

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

AND

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

PETITIONERS

NOTICE OF APPLICATION

Name of applicant:

KSV Restructuring Inc., in its capacity as Monitor (the "Monitor")

To: The Service List

TAKE NOTICE that an application will be made by way of telephone conference by the Monitor to the Honourable Mr. Justice Macintosh at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, at 9:00 a.m. on January 28, 2022 for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

SERVICE

- 1. An Order substantially in the form attached as **Schedule "A"** hereto, including, among other things, the following relief:
 - (a) abridging time for service of this Notice of Application; and
 - (b) approving the fees and disbursements of the Monitor and the Monitor's counsel.

Part 2: FACTUAL BASIS

2. All capitalized terms used in this Notice of Application, unless otherwise noted, have the meanings ascribed to them in the Monitor's Ninth Report.

Background

 Ardenton Capital Corporation ("ACC") is the parent company of a multinational private equity business. Using monies raised from its investors, ACC acquired through various holding companies, including Ardenton Capital Bridging Inc. ("ACBI" and together with ACC, the "Petitioners" or the "Companies", and the Companies and their non-filing affiliates and related companies are collectively referenced as "Ardenton"), majority ownership interests in numerous portfolio companies (collectively, the "PCs"). The PCs are privately-owned mid-market businesses.

- 4. ACC currently has indirect majority ownership interests in fourteen (14) PCs located in Canada, the United States and the United Kingdom.
- 5. ACC did not use a typical private equity model to raise capital and invest in businesses, which ordinarily relies on a limited partnership structure to raise capital from its investors. Rather, ACC primarily raised capital by issuing unsecured debt through instruments that pay annual interest.
- 6. Pursuant to an order (the "Initial Order") of the Supreme Court of British Columbia (the "Court") made on March 5, 2021 (the "Filing Date"), ACC and ACBI were granted protection under the CCAA, and KSV was appointed as Monitor.
- 7. Since the Filing Date, the Court has issued orders, that, among other things:
 - (a) granted the Companies a stay of proceedings, which currently expires on January 31, 2022 (the "Stay Period");
 - (b) approved a debtor-in-possession ("DIP") loan facility (the "DIP Facility") in the amount of \$5 million from RCM Capital-WSC Holdings Ltd. (the "DIP Lender"), and granted a charge on the Property in favour of the DIP Lender for this amount (the "Interim Lender's Charge");
 - (c) approved the appointment of an Investor Committee comprised of seven investors in ACC and/or ACBI (the "Investor Committee");
 - (d) approved a claims procedure for soliciting and determining claims against the Companies and against the Companies' directors and officers (the "Claims Procedure");
 - (e) approved a key employee retention plan (the "KERP") for certain of ACC's employees and related KERP Charge;
 - (f) approved a consulting agreement pursuant to which Kingsman Scientific Management Inc. ("Kingsman") was engaged to provide the services of Kyle Makofka to act as Chief Restructuring Officer during the CCAA proceedings, with the benefit of a \$200,000 CRO Charge, and to perform the services of a Chief Executive Officer upon ACC exiting the CCAA proceedings, subject to the approval of ACC's Board of Directors (the "New Board") to be appointed pursuant to the terms of the Companies' Plan of Compromise and Arrangement dated September 20, 2021 (the "Plan");
 - (g) authorized the filing of the Plan and approved the procedure for holding a creditors' meetings to vote on the Plan; and

- (h) sanctioned the Plan (the "Sanction Order").
- 8. The Monitor filed the Monitor's Plan Certificate dated December 1, 2021 with the Court on December 7, 2021 (the "Certificate") confirming that all conditions to the Plan had been satisfied or waived.
- 9. In accordance with the Sanction Order, the following Court-ordered charges were released, discharged, expunged and terminated:
 - (a) the Intercompany Charge;
 - (b) the D&O Charge; and
 - (c) the CRO Charge.

10. The Sanction Order also:

- reduced the KERP Charge to \$248,000, which amount is being held in trust by the Companies' counsel to secure the balance payable under the KERP. Pursuant to the terms of the KERP, these amounts are payable 90 days following Plan Implementation to employees covered by the KERP and who remain eligible at that time to receive amounts owing to them under the KERP; and
- (b) continued the Interim Lender's Charge in full force and effect until the DIP Facility was repaid in full, which took place on December 1, 2021. Accordingly, the Interim Lender's Charge is now also released, discharged, expunged and terminated.
- 11. The Companies are not seeking an extension of the Stay Period and are now seeking an order terminating these proceedings (the "Termination Order"); however, pursuant to the Termination Order, the Monitor will continue to have its authority under the Initial Order and the Claims Procedure Order to deal with the remaining disputed claim, namely the Scott Claim, and any remaining administrative or incidental matters that may arise prior to the filing of a further certificate by the Monitor (the "Monitor's Discharge Certificate") confirming the completion of all matters in these proceedings.
- 12. In service of completing these proceedings, the Monitor is seeking to approve the fees and activities of the Monitor and those of the Monitor's counsel, DLA Piper (Canada) Inc. ("DLA"), in these proceedings.

Summary of the Monitor's Activities

13. A summary of the Monitor's pre-filing activities and its activities from the commencement of these CCAA proceedings is provided below, and a more detailed account can be found in the Monitor's Ninth Report which includes all previous filed reports in these proceedings.

Pre-Filing Activities, Initial Order and Comeback

- 14. Before the commencement of the these proceedings, the Monitor undertook the following activities:
 - (a) reviewing background information about the Companies and their operations;
 - (b) working with Management, the Companies' co-legal counsel, Aird & Berlis LLP ("A&B") and MLT Aikins LLP ("MLT"), and DLA, to prepare for the CCAA proceedings and discuss restructuring scenarios;
 - (c) preparing various financial analyses of the PCs;
 - (d) attending several calls with DLA and A&B regarding liquidity issues at the commencement of the CCAA, DIP financing and a CCAA communication plan;
 - (e) reviewing, commenting and collaborating on several versions of the CCAA application materials;
 - (f) preparing and discussing the Report of the Proposed Monitor dated March 3, 2021 and discussing same with A&B, DLA and Management;
 - (g) reviewing financial information supporting the cash flow projection filed with the CCAA application materials;
 - (h) assisting the Companies to determine the amounts of the charges in the Initial Order;
 - (i) attending the initial CCAA application;
 - reviewing and commenting on the Companies' motion materials for the comeback hearing heard on March 15, 2021 ("Comeback Motion");
 - (k) preparing the First Report of the Monitor; and
 - (I) attending the Comeback Motion via conference call on March 15, 2021.

CCAA Communication Plan

- 15. The Monitor undertook various activities relating to the CCAA Communication Plan, including:
 - (a) assisting Management with the preparation and drafting of the communication materials and correspondence (the "Communication Plan");
 - (b) discussing extensively the Communication Plan with the Companies, A&B and DLA, including incorporating feedback from each on the Communication Plan documents;
 - (c) uploading information to the Monitor's website;
 - (d) meetings, correspondence and communication with several key constituents, including numerous investors;
 - (e) attending, virtually, an employee town hall meeting;

- (f) corresponding extensively with the Companies' suppliers, creditors and other parties regarding the CCAA proceedings; and
- (g) dealing with various of the PCs' lenders;

Statutory Obligations

- 16. The Monitor addressed all statutory obligations pursuant to the CCAA, including:
 - (a) reviewing the Companies' creditors' list;
 - (b) mailing a notice to the Companies' creditors;
 - (c) making arrangements to have the CCAA notice published in national newspapers; and
 - (d) preparing forms which are required to be filed with the Office of the Superintendent of Bankruptcy;

Investor Committee

- 17. The Monitor undertook various activities relating to the creation, and utilization of the Investor Committee, including:
 - (a) supporting the creation of the Investor Committee including:
 - (i) discussing the Investor Committee with Management;
 - (ii) identifying and interviewing parties to sit on the Investor Committee;
 - (iii) discussing with stakeholders the scope of the Investor Committee's duties and responsibilities; and
 - (iv) considering the appointment of advisors for the Investor Committee, including legal counsel;
 - (b) working with the Investor Committee's counsel, Bennett Jones LLP ("Bennett Jones") throughout these proceedings;
 - (c) corresponding with members of the Investor Committee;
 - (d) drafting the Investor Committee by-laws (the "Committee By-Laws") and corresponding with the Investor Committee regarding same;
 - (e) preparing an agenda for a majority of the formal Investor Committee meetings;
 - (f) preparing and planning for, convening, and chairing over 40 Investor Committee meetings;
 - (g) drafting minutes of the majority of the official Investor Committee meetings;
 - (h) reviewing and commenting on status report presentations to the Investor Committee;

- (i) attending numerous calls with individual Investor Committee members throughout the CCAA proceedings regarding various matters in these proceedings;
- (j) working with the Investor Committee to conduct a search for a Chief Restructuring Officer for the Companies, including interviewing several candidates; and
- (k) setting up and maintaining a data room for the Investor Committee;

Claims Procedure

- 18. The Monitor undertook various activities relating to the claims procedure, including:
 - (a) working with DLA, A&B and Management to draft the CPO;
 - (b) arranging for the notice of the Claims Procedure to be published in;
 - (c) working with the Companies to identify all creditors and investors as of the filing date including amounts owing to them as of that date (the "Creditor Listing");
 - (d) preparing approximately 400 "Known Claimant" notices based on the Creditor Listing and sending same to each creditor;
 - (e) preparing and sending claim packages to parties whose contracts were disclaimed during the CCAA process;
 - (f) attending calls with Canada Revenue Agency ("CRA") regarding the Claims Procedure;
 - (g) responding to numerous inquiries from creditors regarding the Claims Procedure;
 - (h) reviewing all proofs of claim and "Notice of Known Claimant Disputes" filed against the Companies and/or the Directors and Officers ("D&Os") pursuant to the Claims Procedure and corresponding with the Companies, Investor Committee and the respective creditors regarding same;
 - (i) corresponding extensively with the Investor Committee, A&B, DLA and Bennett Jones regarding an omnibus claim filed against the D&Os;
 - (j) corresponding with the Companies and DLA regarding various former employee claims:
 - (k) corresponding with the Companies, DLA and A&B regarding settlement negotiations in respect of certain claims;

DIP Facility

- 19. The Monitor also undertook various activities relating to the DIP Facility, including:
 - (a) preparing financial analyses for the DIP loan solicitation process;
 - (b) preparing a data room with information for prospective DIP lenders, including financial statements, projections and other financial analyses;

- (c) reviewing several versions of the interim financing term sheet and confidentiality agreement used for the DIP Solicitation Process;
- (d) negotiating and executing several NDAs with potential DIP lenders;
- (e) responding to numerous requests for information from potential DIP lenders;
- (f) corresponding extensively with the DIP Lender, Management, A&B and DLA regarding the proposed terms of the DIP facility (the "DIP Facility");
- (g) dealing with certain of the PCs' lenders regarding the terms of the DIP Facility;
- (h) monitoring throughout these proceedings the PCs' weekly receipts, disbursements and bank activity, and corresponding with the Companies regarding same;
- (i) assisting the Companies throughout these proceedings to prepare the weekly reporting required in connection with the DIP Facility, corresponding with the Companies and the DIP Lender regarding periodic funding requests; and
- (j) facilitating negotiations, reviewing, and commenting on the terms of the Companies' exit facility (the "Exit Facility") and discussing same with the DIP Lender, Companies, and the Investor Committee;

KERP

- 20. The Monitor undertook various activities relating the KERP, including:
 - (a) working with the Companies to develop the terms of the KERP;
 - (b) discussing the KERP with the Investor Committee, including the terms of the proposed KERP;
 - (c) drafting the KERP and obtaining approval from the Companies and the Investor Committee; and
 - (d) amending the bonus payment structure for certain of the Companies' UK employees to facilitate their retention;

Portfolio Companies

- 21. The Monitor undertook a number of activities relating to monitoring and supporting the PCs, including:
 - (a) speaking routinely with the Companies' North American and UK management teams regarding the PCs' operations;
 - (b) reviewing the PCs' monthly financial reporting and financial forecasts;
 - (c) reviewing PC loan instruments and investment agreements;
 - (d) corresponding extensively with management of certain PCs and dealing with matters related to individual PCs;

- (e) dealing extensively with an underperforming PC and discussing same with the Investor Committee;
- (f) preparing various PC financial analyses either independently or with members of the Investor Committee;
- (g) working with the Companies' North American and UK management teams to develop a monthly report for the PCs (the "Monthly Reports") summarizing the key issues affecting each PC and discussing same with the Investor Committee; and
- (h) reviewing and commenting on the Monthly Reports prior to providing them to the Investor Committee.

Leadership Transition

- 22. The Monitor undertook various activities to transition of the leadership of the Companies, including:
 - (a) conducting a search for candidates to be the Chief Restructuring Officer ("CRO") in these proceedings;
 - (b) interviewing multiple candidates for the role of CRO;
 - (c) considering and addressing issues related to the resignation of James Livingstone as Chief Executive Officer ("CEO");
 - (d) considering issues related to the selection and engagement of Kingsman Scientific Management Inc. to provide the services of Kyle Makofka to perform the services of CRO;
 - (e) corresponding about, and reviewing and commenting on, a consulting agreement in connection with Mr. Makofka's appointment as CRO;
 - (f) designing, with input from the Investor Committee, a long-term and short-term incentive plan for Mr. Makofka;
 - (g) considering and negotiating the CRO's compensation structure with Mr. Makofka;
 - (h) considering and negotiating the terms of Mr. Livingstone's separation agreement and working with Mr. Livingstone regarding same; and
 - (i) seeking court approval of the CRO's consulting agreement and Mr. Livingstone's separation agreement.

Plan

- 23. The Monitor dedicated a significant amount of time and efforts in developing and supporting the creation of the Plan, including, at a high level, the following activities:
 - (a) working with counsel and the Companies to draft the Plan term sheet;

- (b) working extensively with the Companies and the Investor Committee to consider creditor priority, tax, securities, governance and equity ownership issues in the context of the Plan;
- (c) considering the allocation of ACC's equity between Preferred Securityholders and Hybrid Securityholders and discussing same at several Investor Committee meetings;
- (d) developing and securing the support of the Investor Committee for the Plan;
- (e) corresponding extensively with the Companies, DLA, A&B, MLT, Bennett Jones and the Investor Committee regarding the Plan, amendments to ACC's articles and other matters related to the Companies' post-CCAA governance;
- (f) reviewing and commenting on numerous drafts of the Plan; and
- (g) reviewing and commenting on all Plan-related materials including the Plan Information Letter, Electronic Meetings Protocol and Proxy.

Creditors' Meetings

- 24. The Monitor undertook a number of activities relating to the Creditors' Meetings, including:
 - (a) considering and commenting on the procedures to conduct the Creditors' Meetings;
 - (b) preparing for the meetings of ACC's and ACBI's creditors (collectively, the "Creditors' Meetings") and engaging a provider of a virtual creditor meeting platform and scrutineer services;
 - (c) corresponding extensively with creditors ahead of the Creditors' Meetings;
 - (d) preparing hypothetical realization analyses comparing the contingent results of the Plan to the estimated results in a liquidation;
 - (e) preparing a frequently asked questions document to assist creditors to understand the terms of the Plan and to provide instructions on voting and attending the Creditors' Meetings;
 - (f) posting information for creditors on the Website;
 - (g) tracking all votes and proxies received in advance of the Creditors' Meetings;
 - (h) attending technical rehearsal meetings for the virtual Creditors' Meetings; and
 - (i) convening the Creditors' Meetings, arranging to tabulate the results of voting at the Creditors' Meetings and drafting minutes of the Creditors' Meetings.

Plan Implementation

25. The Monitor undertook a number of activities relating to the implementation of the Plan, including:

- (a) reviewing the draft closing documents;
- (b) corresponding with the Companies, DLA, A&B and MLT regarding Plan Implementation;
- (c) corresponding extensively with creditors regarding an election notice prepared for tax purposes in respect of shares to be issued under the Plan; and
- (d) filing the Certificate with the Court confirming Plan Implementation.

CCAA Hearings

- 26. The Monitor undertook a number of activities in order to prepare for the hearings in these CCAA Proceedings, including:
 - (a) preparing a total of 10 Reports as Monitor and as proposed Monitor;
 - (b) assisting the Companies to prepare weekly cash flow projections in support of the various stay extensions it sought during these proceedings;
 - (c) reviewing and commenting on all draft application materials in respect of each application filed in these proceedings; and
 - (d) attending (electronically) at all applications in these proceedings.

<u>Other</u>

- 27. The Monitor also undertook various other activities to advance these proceedings, including:
 - (a) corresponding extensively with the Companies' creditors and other stakeholders throughout the CCAA proceedings;
 - (b) reviewing and commenting extensively on an investor update summarizing the status of the CCAA proceedings and 2019 and 2020 financial results;
 - (c) reviewing and commenting extensively on investor updates for the first and second quarter of 2021 regarding the status of the CCAA proceedings and the performance of the PCs;
 - (d) dealing with Canada Revenue Agency;
 - (e) dealing with employee matters;
 - (f) maintaining the Website; and
 - (g) dealing with other matters pertaining to the administration of these CCAA proceedings, including maintaining the service list.

Fees and Disbursements of the Monitor

28. The Monitor 's Statements of Fees, Disbursements and Taxes from March 5, 2021, to January 20, 2022, are set out in section 6 of the Ninth Report and are further detailed in

Affidavit of Robert Kofman found at Appendix "L" of the Ninth Report. The Monitor's Billings include \$\$1,560,807.50 in fees, \$11,878.46 in disbursements, for total billings of \$1,572,685.96.

Fees and Disbursements of the Receiver's Counsel

- 29. The invoices for fees, disbursements and taxes of DLA Piper (Canada) LLP for the period of March 5, 2021, to January 17, 2022, are set out in section 6 of the Ninth Report and are further detailed in Affidavit of Edmond Lamek found at Appendix "M" of the Ninth Report. DLA's billings include: \$656,866.50 in fees, \$312.56 in disbursements, for total billings of \$657,179.06.
- 30. The Monitor has reviewed the accounts for DLA rendered in this matter and is satisfied that the work detailed therein was completed by DLA at the request of the Monitor and that it was necessary. In the Monitor 's experience, the fees and rates charged by DLA in its invoices are consistent with those charged by other law firms for work of a similar nature and complexity in British Columbia.

Part 3: LEGAL BASIS

- 1. The Monitor relies on the *Companies' Creditor Arrangement Act*, R.S.C., 1985, c. C-36, particularly sections 11 and 25.
- 2. The Monitor has acted with good faith throughout these proceedings and has complied with the requirements of s. 25 of the CCAA, and the orders issued by this Court from time to time.
- 3. The Monitor's fees as set out in the Ninth Report are consistent with fees charged by similar firms that have the capacity and expertise to undertake a file of comparable size and complexity and work undertaken was delegated to the appropriate professionals in the Monitor's organisation based on seniority and hourly rates.
- 4. The Monitor has reviewed all accounts rendered by the Monitor's Counsel in this period and confirms that all services described in the accounts of the Monitor's Counsel were rendered to the Monitor's, and that the Monitor believes that all charges are fair reasonable and consistent with the market for such legal services in British Columbia.
- 5. The within CCAA proceedings commenced on March 5, 2021, and have resulted in, *inter alia*, the successful restructuring of the Companies and the successful implementation of a Plan of Arrangement that has furthered the general objectives of the insolvency regime in Canada and provided for the best available recovery to stakeholders in the circumstances.
- 6. The Monitor recommends that this Honourable Court grant an order on notice to the Service List, that approves the activities, fees and disbursements of the Monitor and the Monitor's Counsel.

Part 4: MATERIAL TO BE RELIED ON

1.	The Ninth Report of the Monitor dated January 20, 2022.							
The ar	onlicant	estima	tes that the application will take 30 Minutes.					
		This matter is within the jurisdiction of a master.						
\boxtimes	This matter is not within the jurisdiction of a master. Justice Macintosh is seized of this proceeding.							
TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,								
	(a) file an application response in Form 33;							
	(b)	(b) file the original of every affidavit, and of every other document, that						
		(i)	you intend to refer to at the hearing of this application, and					
		(ii)	has not already been filed in the proceeding; and					
	(c)	(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:						
		(i)	a copy of the filed application response;					
	a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;							
(iii) if this application is brought under Rule 9-7, any notice that you are to give under Rule 9-7(9).								
Janu	ary 21	2022						
Date			Signature of 🗹 lawyer for filing party DLA Piper (Canada) LLP (Colin D. Brousson)					
			Lawver for KSV Restructuring Inc., in its					
capacity as the court appointed Monitor of								
Petitioners, and not in its personal capacity								
To be completed by the court only:								
	Order made							

in the terms requested in para of this notice of application	graphs of Part 1							
with the following variations and additional terms:								
	· · · · · · · · · · · · · · · · · · ·							
Date:Signature	gnature of 🔲 Judge 🔲 Master							

APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

	discovery: comply with demand for documents			
	discovery: production of additional documents			
	oral matters concerning document discovery			
	extend oral discovery			
	other matter concerning oral discovery			
	amend pleadings			
	add/change parties			
	summary judgment			
	summary trial			
	service			
	mediation			
	adjournments			
	proceedings at trial			
	case plan orders: amend			
	case plan orders: other			
	experts			
\square	none of the above			

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PETITIONERS

NOTICE OF APPLICATION

DLA Piper (Canada) LLP Barristers & Solicitors 2800 Park Place 666 Burrard Street Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444 Fax No. 604.687.1612

File No.: 103454-00004 JDB/day

IN THE SUPREME COURT OF BRITISH COLUMBIA

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PETITIONERS

ORDER MADE AFTER APPLICATION

))
BEFORE)))	THE HONOURABLE JUSTICE MACINTOSH)))

ON THE APPLICATION of the Petitioners coming on for hearing via telephone conference at Vancouver, British Columbia, on this twenty-eighth day of January, 2022; AND ON HEARING Colin Brousson, counsel for KSV Restructuring Inc., in its capacity as Monitor of the Petitioners (the "**Monitor**"), William E.J. Skelly and Kyle Plunkett, counsel for the Petitioners, and those other counsel listed on **Appendix "A"** hereto; AND ON READING the material filed including the Ninth Report of the Monitor dated January 20, 2022 (the "**Ninth Report**");

AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "CCAA"), the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of the Court;

THIS COURT ORDERS that:

SERVICE

1. The time for service of the Notice of Application dated January 20, 2022, is, to the extent necessary, hereby abridged and validated such that the Notice of Application is properly returnable today without further service or notice.

FEE APPROVAL

- 2. The fees and disbursements of the Monitor from March 5, 2021, to January 20, 2022, as set out in the Ninth Report, are hereby approved.
- 3. The fees and disbursements of DLA Piper (Canada) LLP ("**DLA**", in its capacity as counsel to the Monitor), from March 5, 2021, to January 17, 2022, and as set out in the Ninth Report, are hereby approved.

GENERAL

4. Endorsement of this Order by counsel appearing on this application other than the counsel for the Monitor is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of ☑ lawyer for KSV Restructuring Inc. in its capacity as the Monitor, DLA Piper (Canada) LLP (Colin D. Brousson)

REGISTRAR

Schedule "A" List of Counsel

Name of Counsel	Name of Party

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ORDER MADE AFTER APPLICATION

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File No.: 103454-

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