



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: Service List (attached hereto as **Schedule "A"**)

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Macintosh via MS Teams at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on July 26, 2021, at 9:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order that service of Notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.
2. An Order, substantially in the form attached hereto as **Schedule "B"** (the "**CRO and Separation Agreement Order**"), *inter alia*:
 - (a) approving the consulting agreement (the "**Consulting Agreement**") between Ardenton Capital Corporation ("**ACC**") and Kingsman Scientific Management Inc. (the "**Consultant**") forming Appendix 1 to the Confidential Supplement to the Monitor's Fifth Report (the "**Confidential Supplement**"), engaging the Consultant to provide the services of Kyle Makofka (the "**CRO**") as Chief Restructuring Officer of the Petitioners, and authorizing and directing ACC to enter into and carry out the terms of the Consulting Agreement, including without limitation making the payments to the Consultant contemplated thereunder;
 - (b) the creation of a charge in favour of the Consultant (the "**CRO Charge**") in the amount of \$200,000 to be *pari passu* with the Administration Charge; and

- (c) the approval of the Separation Agreement between the Petitioners and James Livingstone (“**Livingstone**”) and Livingstone Holdings Inc. (“**LHI**”).
3. An Order, substantially in the form attached hereto as **Schedule “C”** (the “**Sealing Order**”), authorizing that the Confidential Supplement be filed under seal pending further order of this Court.

Part 2: FACTUAL BASIS

1. Pursuant to an order (the “**Initial Order**”) of the Supreme Court of British Columbia (the “**Court**”) made on March 5, 2021, Ardenton Capital Corporation (“**ACC**”) and Ardenton Capital Bridging Inc. (“**ACBI**”) and together with ACC, the “**Companies**” or the “**Petitioners**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and KSV Restructuring Inc. (“**KSV**”) was appointed monitor (and in such capacity, the “**Monitor**”). The Companies and their non-filing affiliates and related companies are collectively referred to as “**Ardenton**”.
2. Also pursuant to the terms of the Initial Order, the Court granted:
- (a) an initial stay of proceedings until March 15, 2021 (the “**Stay Period**”); and
 - (b) the Administration Charge and D&O Charge.
3. On March 15, 2021, the Court issued an amended and restated Initial Order (the “**ARIO**”) pursuant to which:
- (a) the Stay Period was extended to May 7, 2021;
 - (b) increased the amounts of the Administration Charge and D&O Charge; and
 - (c) approved the Intercompany Charge in favour of ACBI.
4. Pursuant to orders issued by the Court on March 31, 2021, the Court:
- (a) approved the appointment of a committee comprised of seven investors (the “**Investor Committee**”), which was put in place to provide the Monitor and the Companies with insight into the objectives and priorities of the investors so that these are reflected in the Plan of Arrangement or Compromise (the “**Plan**”) which will be presented to creditors;
 - (b) approved a DIP Facility in the amount of \$5 million from the DIP Lender and granted the DIP Charge in favour of the DIP Lender for this amount (the “**DIP Charge**”);
 - (c) reduced the amount of the Administration Charge; and

- (d) approved a claims procedure for soliciting and determining claims against the Companies and against the Companies' directors and officers.
5. Pursuant to an order issued by the Court on May 6, 2021, the Court:
 - (a) approved a key employee retention plan ("**KERP**") for certain of ACC's employees; and
 - (b) granted an extension of the Stay Period to July 6, 2021.
 6. Pursuant to an order issued by the Court on June 28, 2021, the Court granted an extension of the Stay Period to October 1, 2021.

Background

7. ACC is the parent company of a multinational private equity business. Through various holding companies, including ACBI, ACC acquired, with monies raised from its investors, majority ownership interests in the portfolio companies (collectively, the "**PCs**", and each a "**PC**"), which are privately-owned mid-market businesses.
8. ACC currently has indirect majority ownership interests in fourteen (14) PCs located in Canada, the US and the United Kingdom.
9. ACC did not use a typical private equity model to raise capital and invest in businesses, which typically relies on a limited partnership structure to raise capital from its investors. Rather, ACC primarily raised capital by issuing unsecured debt through instruments which pay annual interest.

Management

10. Prior to the CCAA proceedings, Ardenton was principally focused on raising capital, considering investment opportunities, acquiring the PCs and working with management of the PCs.
11. Many of the PCs were acquired in late 2019, just prior to the onset of the Pandemic. While the results of the PCs to-date in 2021 have improved considerably on a year-over-year basis, many of the PCs continue to be affected by the Pandemic and continue to receive financial support under government programs.
12. The Companies are presently preparing the Plan which is intended to provide creditors and investors a better return than if the PCs are sold in the near term.
13. The Companies, the Investor Committee and the Monitor share the view that an orderly process to improve the financial performance of the PCs, provide them the opportunity to materially reduce their debt and then refinance and sell the PCs, will take several years.

14. In light of these considerations, the Investor Committee undertook a process to assess the management skillset required to work with the PCs and their management teams to materially grow the value of the PCs going forward. The Investor Committee believes an experienced executive with an operational background and strong communication and interpersonal skills is best suited to achieve these objectives.
15. The Investor Committee met with six candidates for the role, including Livingstone. The individuals interviewed included candidates recommended by the Monitor and Investor Committee members.
16. During meetings with Livingstone, he advised that the interests of the Companies' stakeholders would be better served by an individual with an operational background, which is not his particular skill set. Accordingly, Livingstone has confirmed that he intends to resign as the Companies' CEO upon the appointment of the Consultant. Livingstone has advised that he will facilitate an orderly leadership transition and that he will be available to work with the CRO to the extent requested. The Monitor notes in the Fifth Report that Livingstone's assistance to-date in these proceedings has contributed significantly to advance these proceedings.
17. The Investor Committee conducted several rounds of interviews with the candidates. The Investor Committee also performed extensive due diligence on the leading candidates. The Investor Committee ultimately selected Mr. Makofka, on behalf of the Consultant, to take on the leadership role.
18. Mr. Makofka has requested that the Consultant's engagement be approved by the Court and that the approval order provide the CRO Charge and typical protections afforded a CRO in a CCAA proceeding.
19. Unless the Consulting Agreement is terminated earlier in accordance with its terms, Mr. Makofka will perform the services of a CRO up to and including the earlier of the date the Plan is implemented and the termination of the CCAA proceedings. After the CCAA proceedings, Mr. Makofka is to perform the services performed by a CEO, subject to approval by the New Board.
20. Mr. Makofka has worked with members of the Investor Committee in the past but has agreed during the CCAA proceedings to not take on any new roles involving any member of the Investor Committee without the prior written consent of the Monitor and the Investor Committee and, during the post-CCAA period, not without the prior written consent of the New Board.
21. Under the terms of the Agreement, Mr. Makofka's full-time attention is to be focused on acting as the senior executive at ACC.

Confidential Supplement to the Fifth Report / Sealing Order

22. The Confidential Supplement to the Fifth Report includes an unredacted copy of the Consulting Agreement between the Companies and the Consultant to provide the services of the CRO.
23. As discussed in the Monitor's Fifth Report, the Confidential Supplement contains certain financial provisions that may be considered personal information and the Monitor believes it is appropriate that the information provided in Confidential Supplement be sealed on that basis. The Monitor does not believe any party will be prejudiced if this information is subject to the Sealing Order.

CRO Charge

24. In the CRO and Separation Agreement Order, the CRO Charge is contemplated to be a first ranking charge in priority to all Encumbrances (other than the liens and encumbrances in favour of HSBC Bank Canada) against the Property of the Companies existing as at the date of the Initial Order, and will rank *pari passu* with the Administration Charge, such that the priorities of the CRO Charge, the Administration Charge, the Directors' Charge, the KERP Charge, the Intercompany Charge and the Interim Lender's Charge would be as follows:
 - (a) First – Administration Charge and CRO Charge - *pari passu* (to the maximum amounts of \$750,000 and \$200,000, respectively);
 - (b) Second – Interim Lender's Charge;
 - (c) Third – Director's Charge (to the maximum amount of \$240,000);
 - (d) Fourth – KERP Charge (to the maximum amount of \$496,000); and
 - (e) Fifth – Intercompany Charge.

Separation Agreement

25. In connection with Livingstone's resignation, the Companies, Livingstone and LHI will enter into a Separation Agreement, conditional upon on Court approval.
26. The Separation Agreement was negotiated by the Monitor, with input from the Investor Committee.
27. The Separation Agreement provides a full and final resolution to all amounts owing to and from Livingstone, LHI and Ardenton and avoids potential litigation between the parties.

28. Pursuant to the terms of the Separation Agreement, Livingstone has agreed to withdraw and limit several of his claims against the Companies and has agreed to assist in the transition of ACC's leadership to the Consultant.
29. Materially, the Separation Agreement provides that:
- (a) Livingstone's active employment will conclude with the approval of the Separation Agreement;
 - (b) Livingstone will resign as director and officer of the Companies;
 - (c) Livingstone will assist with transition of management and operations to the CRO;
 - (d) ACC will waive all outstanding loan amounts owing from LHI to ACC;
 - (e) Livingstone will be entitled to an unsecured claim against the Companies for the equivalent of 6 months salary (subject to a set-off amount of \$83,834), to be paid on a *pari passu* basis with all other general unsecured creditors under the Plan,;
 - (f) A lump sum payment for outstanding vacation pay will be paid to Livingstone in accordance with ACC's policies;
 - (g) ACC agrees that the Plan it proposes will provide that, subject to any limitations in the CCAA, Livingstone and LHI will have no personal liability in respect of any claims against Livingstone and LHI in their capacity as an officer or director of the Companies, and that any such claims would be limited to recoveries under any applicable Directors and Officers Liability Insurance policies;
 - (h) Livingstone and LHI will waive all indemnities provided to them by Ardenton for the pre-Effective Date period, which indemnities would otherwise rank senior to many of the investor claims; and
 - (i) ACC and Livingstone and LHI will enter into a mutual release.

Part 3: LEGAL BASIS

1. The Monitor relies on:
- (a) The *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and in particular ss. 11, and 11.52;
 - (b) The Supreme Court Civil Rules;
 - (c) The inherent and equitable jurisdiction of this Honourable Court; and

Such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

Appointment of the CRO

2. CROs have the primary purpose of leveraging their experience as “turnaround experts” to take control of the restructuring process and to approach the financial problems with a fresh assessment of the financial distress of the debtor company and the potential for a viable workout during the *CCAA* proceedings.

Janis P Sara, *Rescue! The Companies' Creditors Arrangement Act*, 2nd ed
(Toronto: Thomson Reuters Canada Limited, 2013) (“**Rescue!**”) at 350

3. A CRO has several ancillary purposes, including:

- (a) creating higher creditor confidence; and
- (b) serving as a buffer between equity investors, directors, officers, and creditors.

Rescue! at 350

4. This Court has jurisdiction to approve the appointment of a CRO pursuant to its general power under section 11 of the *CCAA* which empowers it to make any order it considers appropriate in a *CCAA* proceedings.

CCAA, s 11

5. This Court has jurisdiction to fund the CRO and grant the CRO Charge pursuant to section 11.52 of the *CCAA*.

CCAA, s 11.52

6. Factors to be considered by the court in approving the appointment of a CRO have been considered by Madam Justice Fitzpatrick in *Walter Energy*. Madam Justice Fitzpatrick identified the following factors:

- (a) whether there are significant high-level employees in the province that are knowledgeable about financial or restructuring matters;
- (b) whether there is a legitimate risk that without a CRO the debtor could become rudderless in the proceedings;
- (c) whether professional advisors are desirable or potentially necessary for a successful restructuring;
- (d) whether the CRO is qualified;

- (e) whether the expertise of the CRO will assist the debtor in achieving the objectives of the *CCAA*;
- (f) whether the debtor's assets and operations are significantly complex so as to justify the appointment and proposed compensation of the CRO;
- (g) whether there will be an unwarranted duplication of effort;
- (h) whether the secured creditors likely to be affected by the CRO's fees have been given notice and do not oppose the relief; and
- (i) whether the Monitor is of the view that the CRO's fees and charge are appropriate.

Walter Energy Canada Holdings, Inc. (RE)
2016 BCSC 107 ("**Walter Energy**") at paras 29-35, and 43-47

7. The Monitor recommends that the Court approve the Consulting Agreement and grant the CRO Charge, and related CRO protections as set out in the CRO and Separation Agreement Order for the following reasons:

- (a) based on diligence and interviews performed by the Investor Committee and the Monitor, Mr. Makofka appears to have the experience, skillset and qualifications to perform the mandate;
- (b) the Petitioners' operations require significant expertise to support not only the Companies but also the PCs, and the Plan will require someone with such skills to improve the chances of a successful Plan and assist the Companies in achieving the objectives of the *CCAA* through a successful restructuring;
- (c) an Investor Committee member, Mr. Wood, has worked with Mr. Makofka extensively. Mr. Wood is supportive of Mr. Makofka's appointment based on his positive experiences working with him;
- (d) the Investor Committee supports Mr. Makofka's retention and the terms of the Agreement, including the amount of his compensation and the compensation structure;
- (e) the Consultant's proposed remuneration under the Consulting Agreement appears fair and reasonable, consistent with Livingstone's salary, and the compensation incentives under the Consulting Agreement were designed to align the interests of the Consultant with the interests of creditors and investors and the Monitor is of the view that the fees and charge are appropriate;
- (f) Mr. Makofka is to provide his full-time attention to ACC; and
- (g) Livingstone is departing, and the Companies will require new leadership.

8. Considering the *Walter Energy* factors, the appointment of the Consultant and the CRO in this instance is appropriate, desirable, will improve the likelihood of a successful exit from these *CCAA* proceedings and the Monitor supports the granting of the CRO and Separation Agreement Order on the terms sought.

Separation Agreement

9. This Court has jurisdiction to approve the Separation Agreement pursuant to its general power under section 11 of the *CCAA* which empowers it to make any order it considers appropriate in a *CCAA* proceedings.

CCAA, s 11

10. The Monitor recommends that the Court approve the Separation Agreement for the following reasons:

- (a) the Investor Committee supports the terms of the Separation Agreement;
- (b) the Separation Agreement avoids potentially protracted and costly litigation with Livingstone, allowing the Companies to focus on the Plan and operational matters;
- (c) Livingstone and LHI will provide Ardenton with a broad full and final release of all claims they may have against Ardenton;
- (d) the Separation Agreement is fair and reasonable, in the circumstances, as it represents a commercially reasonable compromise in respect of the claims against Ardenton and it is in the best interests of the Companies and their respective stakeholders;
- (e) parties with claims against Livingstone will still be able to pursue the Insurance in respect of any potential director and officer claims, but without creating indemnity claims against ACC that would be senior to most of the investor claims; and
- (f) the Separation Agreement provides that Livingstone will assist with transition issues, which should help avoid any disruption to Ardenton's operations.

11. The Separation Agreement is a commercially reasonable resolution and will assist with the successful restructuring of the Companies and the Monitor supports the granting of the CRO and Separation Agreement Order on the terms sought.

Sealing Order

12. The Confidential Supplement includes financial information that the Monitor believes should be sealed.

13. The Monitor does not believe any party will be prejudiced if this information is subject to the Sealing Order.
14. The Court has jurisdiction to order that certain materials filed with the Court be sealed in the Court file. The Supreme Court of Canada has stated that such order can be granted where:
 - (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk; and
 - (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.
Sierra Club of Canada v. Canada (Minister of Finance), 2002 SCC 41 at para. 53 (“**Sierra Club**”)
15. The information sought to be sealed fit squarely within the test established by *Sierra Club*.
16. The Confidential Appendices contain information and particulars which are confidential and contain certain financial provisions that may be considered personal information and the Consultant and the CRO have a reasonable expectation of privacy over this information.
17. The Monitor submits that the deleterious effects are minimal and outweighed by the benefits of the proposed Sealing Order.
18. The procedure to be followed in British Columbia for seeking a sealing order is set out in the Supreme Court of British Columbia PD-58, *Sealing Orders in Civil and Family Proceedings* (effective February 10, 2020), which the Monitor intends to comply with (modified as necessary in light of remote hearing requirements).

Part 4: MATERIAL TO BE RELIED ON

1. Fifth Report of the Monitor, dated July 15, 2021;
2. The Confidential Supplement to the Fifth Report of the Monitor, dated July 14, 2021; and
3. Any such further materials as counsel advises and this Honourable Court permits.

The applicant estimates that the application will take 40 minutes


This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master and Mr. Justice Macintosh is seized of this matter.

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) 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) 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;
 - (ii) 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 required to give under Rule 9-7(9).

July 16, 2021
Dated _____



 Signature of lawyer for filing party
 DLA Piper (Canada) LLP (Jeffrey D. Bradshaw)
 Lawyer for KSV Restructuring Inc.

To be completed by the court only:	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs _____ of Part 1 of this notice of application
<input type="checkbox"/>	with the following variations and additional terms:

<hr/> <hr/> <hr/> <hr/>	
Date: _____	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> 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
- none of the above

Schedule "A"
(Service List)

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

SERVICE LIST

June 30, 2021

<p>Aird & Berlis LLP 1800-181 Bay Street Toronto, Ontario M5J 2T9</p> <p>Co-counsel to the Petitioners</p>	<p>Kyle B. Plunkett (416) 865-3406 kplunkett@airdberlis.com</p> <p>D. Robb English (416) 865-4748 renglish@airdberlis.com</p> <p>Tamie Dolny 647.426.2306 tdolny@airdberlis.com</p>
<p>MLT Aikins LLP 2600-1066 West Hastings Street Vancouver, British Columbia V6E 3X1</p> <p>Co-counsel to the Petitioners</p>	<p>William E. J. Skelly (604) 608-4597 wskelly@mltaikins.com</p> <p>Thomas W. Clifford (604) 608-4555 tclifford@mltaikins.com</p> <p>Vanessa Mensink (604) 608-4582 vmensink@mltaikins.com</p>

<p>KSV Restructuring Inc. 2308-150 King Street West Toronto, Ontario M5H 1J9</p> <p>Monitor</p>	<p>Bobby Kofman (416) 932-6228 bkofman@ksvadvisory.com</p> <p>Noah Goldstein (416) 932-6207 ngoldstein@ksvadvisory.com</p> <p>Jordan Wong (416) 932-6025 Jwong@ksvadvisory.com</p>
<p>DLA Piper (Canada) LLP 6000-100 King Street West Toronto, Ontario M5X 1E2</p> <p>2800-666 Burrard Street Vancouver, British Columbia V6C 2Z7</p> <p>Counsel to the Monitor</p>	<p>Edmond Lamek (416) 365-3444 edmond.lamek@dlapiper.com</p> <p>Colin Brousson (604) 643-6400 colin.brousson@dlapiper.com</p> <p>Jeffrey Bradshaw (604) 643-2941 jeffrey.bradshaw@dlapiper.com</p>
<p>Nathanson, Schachter & Thompson LLP 750-900 Howe Street Vancouver, British Columbia V6Z 2M4</p> <p>Counsel to the Petitioners' Directors and Officers</p>	<p>Peter J. Reardon (778) 328-8940 preardon@nst.ca</p> <p>Jessica Pinard jpinard@nst.ca</p>
<p>Attorney General of Canada Department of Justice Canada Ontario Regional Office, Tax Law Section 400-120 Adelaide Street West Toronto, Ontario M5H 1T1</p>	<p>Diane Winters (647) 256-7459 diane.winters@justice.gc.ca</p> <p>Maria Vujnovic (647) 256-7455 maria.vujnovic@justice.gc.ca</p>
<p>Ministry of Finance (Ontario) Insolvency Unit 33 King Street West, 6th Floor Oshawa, Ontario L1H 8H5</p>	<p>insolvency.unit@ontario.ca</p>

<p>Ontario Securities Commission 20 Queen Street West, 22nd Floor Toronto, Ontario M5H 3S8</p>	<p>Joyce Taylor jtaylor@osc.gov.on.ca</p>
<p>Ministry of Attorney General (British Columbia) Legal Services Branch PO Box 9290 Stn Prov Govt Victoria, BC V8W 9J7</p>	<p>Aaron Welch (250) 356-8589 aaron.welch@gov.bc.ca</p> <p>Cindy Cheuk Cindy.Cheuk@gov.bc.ca</p> <p>AGLSBRevTaxInsolvency@gov.bc.ca</p>
<p>Department of Justice Canada British Columbia Regional Office 900-840 Howe Street Vancouver, BC V6Z 2S9</p> <p>Counsel to Her Majesty The Queen in right of Canada</p>	<p>Christine Matthew (604) 666-5891 Christine.Matthews@justice.gc.ca</p> <p>Marina Karpova Marina.Karpova@justice.gc.ca</p>
<p>British Columbia Securities Commission 12th Floor 701 W. Georgia Street Vancouver, BC V7Y 1L2</p>	<p>Kai Shi (604) 899-6838 kshi@bcsc.bc.ca</p>

<p>The Toronto-Dominion Bank 1933 Willingdon Avenue, 2nd Floor Burnaby, British Columbia V5C 5J3</p> <p>And</p> <p>The Toronto-Dominion Bank (Commercial Baking) P.O. Box 1001, Pacific Centre 700 West Georgia Street, 2nd Floor Vancouver I B.C. V7Y 1A2</p> <p>And</p> <p>The Toronto-Dominion Bank TD Tower, 66 Wellington St. West, 39th Floor Toronto, Ontario, M5K 1A2</p>	<p>Christopher Keane (604) 654-3944 christopher.keane@td.com</p> <p>Michelle Madore (604) 654-3055 michelle.madore@td.com</p> <p>Andrew Laukkanen (604) 654-3195 andrew.laukkanen@td.com</p> <p>Michael Vos (416) 308-4076 michael.vos@td.com</p>
<p>HSBC Bank Canada Corporate Banking 855 West Georgia Street, 2nd Floor Vancouver, British Columbia V6C 3G1</p>	<p>Janette T. Wong (604) 641-1127 janette_t_wong@hsbc.ca</p> <p>Tanja Deretic (604) 642-4489 tanja_deretic@hsbc.ca</p> <p>Ryan Guo (604)641-1052 ryan.b.guo@hsbc.ca</p>
<p>Dentons Canada LLP 20th Floor, 250 Howe Street Vancouver, BC V6C 3R8</p> <p>Counsel to HSBC</p>	<p>Tevia Jeffries (604) 691-6427 tevia.jeffries@dentons.com</p> <p>Sarah Howes sarah.howes@dentons.com</p>
<p>Nansil Inc.</p>	<p>Richard Gotlib richard.gotlib@gmail.com</p>

<p>Bentall Kennedy (Canada) Limited Partnership, Suite 1100 - One York Street, Toronto, ON, M5J0B6.</p>	<p>Geoff Rayner, Sr Director, Leasing (416) 681-3400 geoff.rayner@bentallgreenoak.com</p>
<p>Oxford Properties Group, MNP Tower, Suite 1280, 1021 West Hastings Street, Vancouver, BC, V6E0C3</p>	<p>Susan Wali, Property Administrator (604) 893-3240 swali@oxfordproperties.com</p>
<p>Lawson Lundell LLP 1600 - 925 West Georgia Street, Vancouver, BC V6C 3L2</p> <p>Creditor</p>	<p>William Roberts (604) 631-9163 wroberts@lawsonlundell.com</p>
<p>Blake, Cassels & Graydon LLP 595 Burrard Street, Suite 2600 Vancouver, BC V7X 1L3</p> <p>Counsel to Oxford Management Services Inc.</p>	<p>Claire Hildebrand (604) 631-3331 claire.hildebrand@blakes.com</p>
<p>Fasken Martineau DuMoulin LLP 550 Burrard Street, Suite 2900 Vancouver, British Columbia V6C 0A3</p> <p>Counsel to Montrusco Bolton Investments Inc., Montrusco Bolton Alternative Fund L.P., MBI/Ardenton Private Equity Income Fund, L.P. and MBI/Ardenton Private Equity Income and Growth Fund, L.P.</p>	<p>Kibben Jackson (604) 631-4786 kjackson@fasken.com</p>
<p>Office of the Superintendent of Bankruptcy Innovation, Science and Economic Development Canada</p>	<p>Marie Wu (236) 334-3514 marie.wu@canada.ca</p>

<p>Thornton Grout Finnigan LLP Suite 3200, 100 Wellington Street West P.O. Box 329, Toronto-Dominion Centre Toronto, ON M5K 1K7</p> <p>Counsel to Leone Financial Corporation, shareholder of 1971035 Ontario Inc.</p>	<p>Rebecca Kennedy (416) 304-0603 Rkennedy@tgf.ca</p> <p>Adrienne Ho (647) 354-4122 AHo@tgf.ca</p>
<p>Clark Wilson LLP 900-885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Counsel to RCM Capital Management Ltd.</p>	<p>Nick Carlson (604) 891-7797 NCarlson@cwilson.com</p> <p>Deborah Hamann-Trou DHamann-Trou@cwilson.com</p> <p>Christopher Ramsay CRamsay@cwilson.com</p>
<p>Minden Gross LLP 2200 - 145 King Street West Toronto, ON M5H 4G2</p> <p>Counsel for the Landlord of 18 King Street East, Toronto, ON, KS King and Victoria Inc.</p>	<p>Timothy R. Dunn (416) 369-4335 tdunn@mindengross.com</p> <p>Stephen Skorbinski (416) 369-4286 sskorbinski@mindengross.com</p> <p>Benjamin Radcliffe (416) 369-4112 bradcliffe@mindengross.com</p>
<p>EQUICAPITA Suite 2210, 8561 8A Avenue SW, Calgary, AB T3H 0V5</p>	<p>Stephen Johnston (403)218-6506 sjohnston@equicapita.com</p>
<p>Bennett Jones LLP 3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4</p> <p>666 Burrard Street, Suite 2500 Vancouver, British Columbia V6C 2X8 Canada</p> <p>Counsel for the Investor Committee</p>	<p>Sean Zweig (416) 777-6254 zweigs@bennettjones.com</p> <p>David Gruber (604) 891-5150 gruberd@bennettjones.com</p>

Email Distribution List

kplunkett@airdberlis.com; renglish@airdberlis.com; wskelly@mltaikins.com;
telifford@mltaikins.com; vmensink@mltaikins.com; bkofman@ksv advisory.com;
ngoldstein@ksv advisory.com; edmond.lamek@dlapiper.com; colin.brousson@dlapiper.com;
preardon@nst.ca; jpina rd@nst.ca; diane.winters@justice.gc.ca; maria.vujnovic@justice.gc.ca;
insolvency.unit@ontario.ca; jtaylor@osc.gov.on.ca; aaron.welch@gov.bc.ca;
Cindy.Cheuk@gov.bc.ca; AGLSBRevTaxInsolvency@gov.bc.ca; kshi@besc.bc.ca;
christopher.keane@td.com; michelle.madore@td.com; andrew.laukkanen@td.com;
michael.vos@td.com; janette_t_wong@hsbc.ca; richard.gotlib@gmail.com;
swali@oxfordproperties.com; wroberts@lawsonlundell.com; claire.hildebrand@blakes.com;
kjackson@fasken.com; marie.wu@canada.ca; Rkennedy@tgf.ca;
Christine.Matthews@justice.gc.ca; Marina.Karpova@justice.gc.ca;
geoff.rayner@bentallgreenoak.com; AHo@tgf.ca; NCarlson@cwilson.com; DHamann-
Trou@cwilson.com; CRamsay@cwilson.com; tevia.jeffries@dentons.com;
sarah.howes@dentons.com; tdunn@mindengross.com; sskorbinski@mindengross.com;
bradcliffe@mindengross.com; jeffrey.bradshaw@dlapiper.com; sjohnston@equicapita.com;
tanja_deretic@hsbc.ca; ryan.b.guo@hsbc.ca; zweigs@bennettjones.com;
gruberd@bennettjones.com; tdolny@airdberlis.com; Jwong@ksv advisory.com;

Schedule "B"

(CRO and Separation Agreement Order)

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

ORDER MADE AFTER APPLICATION
(Chief Restructuring Officer and Separation Agreement)

BEFORE THE HONOURABLE) MONDAY THE 26TH DAY
)
MR. JUSTICE MACINTOSH) OF JULY, 2021

THE APPLICATION of KSV Restructuring Inc. in its capacity as monitor (the "**Monitor**") of the Petitioners coming on for hearing by MS Teams at Vancouver, British Columbia, on the 26th day of July, 2021; AND ON HEARING Colin Brousson, counsel for the Monitor, and William E. J. Skelly, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the material filed, including the Fifth Report of the Monitor, made on July 15, 2021 (the "**Fifth Report**") and the Confidential Supplemental Fifth Report of the Monitor, made on July 14, 2021 (the "**Confidential Supplement**"); AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charge created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. Capitalized terms contained in this Order not otherwise defined herein shall have the meanings ascribed to them in the Fifth Report and the Second Amended and Restated Initial Order (the "**ARIO**").

SERVICE

2. Service of Notice of this Application and supporting materials is hereby declared to be good and sufficient, and no other person is required to have been served with notice of this Application, and time for service of this Application is abridged to that actually given.

CONSULTING AGREEMENT

3. The Consulting Agreement between Ardenton Capital Corporation and Kingsman Scientific Management Inc. forming Appendix 1 to the Confidential Supplement, appointing Kingsman Scientific Management Inc. (the "**Consultant**") to provide the services of Kyle Makofka (the "**CRO**") as Chief Restructuring Officer of the Petitioners, be and is hereby approved, and ACC be and is hereby is authorized and directed to enter into and carry out the terms of the Consulting Agreement, including without limitation making the payments to the Consultant contemplated thereunder.
4. The Consultant shall be entitled to the benefit of and is hereby granted a charge on the Property (the "**CRO Charge**"), which CRO Charge shall not exceed an aggregate amount of \$200,000, to secure the amounts payable under the Consulting Agreement. The CRO Charge shall have the priority set out in paragraph 4 herein.
5. The CRO Charge shall have the benefit of paragraphs 41 through 46 of the ARIO and constitute a "Charge" thereunder. The CRO Charge shall rank in priority to all Encumbrances other than the liens and encumbrances in favour of HSBC Bank Canada against the Property existing as at the date of the Initial Order, and shall rank pari passu with the Administration Charge, such that the priorities of the CRO Charge, the Administration Charge, the Directors' Charge, the KERP Charge, the Intercompany Charge and the Interim Lender's Charge, as among them, shall be as follows:
 - First – Administration Charge and CRO Charge - pari passu
(to the maximum amounts of \$750,000 and \$200,000, respectively);
 - Second – Interim Lender's Charge;
 - Third – Director's Charge (to the maximum amount of \$240,000);
 - Fourth – KERP Charge (to the maximum amount of \$496,000); and
 - Fifth – Intercompany Charge in the case of the Property of ACC.
6. Neither the Consultant nor any officer, director, employee or agent of the Consultant shall incur any liability as a result of fulfilment of its duties or the CRO acting as a director of the Petitioners during the pendency of these proceedings, save and except for any liability or obligation incurred as a result of gross negligence or wilful misconduct on their part.

7. Until further order of this Court, no action or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise, against or in respect of the Consultant or its officers, directors, employees or agents relating to its appointment or its conduct pursuant to the Consultant Agreement, and all rights and remedies of any Person against or in respect of the Consultant and the CRO are hereby stayed and suspended, except with leave of this Court, any such application seeking leave of this Court shall be served upon the Consultant, the Monitor and the Petitioners at least seven (7) days prior to the return date of any such application for leave.
8. In addition to the rights and protections afforded to the Consultant as an officer of the Court, no provision of this Order is intended, or shall be deemed, to appoint or otherwise obligate the Consultant as a director of any of the Petitioners. The CRO may be appointed as a director of the Petitioners if the CRO agrees to such appointment, as set out in the Consulting Agreement, and in such capacity, the CRO shall be entitled to the benefit of the Directors' Charge.
9. The Consultant shall not take possession of the Petitioners' current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "**Property**"), and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof.
10. The obligations of ACC to the Consultant pursuant to the Consulting Agreement shall be treated as unaffected and may not be compromised in any Plan or proposal filed under the BIA in respect of ACC.

SEPARATION AGREEMENT

11. The Separation Agreement among Ardenton Capital Corporation and James Livingstone ("**Livingstone**") and Livingston Holdings Inc. ("**LHI**") forming Appendix "D" to the Fifth Report be and is hereby approved, and ACC be and is hereby is authorized and directed to enter into and carry out the terms of the Separation Agreement.
12. ACC is hereby authorized and directed to pay Livingstone: (i) his base Salary, pro-rated to the effective date of the Separation Agreement (the "**Effective Date**"), in the amount and manner set out in the Separation Agreement; and (ii) a lump sum payment for any accrued but unused vacation pay owing to him up to and including the Effective Date in the amount and manner set out in the Separation Agreement (the "**Payment Amounts**").
13. LHI shall continue to receive its compensation in accordance with the Separation Agreement up to and including the Effective Date, with such compensation continuing to be set-off against LHI's outstanding shareholder loan owing to ACC (the "**Director Compensation**").
14. The Monitor and the Petitioners are hereby authorized and directed to admit as Proven Claims for purposes of the Petitioners' Claims Procedure in these proceedings, as

applicable in accordance with the Separation Agreement, the claims of Livingstone and LHI set out in section 7 of the Separation Agreement, and that all other claims (whether filed or unfiled) of Livingstone and LHI against the Petitioners, save and except the Payment Amounts and the Director Compensation, be and are hereby disallowed and forever barred.

15. Endorsement of this Order by counsel appearing on this Notice of Application, except for 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 Colin D. Brousson
DLA Piper (Canada) LLP,
Lawyer for the Monitor

BY THE COURT

REGISTRAR

Schedule "A"

(List of Counsel)

Name of Counsel	Party Represented
William E. J. Skelly	The Petitioners, Ardenton Capital Corporation and Ardenton Capital Bridging Inc.
Colin Brousson	The Monitor, KSV Restructuring Inc.
Sean Zweig	Ardenton Investors Committee

Schedule "C"

(Sealing Order)

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

BEFORE THE HONOURABLE)
) JULY 26, 2021
MR. JUSTICE MACINTOSH)

ORDER MADE AFTER APPLICATION
(Sealing Order)

ON THE APPLICATION of KSV Restructuring Inc. in its capacity as Monitor (the "**Monitor**") of Ardenton Capital Corporation and Ardenton Capital Bridging Inc. coming on for hearing by teleconference at the Law Courts, 800 Smithe Street in the City of Vancouver, in the Province of British Columbia, on the 27th day of July, 2021; **AND ON HEARING** Colin D. Brousson, counsel for the Monitor and William Skelly counsel for the Petitioners and those counsel listed on Schedule "A" hereto, and; **AND UPON READING** the material filed, including the Fifth Report of the Monitor dated July 15, 2021; **AND** pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECLARED THAT:

THIS COURT ORDERS THAT:

- 1. Access to Sealed Items permitted by

- Counsel of Record
- Parties of Record
- Further Court Order
- Others:

Items to be sealed

Document Name	Date filed (Date on Court Stamp)	Number of copies filed, including any extra copies for the judge	Duration of sealing order (to specific date or until further order)	Sought	Granted	
					YES	NO
1) Entire File				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Specific Documents The Confidential Supplemental Fifth Report of the Monitor, dated July 14, 2021	To be filed	Two - One copy, to be sealed in the file, and one copy to be included in the Application Record for the Judge.	Until further order.	X	X	<input type="checkbox"/>
3) Clerk's Notes				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) Order				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) Reasons for Judgment				<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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GENERAL

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

3. The time for service and filing of the Notice of Application is hereby abridged and validated so that this Notice of Application is properly returnable today and the need for further service thereof 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 the lawyer for the Monitor
DLA Piper (Canada) LLP (Colin D. Brousson)

BY THE COURT

REGISTRAR

Schedule "A"

List of Additional Counsel Appearing

Name of Counsel	Name of Party
Sean Zweig	The Ardenton Investors Committee

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

**ORDER MADE AFTER APPLICATION
(SEALING ORDER)**

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

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

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

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JDB/day