



This is the 1<sup>st</sup> Affidavit of  
P. Crawford in this case and  
was made on September 20, 2021

No. S-211985  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

**AND**

**IN THE MATTER OF ARDENTON CAPITAL CORPORATION AND ARDENTON  
CAPITAL BRIDGING INC.**

**PETITIONERS**

**AFFIDAVIT OF PETER CRAWFORD**

I, **PETER CRAWFORD**, care of 60 W 6th Ave Suite 200, in the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the Vice President, Legal Affairs of Ardenton Capital Corporation ("**ACC**"), the parent company of Ardenton Capital Bridging Inc. ("**ACBI**" and together with ACC, the "**Petitioners**"). In such capacity, I am also general counsel for the Ardenton group of companies. I therefore oversee the legal affairs of the Petitioners and I am authorized to make this affidavit on behalf of the Petitioners.

2. I have personal knowledge of the matters herein, except where such facts are based upon information and belief and where so stated, I do verily believe the same to be true.

3. Defined terms used in this affidavit not otherwise defined shall have the meanings ascribed to them in the proposed Plan of Compromise and Arrangement of the Petitioners, a copy of which

is appended hereto and marked as **Exhibit “A”** (the “**Plan**”) or the Meetings Order (as defined below), as applicable.

## **I. NATURE OF RELIEF SOUGHT**

4. I swear this affidavit in support of an application by the Petitioners to approve the Petitioners’ proposed Stay Extension Order (the “**Stay Extension Order**”) and Meetings Order (the “**Meetings Order**”), copies of which are appended to the Petitioners’ Notice of Application as Schedules “B” and “C”, respectively.

## **II. BACKGROUND**

5. On March 5, 2021, the Supreme Court of British Columbia (the “**CCAA Court**”) granted the Petitioners protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”). Among other things, the Initial Order:

- (a) granted an initial Stay Period (as defined in the Initial Order) in favour of the Petitioners up to and including March 15, 2021;
- (b) granted each of the Administration Charge and the D&O Charge; and
- (c) appointed KSV Restructuring Inc. as monitor in these CCAA Proceedings (in such capacity, the “**Monitor**”).

6. Under the Initial Order, the CCAA Court set the application for an extension of the Stay Period to be heard on March 15, 2021 (the “**Comeback Hearing**”). At the Comeback Hearing, the CCAA Court granted an Order amending and restating the Initial Order pursuant to which, among other things, the Stay Period was extended to May 7, 2021.

7. On March 31, 2021, the CCAA Court granted a second Order amending and restating the Initial Order pursuant to which, among other things:

- (a) the amount of the Administration Charge was reduced from \$1.0 million to \$750,000;

- (b) the DIP Facility was approved; and
  - (c) the Interim Lender's Charge was granted.
8. The CCAA Court also granted Orders on March 31, 2021 approving:
- (a) a claims procedure for soliciting and determining the Claims against the Petitioners and against the Petitioners' D&Os (the "**Claims Procedure**"); and
  - (b) the appointment of the Investor Committee, representing significant investors or representatives of groups of significant investors to, among other things, work with the Monitor and the Petitioners to formulate the Plan.
9. On May 6, 2021, the CCAA Court granted an Order:
- (a) approving a key employee retention plan for certain of ACC's employees and the KERP Charge; and
  - (b) granting an extension of the Stay Period to July 6, 2021.
10. On June 28, 2021, the CCAA Court granted an Order extending the Stay Period to October 1, 2021.
11. On July 26, 2021, the CCAA Court granted the following Orders:
- (a) an Order approving the consulting agreement (the "**Consulting Agreement**") between ACC and Kingsman Scientific Management Inc. (the "**Consultant**"), engaging the Consultant to provide the services of Chief Restructuring Officer (the "**CRO**") of the Petitioners, and authorizing and directing ACC to enter into and carry out the terms of the Consulting Agreement;
  - (b) an Order creating the CRO Charge in favour of the Consultant in the amount of \$200,000; and
  - (c) an Order approving the separation agreement between the Petitioners and James Livingstone and Livingstone Holdings Inc.,

(collectively, the “**July 26 Orders**”).

12. Further information concerning the Petitioners and their business and the events leading up to the filing of the Plan is detailed in previous materials filed by the Petitioners and the Monitor in these CCAA Proceedings, all of which can be found on the Monitor’s Website: <https://www.ksvadvisory.com/insolvency-cases/case/ardenton-capital-corporation>.

### **III. UPDATE ON THE CLAIMS PROCEDURE**

13. Since the granting of the Claims Procedure Order on March 31, 2021 (the “**Claims Procedure Order**”), the Monitor and the Petitioners have identified and quantified all known creditor claims against the Petitioners (the “**Known Claims**”).

14. In accordance with the terms of the Claims Procedure Order, the Monitor:

- (a) distributed, by the date required under the Claims Procedure Order (being April 15, 2021), approximately four hundred (400) claim packages to claimants with Known Claims;
- (b) published, on April 7, 2021, a notice advising of the Claims Procedure in *The Globe and Mail (National Edition)* and the Vancouver Sun; and
- (c) posted on its website, immediately after the Claims Procedure Order was granted, a notice to claimants, the claims package and the Claims Procedure Order.

15. The claims bar date for Known Claims, pre-filing Claims, and D&O Claims was May 14, 2021 (the “**Claims Bar Date**”).

16. Following the Claims Bar Date, the Petitioners identified twelve (12) Claims that the Petitioners intend to dispute, principally involving former employees, a former landlord and a claim filed by an investment management firm for unpaid fees. The Monitor and the Petitioners have been working with such claimants to attempt to consensually resolve these Disputed Claims. As of the date hereof, six (6) Disputed Claims have been resolved and six (6) Disputed Claims remain outstanding. Substantial progress has been made in respect of these Disputed Claims and it is my understanding that the Monitor is optimistic that most of these remaining Disputed Claims

will be resolved by the date of the Creditors' Meetings. If the Monitor is unsuccessful in resolving the outstanding Disputed Claims, it may be necessary to have such Disputed Claims adjudicated by the CCAA Court.

17. Five (5) D&O Claims were filed. Four (4) of these claims were filed by members of the Investor Committee and one was filed by another investor. The Monitor also sent a letter to ACC, which attached a claim from a member of the Investor Committee advising the Petitioners that the Monitor intended to accept the claim as a placeholder representative claim (the "**Omnibus D&O Claim**") made on behalf of all of the Petitioners' investors. It is my understanding, based on my personal involvement with the preparation of the Plan that, if the Plan is implemented, the Investor Committee will not pursue the Omnibus D&O Claim given the releases contemplated by the Plan.

#### **IV. SUMMARY OF THE PLAN**

18. Since the granting of the July 26 Orders, the Petitioners have acted in good faith and with due diligence to, *inter alia*, draft and finalize the Plan in consultation with the Monitor and the Investor Committee. It is my understanding, based on my discussions with the Monitor, that the Monitor will prepare the Monitor's Plan Assessment Report as particularised in the proposed Meetings Order. Among other things, the Monitor's Plan Assessment Report will discuss the proposed Plan in detail. A summary of the proposed Plan's principal features is provided below.

##### **A. Purposes of the Plan and Creditor Classification**

19. The primary purposes of the Plan are to: (a) restructure the Affected Claims and effect the Distributions to Affected Creditors contemplated under the Plan; (b) effect a release and discharge of certain Claims against the Petitioners' D&Os; (c) establish a new board of directors of ACC; and (d) amend and reconstitute the share capital of ACC, including the issuance of new shares to ACC Investor Creditors.

20. The Plan is put forward in the expectation that the Affected Creditors, when considered as a whole, will derive a greater benefit from the implementation of the Plan and the continuation of the Petitioners' business as a going concern than would result from an immediate sale of the Petitioners' interests in their respective Portfolio Companies.

21. As ACBI is a wholly owned subsidiary of ACC, with its own distinct constituent of creditors, the Plan provides for two (2) separate classes of creditors for voting purposes at the (together, the “**Affected Creditor Classes**”) at the ACBI Creditors’ Meeting and the ACC Creditors’ Meeting, respectively:

- (a) the ACBI Creditor Class, comprising of the ACBI Creditors; and
- (b) the ACC Creditor Class, comprising of the ACC Creditors.

22. The Claims of the Affected Creditors in each of the Affected Creditor Classes are in the nature of general unsecured claims.

**B. Treatment of Affected Creditors**

23. Pursuant to the Plan, at the Effective Time:

- (a) the Affected Claims of the ACC Creditors will be restructured and each of the ACC General Creditors and the ACC Investor Creditors will have a continuing non-interest bearing claim against ACC, entitling such ACC Creditors to payments from the ACC Cash Available for Distribution in the manner and priority contemplated under the Plan; and
- (b) the Affected Claims of the ACBI Creditors will be restructured and each of the ACBI General Creditors will have a continuing non-interest bearing claim against ACBI, entitling such ACBI Creditors to payments from the ACBI Cash Available for Distribution in the manner and priority contemplated under the Plan. For clarity, such ACBI Creditors have a continuing claim to post-filing interest on the principal portion of their Proven Claims in addition to their continuing non-interest bearing claims in respect of the principal and pre-filing interest portions of their Proven Claims.

24. In addition to the aforementioned distributions, each of the ACC Investor Creditors will be issued New ACC Common Shares in accordance with the Plan implementation steps set out in Schedule “E” to the Plan (the “**Plan Implementation Steps**”). In accordance with the Plan Implementation Steps, the existing ACC Shares will be converted into the Converted Shares, which shares will be subsequently cancelled, without further act or formality.

25. The post-Plan Implementation Date authorized share structure of ACC will be comprised of two classes of New ACC Common Shares to be allocated to the Preferred Securityholders and the Hybrid Securityholders. The allocation of the New ACC Common Shares among the Preferred Securityholders and the Hybrid Securityholders is representative of the debt owing to such ACC Investor Creditors, the general repayment priority of such debt, and other factors that I understand will be more fully discussed in the Monitor’s Plan Assessment Report. The current articles of ACC will be amended to reflect, *inter alia*, the issuance of the New ACC Common Shares contemplated under the Plan.

### **C. Approving the Plan**

26. The Plan, insofar as it relates to ACC, must be accepted by the Required Majority of Creditors of the ACC Creditors, and, insofar as it relates to ACBI, is required to be accepted by the Required Majority of Creditors of the ACBI Creditors and the ACC Creditors. In the event that the Plan is only approved by the Required Majority of Creditors of ACC Creditors, the Petitioners shall move to have the Plan sanctioned by the CCAA Court only with respect to ACC, and the terms of the Plan as it relates to ACBI shall be severed from the Plan and no longer in force. In the event that the Plan is not approved by the Required Majority of Creditors of the ACC Creditors, then the Plan shall be deemed to be rejected by the Affected Creditors.

27. If the Plan is approved by the Required Majority of Creditors of the ACC Creditor Class or the Required Majority of Creditors of both the ACC Creditor Class and the ACBI Creditor Class, the Petitioners will bring an application (the “**Sanction Order Application**”) for an order sanctioning the Plan pursuant to the CCAA (the “**Sanction Order**”).

**D. Treatment of Unaffected Claims**

28. Notably, the Plan does not affect the Unaffected Claims, which include, among others:
- (a) all Non-Released D&O Claims;
  - (b) any Claims of Secured Creditors;
  - (c) any Claims relating to Continuing D&O Indemnities;
  - (d) any Claims that are not permitted to be compromised under section 19(2) of the CCAA; and
  - (e) any Claims in respect of payments referred to in sections 6(3), 6(5) and 6(6) of the CCAA.

**E. Conditions Precedent to the Implementation of the Plan**

29. The implementation of the Plan is subject to the satisfaction of the following conditions:
- (a) the Plan shall have been approved by: (a) the Required Majority of Creditors of the ACC Creditors; and (b) in the case of that portion of the Plan relating to ACBI Creditors, the Required Majority of Creditors of the ACBI Creditors;
  - (b) the Sanction Order shall have been granted by the CCAA Court in a form acceptable to the Monitor and the Investor Committee and shall be in full force and effect and not reversed, stayed, varied, modified or amended;
  - (c) all applicable appeal periods in respect of the Sanction Order shall have expired and, in the event of an appeal or application for leave to appeal, final determination thereof shall have been made by the applicable appellate court;
  - (d) all approvals, orders, determinations or consents required pursuant to Applicable Law, if applicable, shall have been obtained on terms and conditions satisfactory to the Monitor, acting reasonably, and shall remain in full force and effect at the Effective Time;



- (e) all agreements, resolutions, documents and other instruments which are necessary to be executed and delivered by the Petitioners or the Monitor in order to implement the Plan and perform the Petitioners' obligations under the Plan shall have been executed and delivered;
- (f) no action shall have been instituted and be continuing as at the Effective Time for an injunction to restrain, a declaratory judgment in respect of, or damages on account of, or relating, the Plan;
- (g) the Petitioners shall have entered into the RCM Exit Facility on terms acceptable to the Monitor and the Investor Committee, acting reasonably; and
- (h) the Petitioners shall have obtained director and officer insurance acceptable to the Monitor and the Investor Committee for the period commencing on the Effective Date.

**F. Releases**

30. The Plan provides for certain limited releases in favour of the Monitor, its counsel and the CRO. Specifically, at the Effective Time, except as otherwise provided in the Plan or in the Sanction Order, the Monitor, its legal counsel and the CRO will be released from any and all Claims, obligations, rights, Causes of Action and liabilities which any Person may be entitled to assert, whether for tort, contracts, violation of Applicable Laws or otherwise, whether known or unknown, foreseen or unforeseen, existing or thereafter arising, based in whole or in part upon any act or omission, transaction or other occurrence taking place on or before the Effective Time, including the negotiation, solicitation, confirmation and consummation of this Plan; provided, however, that nothing will release the Monitor, its legal counsel or the CRO from any Claims, obligations, Causes of Action or liabilities which arise out of the Monitor's, its legal counsel's or the CRO's fraud, gross negligence, or wilful misconduct.

**G. Plan Filing**

31. The Petitioners are not seeking the CCAA Court's approval of the Plan at this time. Rather, the Petitioners are seeking authorization to file the Plan with the CCAA Court, and to present the Plan to the Affected Creditors to consider and vote on the Plan at the Creditors' Meetings.

32. The Plan reflects a substantial step forward in the Petitioners' restructuring and is the culmination of significant efforts by the Petitioners and the Monitor. I believe that the Plan fairly balances the interests the Petitioners' stakeholders and provides a superior outcome for the Affected Creditors than they would derive from the Petitioners' bankruptcy or liquidation. I understand that the Monitor will file a sixth report (the "**Sixth Report**") and the Monitor's Plan Assessment Report with the CCAA Court articulating its views on the Meetings Order and the proposed Plan.

33. In anticipation of filing the Plan, ACC has negotiated the terms of the RCM Exit Facility to provide the Petitioners with financing to repay the DIP Facility in full and fund the Petitioners' operating costs as needed. The parties to the proposed RCM Exit Facility have signed a term sheet and are in the process of finalizing the necessary documentation. As discussed above, the Petitioners' entrance into the RCM Exit Facility on terms acceptable to the Monitor and the Investor Committee is a condition precedent to the Plan's implementation.

## **V. THE MEETINGS ORDER**

34. The proposed Meetings Order sets out the processes and procedures relating to the Creditors' Meetings to permit the Affected Creditors to vote on the Plan. In light of the COVID-19 pandemic, the Meetings Order provides that the Creditors' Meetings will be held virtually in accordance with the Electronic Meetings Protocol. The ACC Creditors' Meeting will be held on November 2, 2021 (the "**Meetings Date**"), at 10:00 a.m. (Pacific Daylight Time). If the Plan is approved at the ACC Creditors' Meeting in accordance with the Meetings Order, the ACBI Creditors' Meeting will be held on the Meetings Date at 12:00 p.m. (Pacific Daylight Time).

### **A. Notice of the Creditors' Meetings and Information Related Thereto**

35. To provide the Affected Creditors with notice of and information regarding the Plan, the Creditors' Meetings and the Sanction Order Application, the Petitioners have prepared the following materials in addition to the Meetings Order:

- (a) the Newspaper Notice of Meetings;
- (b) the Electronic Meetings Protocol;

- (c) the Plan Information Letter; and
- (d) the Proxy,

(collectively with the Plan, the Meetings Order, the Monitor's Plan Assessment Report and the Sixth Report, the "**Meetings Materials**").

36. Pursuant to the Meetings Order:

- (a) the Monitor shall publish the Newspaper Notice of Meetings in *The Global and Mail (National Edition)*, as soon as practicable following the issuance of the Meetings Order;
- (b) the Monitor shall publish the Meetings Materials on the Monitor's Website; and
- (c) the Petitioners shall send copies of the Meetings Materials to each Affected Creditor that is not barred pursuant to the Claims Procedure Order.

**B. Conduct of the Creditors' Meetings**

37. Among other things, the proposed Meetings Order sets out the manner in which the Creditors' Meetings are to be conducted. In this regard, the Meetings Order provides that:

- (a) a designated representative of the Monitor shall preside as the Chair of each of the Creditors' Meetings;
- (b) the Monitor may appoint scrutineers for the supervision and tabulation of the attendance, quorum and votes cast by Affected Creditors at each of the Creditors' Meetings and a person designated by the Monitor shall act as secretary at the each of the Creditors' Meetings;
- (c) the only Persons entitled to attend and speak at each of the Creditors' Meetings are:
  - (i) Affected Creditors or their Proxy; (ii) representatives from the Petitioners; (iii) representatives of the Monitor; (iv) the Chair; (v) any other person invited to attend by the Chair; and (vi) legal counsel to any Person entitled to attend the Creditors' Meetings, including for greater certainty, legal counsel to the Investor Committee;

- (d) the quorum of Affected Creditors for each of the Creditors' Meetings shall be one (1) voting Affected Creditor present in person or by Proxy and entitled to vote at the applicable Creditors' Meeting in respect of each of ACC and ACBI; and
- (e) the Monitor (prior to the applicable Creditors' Meetings) and the Chair (during the Creditors' Meetings) is authorized to adjourn, postpone or otherwise reschedule the Creditors' Meetings, or the vote of the applicable Affected Creditor Class scheduled to occur at the Creditors' Meetings, on one or more occasions to such time(s), date(s) and place(s) as the Monitor deems necessary or desirable (without the need to first convene the Creditors' Meetings for the purpose of any adjournment, postponement or other rescheduling thereof).

### **C. Voting Procedure**

38. It is my view that the Meetings Order provides for a fair and equitable voting process. At the Creditors' Meetings, the Chair will direct the votes with respect to the resolutions and any amendments, variations or supplements to the Plan that are made in accordance with the terms thereof. The vote required to pass any resolutions to be voted on at the Creditors' Meetings to approve the Plan, shall be decided by the affirmative vote of at least the Required Majority of Creditors in each Affected Creditor Class of the votes cast on such resolutions, in accordance with the Electronic Meetings Protocol. Any other matter submitted for a vote at the Creditors' Meetings shall be decided by a simple majority of votes cast unless, in the case of a motion passed or defeated by less than 66.67% of votes cast, the Chair in its discretion directs a re-vote requiring a Required Majority of Creditors to pass the motion, in accordance with the Electronic Meetings Protocol.

39. Only Affected Creditors and their Proxy holders are entitled to vote at the Creditors' Meetings. Holders of Equity Claims or Unaffected Claims are not entitled, in such capacity, to attend the Creditors' Meetings or vote on the Plan. Pursuant to the Meetings Order, each ACC Creditor and ACBI Creditor shall be entitled to one (1) vote on the Plan for its Affected Claim. The value attributed to such vote (for the purposes of determining the Required Majority of Creditors) shall be equal to the Canadian Dollar value of such Affected Claim.

40. If approved by the Required Majority of Creditors of the ACC Creditor Class at the ACC Creditors' Meeting, the Plan shall be ratified and given full force and effect in respect of ACC and the ACC Creditors. Similarly, if approved by the Required Majority of Creditors of the ACBI Creditor Class at the ACBI Creditors' Meeting, the Plan shall be ratified and given full force and effect in respect of ACBI and the ACBI Creditors. As discussed above, in the event that the Plan is only approved by the Required Majority of Creditors of the ACC Creditor Class, then the Petitioners will move to have the Plan sanctioned by the Court only with respect to ACC such that the terms of the Plan as it relates to ACBI will be severed and no longer in force. However, if the Plan is not approved by the Required Majority of Creditors of the ACC Creditor Class, it will be deemed to be rejected by the ACBI Creditor Class.

**D. Monitor's Report**

41. The Monitor will, as soon as practicable following the Creditors' Meetings, provide a report to the CCAA Court that includes:

- (a) a summary of all motions called at the Creditors' Meetings;
- (b) the scrutineer's report(s) on the results of the votes on each motion, including the motions to vote on the Plan; and
- (c) such further and other information as determined by the Monitor to be necessary.

42. The report will be available on the Monitor's Website.

**VI. NEXT STEPS AND EXTENDING THE STAY PERIOD**

43. Should this Honourable Court grant the relief sought by the Petitioners in this application, then the Petitioners will assist the Monitor with the convening of the Creditors' Meetings in accordance with the terms of the Meetings Order.

44. In addition to the proposed Meetings Order, the Petitions are also seeking an extension of the Stay Period until and including December 15, 2021 (the "**Stay Extension**") pursuant to the Stay Extension Order. The Stay Extension will provide the stability and time required for the Petitioners, with the assistance of the Monitor, to:

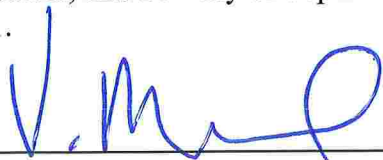
- (a) provide notice of the Creditors' Meetings and send the Meetings Materials to Affected Creditors as contemplated under the Meetings Order;
- (b) convene the Creditors' Meetings;
- (c) facilitate the vote of Affected Creditors on the Plan; and
- (d) if the Plan is approved by the Required Majority of Creditors of the ACC Creditors or the Required Majority of Creditors of both the ACC Creditors and the ACBI Creditors, prepare and file the Sanction Order Application.

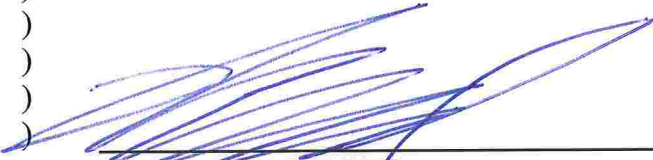
45. The Petitioners are projected to have sufficient funding to continue operating their business during the proposed Stay Extension. I understand that the Monitor is supportive of the proposed Stay Extension and will indicate the reasons for its support in the Monitor's Plan Assessment Report.

**VII. CONCLUSION**

46. I make this affidavit in support of the Petitioners' application seeking this Honourable Court's approval of the Meetings Order.

SWORN before me at the City of )  
 Vancouver in the Province of British )  
 Columbia, this 20<sup>th</sup> day of September )  
 2021. )

  
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 A Commissioner for Oaths in the Province )  
 of Province of British Columbia )

  
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**PETER CRAWFORD**

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