximum amount that can be borrowed under the DIP Facility has been increased to \$1.65 million. The drawings on the DIP Facility have been used to fund the litigation against PGH, the professional costs of these proceedings and the nominal operating costs of the Company. As at the date of this Report, the Company has borrowed approximately \$1.5 million under the DIP Facility; however, by the return of this motion or shortly thereafter, substantially the full amount of the DIP Facility is expected to have been drawn.
2. Based on the Cash Flow Forecast, the Company will require an increase of \$500,000 (the “DIP Limit Increase”) to the maximum amount that it can borrow under the DIP Facility, bringing the maximum amount available to be borrowed under the DIP Facility to \$2.15 million. The DIP Limit Increase is required to fund the costs of these proceedings and the litigation including, in particular, the PGH Appeal.

⁷ If these proceedings extend beyond March 31, 2022, a supplemental cash flow forecast will be filed by the Company.

⁸ Terms not defined in this section have the meaning provided to them in the DIP Term Sheet, as amended, unless otherwise defined herein.

3. The DIP Lender has agreed to the DIP Limit Increase pursuant to a fifth amendment to the DIP Term Sheet dated August 18, 2021 (the “Fifth DIP Amendment”).
4. Pursuant to the Fifth DIP Amendment, the DIP Limit Increase (\$500,000) will continue to accrue interest at 7%, which is consistent with interest rate on advances made pursuant to the most recent Court-approved amendments to the DIP Term Sheet. A copy of the Fifth DIP Amendment is attached as Appendix “K” to this Report.

5.2 Fifth DIP Amendment Recommendation

1. The Proposal Trustee has considered the factors set out in Section 50.6(5) of the BIA with respect to the granting of a Court order for interim financing and a charge related thereto. The Proposal Trustee believes that the Fifth DIP Amendment is reasonable for the following reasons:
 - a) the increased maximum borrowings under the DIP Facility enhance the prospects of a successful restructuring as they will be used primarily to fund the legal costs for the PGH Appeal;
 - b) the interest under the Fifth DIP Amendment (7%) is consistent with the interest rate on borrowings under earlier Court-approved DIP amendments;
 - c) the interest rate on the DIP Facility is below market for such facilities;
 - d) absent an increase in the DIP Facility, the Company will be without the liquidity to fund these proceedings and its litigation, which is the only source of financing for the Proposal;
 - e) no creditor will be materially prejudiced by an increase in the maximum borrowings under the DIP Facility. If the Company is liquidated at this time, creditors will not have any recovery;
 - f) aside from the increase in the maximum borrowings under the DIP Facility, all other terms of the DIP Facility remain unchanged; and
 - g) in the Proposal Trustee’s view, these proceedings cannot advance without an increase in the DIP Facility.

6.0 Overview of the Company’s Activities

1. The Company’s activities since May 21, 2021, the date of the Sixth Report, have focused principally on working with its counsel, Norton Rose Fulbright Canada LLP (“Norton Rose”) in connection with the Company’s litigation against PGH, preparing the Proposal, as well as some incidental matters related to the statutory requirements of these proceedings.

7.0 Overview of the Proposal Trustee's Activities

1. The Proposal Trustee's activities since May 21, 2021, the date of the Sixth Report, have included:
 - a) preparing the Company's statutory cash flow forecasts, Management's Reports on the Cash Flow Statements and the Proposal Trustee's Reports on the Cash Flow Statements;
 - b) filing materials with the OSB, as required pursuant to the BIA;
 - c) reviewing the Decision and the Cost Award;
 - d) drafting the Report to Creditors;
 - e) preparing for and convening the Meeting, including mailing statutory notices to creditors and dealing with other statutory creditor meeting procedures;
 - f) drafting the minutes of the Meeting;
 - g) drafting this Report;
 - h) corresponding with its counsel, Paliare Roland Rosenberg Rothstein LLP, and with Norton Rose;
 - i) corresponding with creditors;
 - j) corresponding with former employees of the Company;
 - k) reviewing the Fifth DIP Amendment;
 - l) corresponding with the Company regarding its actual receipts and disbursements during these proceedings and assisting the Company to prepare funding requests under the DIP Facility;
 - m) reviewing proofs of claim, as filed;
 - n) reviewing claims against the Company, including intercompany claims;
 - o) maintaining the Proposal Trustee's website established for these proceedings; and
 - p) maintaining the service list.

8.0 Conclusion and Recommendation

1. Based on the foregoing, the Proposal Trustee respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(i) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS PROPOSAL TRUSTEE UNDER THE
NOTICE OF INTENTION TO MAKE A PROPOSAL OF
2505243 ONTARIO LIMITED
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “D”

From: Stephen Moreau <SMoreau@cavalluzzo.com>

Sent: Tuesday, June 20, 2023 10:09 AM

To: Jeff.Larry@paliareroland.com; Cole Eisen <ceisen@cavalluzzo.com>

Cc: Mitch Vininsky <mvininsky@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: RE: 2505243 Ontario Limited

Dear Jeff, Bobby and Mitch,

Thank you for your patience. I had to confer with several different people to answer the questions you posed of us last week on our Zoom call. As I understand it, you are asking that Cavalluzzo LLP outline in brief its history in relation to what I will describe as the "Hotel X Matter", set out a proposal for the work it proposes to undertake, and summarize a request for an order and associated fees to represent the workers affected by the Hotel X Matter.

I will do my best to answer your questions. Overall, I believe Cavalluzzo LLP can be of assistance here.

History

Cavalluzzo LLP was retained early by three (3) former Hotel X workers to review the entirety of their situation and the situation of the workers as a whole. This retainer migrated into a formal written retainer to prosecute a class action. During the course of 2020-2022, Cavalluzzo LLP provided ongoing advice, information, and assistance.

As you can imagine, through our organizing efforts and the efforts of others, particularly with the Workers Action Centre ("WAC"), a coherent, mobilized group was assembled. As of the time of writing this email, we have secured the names of 236 potentially affected workers. For each, we have an email address. For most, we have phone numbers and notes about the Peter and Paul food and beverage outlet they were attached to. We have held Zoom information sessions with these individuals and communicated with a subset of them by telephone, directly and through WAC. We likewise have ongoing communications with the three class plaintiffs and these three have access to groups of workers via a WhatsApp group that was created. The WAC and the Parkdale clinic have maintained modes of communication.

As you can imagine, updates are provided to these workers frequently via email and otherwise. For the most part, these updates concern the class action. However, due to the fact that the class action was effectively adjourned pending the outcome of the "Peter and Paul" Action, questions around that Action, the appeal, and the leave to appeal were frequently asked and answered; and we volunteered updates regularly. With the conclusion of the leave process, our firm has received numerous communications. We have been careful to provide factual but limited statements concerning the current situation.

Proposal

Cavalluzzo LLP has successfully assisted non-unionized employees (and many unionized ones) in the context of distributions, normally through *BIA* and/or *CCAA* proceedings. Most recently, the firm provided extensive representational work to persons affected by Foodora's bankruptcy.

We would propose to serve as a representative for the workers affected by the 2020 layoffs at Hotel X. We anticipate providing the following specific services:

1. Communications to/from workers;
2. Holding sessions with those workers to explain to them their rights and options;

3. Facilitating formal notice(s);
4. Reviewing the lists and information you have gathered to offer insight on the application of the *ESA*;
5. Reviewing the lists to consider whether these are comprehensive given that the employer(s) and/or building service providers may have employed others directly or indirectly and given that such persons may be impacted by the distribution and need to be accounted for; and,
6. The determination and settling of any claims.

We would respectfully ask for a typical representation order, one that contains an appropriate exclusion of liability provision and authority provision.

Cavalluzzo LLP believes that fees in a situation like this should be modest and asks for a fee capped at \$35,000 (plus HST) paid for from the proceeds for distribution, presumably from those set aside for the administration itself. If you need a more detailed list of hourly rates charged, this can be provided. My own rate is \$455/hour and others at Cavalluzzo LLP would be charged at lower rates. These I imagine are fair if not modest rates.

Next Steps?

Please do not hesitate to contact us to go over this proposal.

Best,

Stephen

Stephen J. Moreau
Cavalluzzo LLP

Appendix “E”

CAVALLUZZO

Please refer to:	Cole Eisen
Direct Line:	416-964-5526
Email:	ceisen@cavalluzzo.com
Assistant:	Sophia Myers
Assistant's Email:	smyers@cavalluzzo.com
File No.	502350

August 16, 2023

BY E-MAIL

Jeffrey Larry
Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Dear Mr. Larry:

RE: Methodology for Proposed Employee Claims Process

You have asked us to provide an opinion on a proposed methodology for calculating the termination pay owing to the former employees of 2505243 ONTARIO LIMITED (the "Company"). The proposed methodology will be used to calculate the termination pay owing to the Company's former employees for the purpose of implementing a claims process to distribute funds set aside for such a process following a July 5, 2021 decision of the Ontario Superior Court of Justice.¹

We understand that the proposed methodology is intended to reflect the obligations of the Company to its former employees under Ontario's *Employment Standards Act, 2000* (the "ESA"). This opinion is based on the information you have provided to us, our own interactions with the group of former employees, as well as our experience in the areas of labour and employment law.

Context

The Company is part of a hospitality services group that operates under the business name "byPeterandPauls.com". In 2017, the Company was contracted to provide food, beverage and catering services at Hotel X, which is a hotel located on the Exhibition Grounds in downtown Toronto. The Company employed approximately 250 individuals at Hotel X in March 2020 when the COVID-19 pandemic arrived in Ontario. The pandemic

¹ 2505243 Ontario Limited o/a ByPeterandPaul.com v. Princes Gate GP Inc. et al., [2021 ONSC 4649 \(CanLII\)](#) at paras 449-51.

CAVALLUZZO LLP BARRISTERS & SOLICITORS

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largely shut down the provincial hospitality sector. As a result, the former employees were laid off and never recalled by the Company.

On July 2, 2020, Hotel X terminated the agreements under which the Company was contracted to provide food, beverage and catering services, alleging breach of contract. As a result, the Company's employees were never recalled from layoff. The Company filed a lawsuit against Hotel X's owners on July 20, 2020. Among other things, this lawsuit claimed damages on account of the statutory termination pay the Company owed to its more than 200 former employees as a result of Hotel X's breach of contract.

The Company's lawsuit was successful at trial and it was not overturned on appeal. In a July 5, 2021 decision, the trial judge ordered that \$2.063M in damages be aside and distributed to the Company's former employees on account of their outstanding entitlements under the *ESA*. We understand that employees were paid their outstanding wages and vacation pay by the Company following their layoff in 2020. Accordingly, the \$2.063M was intended to compensate the employees for their only remaining outstanding entitlement under the *ESA*: termination pay.²

The *ESA*

Under section 56 of the *ESA*, a person's employment is terminated when the employer "dismisses the employee or otherwise refuses or is unable to continue employing him or her." Generally, when an employer terminates the employment of an employee who has been continuously employed for three months, the employer must provide the employee with either written notice of termination, termination pay or a combination. The amount of notice or pay in lieu of notice that is required is usually calculated with reference to the employee's length of service with the employer. However, under section 3 (1) to O. Reg. 288/01 to the *ESA*, where a "mass termination" of between 200 and 500 employees occurs within a 4-week period, all impacted employees are entitled to 12 weeks of notice or pay in lieu.

Where an employer does not provide advance notice of termination and instead provides pay in lieu of notice, section 61 of the *ESA* requires the employer to "pay the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive [...] had notice been given [...]." Calculating an employee's entitlement to termination pay where the employee earns a salary or has a regular work week is a relatively straightforward exercise: one simply multiplies the employee's weekly earnings entitlement by 12.

However, where an employee is paid on an hourly basis and does not work a fixed number of hours each week, sections 60 (2) and 61 (1.1) of the *ESA* direct that an average

² Employees with more than 5 years of service are also entitled to a separate "severance pay" entitlement under section 64 (3) of the *ESA*. However, the Company had not existed for 5 years when the former employees were terminated so no employee would be entitled to severance pay.

weekly earning figure be used to calculate the employee's termination pay entitlement based on:

the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks [...] immediately preceding the day of termination.

In situations where an employee does not work in the 12 weeks prior to the termination of employment, the Ministry of Labour's [position](#) is that if there are no wages at all during the 12 weeks immediately before notice is given, the employer is to "look back in blocks of 12 weeks, until a 12-week period can be found in which the employee has weeks worked and then average the wages earned over that 12-week period." This policy is intended to address a situation where an employee's termination pay entitlement would be \$0 because they did not work in the period of 12 weeks immediately preceding the day of termination. Such an outcome would result in an "implicit conflict with the requirement that an employee whose employment is terminated without notice must be given termination pay."

The Proposed Methodology

The Proposal Trustee has proposed the following methodology for calculating the former employees' *ESA* termination pay entitlement:

- (a) for salaried employees: the employee's regular gross weekly wage in 2020 (not including holiday pay, overtime, gratuities, or other payments statutorily excluded from the definition of "wages") multiplied by 12 weeks;
- (b) for hourly employees who worked the same number of hours a week: the employee's hourly wage in 2020 multiplied by the number of contracted hours per week multiplied by 12 weeks; and
- (c) for hourly employees who worked variable hours:
 - i. the employee's average actual weekly gross wages (not including weeks not worked) between May 2, 2020 – July 25, 2020 multiplied by 12 weeks; or
 - ii. the employee's average actual weekly gross wages (not including weeks not worked) between February 7, 2020 – May 1, 2020 multiplied by 12 weeks if the employee in question had no wages during the period set out in item (i) immediately above

The formulas described above for calculating termination pay at (a) and (b) simply apply the plain language of the *ESA* and they require no further comment. The formula at (c), in line with the Ministry's direction to "look back in blocks of 12 weeks, until a 12-week period can be found in which the employee has weeks worked," is consistent with the *ESA* and reflects a purposive interpretation of the relevant sections.

Although the Company's employees were given notice of layoff on March 2020, they were deemed to be on unpaid infectious disease emergency leave ("IDEL") from March 2020 to July 1, 2020 because of a temporary measure in O. Reg 228/20, *Infectious Disease Emergency Leave* to the *ESA*. Their status converted to a layoff on July 2, 2020 when Hotel X terminated the agreements under which the Company was contracted to provide food, beverage and catering services such that the Company had no more work to offer the employees. At some point thereafter, their employment was terminated and they became entitled to termination pay.

Section 61 (1.1) requires that a "day of termination" be identified in order to calculate the employee's termination pay entitlement. Where notice is given in a form prescribed by the *ESA* and its regulations, an employee's period of employment is deemed to end on the day that notice is given. However, the Company did not give notice to the Director of Employment Standards as required by section 58 (1) of the *ESA*. Where notice of termination is not given in accordance with the *ESA*, an employee's employment is deemed to end on "the day the employee's employment is terminated". It will be recalled that section 56 of the *ESA* simply states that a person's employment is terminated when the employer "dismisses the employee or otherwise refuses or is unable to continue employing him or her." Identifying the date of termination in these circumstances is therefore not a technical exercise, but a matter of statutory interpretation. Specifically, identifying the date of termination requires a purposive interpretation of the legislation the seeks to determine when the employer "dismiss[e]d the employee or otherwise refuse[d] or [was] unable to continue employing him or her."

The Proposal Trustee's use of July 25, 2020 as the termination date is reasonable and consistent with the spirit of the *ESA*. On July 25, 2020, individuals employed by the Company in management positions sent emails to former employees via WhatsApp stating the following:

In essence, Hotel X are not allowing us to bring you back and operate out of Hotel X. This is now the subject of a lawsuit. The Ministry of Labour will have information regarding your options, but I understand that any severance on termination arising as a result of this is the responsibility of the new operator(s) under the provisions of the Employment Standards Act. I apologize but this is simply out of PNP's control at this time, and in the meantime thank you for your dedication and please be safe.

It is clear from the face of these statements that the Company considered itself "unable to continue employing" its workforce when it sent this message on July 25, 2020.

Using July 25, 2020 as the termination date is also consistent with the spirit of the *ESA* with respect to the calculation of the average actual weekly for hourly employees who worked variable hours. It will be recalled that where an employee does not work in the 12 weeks prior to the termination of their employment, the Ministry of Labour's [position](#) is that if there are no wages at all during the 12 weeks immediately before notice was given, the employer is to "look back in blocks of 12 weeks, until a 12-week period can be found

in which the employee has weeks worked and then average the wages earned over that 12-week period.” As the Company’s food and beverage outlets were not operating during the 12 weeks period prior to July 25, 2020 (May 2, 2020 – July 25, 2020), the average weekly wage used will reflect each employee’s average actual weekly gross wages (not including weeks not worked) between February 7, 2020 – May 1, 2020. This period will capture several weeks of earnings before the Company’s operations at Hotel X shut down in March 2020, ensuring that the termination payments these employees receive will be reflective of their actual weekly earnings over a representative time period (as opposed to only one or two weeks which would be the case if a later date of terminate were used).

Conclusion

In light of the above, we are of the opinion that the methodology proposed is fair and reasonable, and that it accords with the *ESA*. We trust the forgoing will be of assistance. Please do not hesitate to contact the undersigned with any questions.

Yours truly,

CAVALLUZZO LLP

Cole Eisen

Cole Eisen
CE/sm
Associate