

FORCE FILED



File 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

NOTICE OF APPLICATION

(Termination of CCAA Proceedings)

NAME OF APPLICANTS: Ardenton Capital Corporation ("ACC") and Ardenton Capital Bridging Inc. ("ACBI", and together with ACC, the "**Petitioners**"), pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**").

ON NOTICE TO the Service List (attached hereto as **Schedule "A"**).

TAKE NOTICE that an application will be made by way of telephone conference by the Petitioners 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.

The Registry may contact the applicants as set out below to confirm conferencing information:

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PART 1 ORDERS SOUGHT

1. An Order abridging the time for service and hearing of the within Notice of Application, if necessary.
2. An Order, in substantially the form of draft order attached hereto as **Schedule “B”** (the “**Termination Order**”):
 - (a) terminating these CCAA Proceedings;
 - (b) terminating the Interim Lender’s Charge and the KERP Charge;
 - (c) discharging the Monitor (as defined below), except in respect of the oversight of the Scott Claim (as defined below) and in respect of any remaining administrative or incidental matters that may arise prior to the filing of a further Monitor’s certificate; and
 - (d) reducing the Administration Charge to an amount totalling \$200,000.
3. Such further and other relief as counsel may request and as this Honourable Court deems appropriate.

PART 2 FACTUAL BASIS

1. All capitalized terms used in this Notice of Application, unless otherwise noted, have the meanings ascribed to them in the Petitioners’ Plan of Compromise and Arrangement dated September 20, 2021 (the “**Plan**”) or, as the case may be, the Third Affidavit of Peter Crawford, dated January 20, 2022 (the “**Third Crawford Affidavit**”).

Background

2. ACC is the parent company of a multinational private equity business. Using monies raised from its investors, ACC acquired through various holding companies, including ACBI, majority ownership interests in numerous portfolio companies (collectively, the “**Portfolio Companies**”). The Portfolio Companies are privately-owned mid-market businesses.

3. ACC currently has indirect majority ownership interests in fourteen (14) Portfolio Companies located in Canada, the United States and the United Kingdom.
4. 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.
5. Pursuant to an order (“**Initial Order**” or “**ARIO**”, variously) of the Supreme Court of British Columbia (the “**Honourable Court**”) made on March 5, 2021 (the “**Filing Date**”), ACC and ACBI were granted protection under the CCAA, and KSV Restructuring Inc. was appointed as Monitor (in such capacity, the “**Monitor**”).
6. Additionally, the Initial Order granted:
 - (a) an initial stay of proceedings until March 15, 2021 (the “**Stay Period**”); and
 - (b) the Administration Charge and D&O Charge.
7. Further details about the Petitioners, their operations, the activities leading up to these CCAA proceedings (the “**CCAA Proceedings**”), and all restructuring activities are set out in Court materials which were previously filed by the Petitioners and the Monitor to date. All of these documents can be further found at the Monitor’s Case Website maintained in these CCAA Proceedings.
8. Since the Filing Date, the Court has issued various Orders which, *inter alia*:
 - (a) amended and restated the Initial Order and:
 - i. extended the initial Stay Period to May 7, 2021;
 - ii. increased the amount of the Administration Charge and D&O Charge; and
 - iii. granted the Intercompany Charge in favour of ACBI;

- (b) approved the appointment of a committee comprised of seven investors to, among other things, provide the Monitor and the Petitioners with insight into the objectives and priorities of ACC's and ACBI's investors;
- (c) approved a DIP Facility in the amount of \$5 million from RCM and granted the Interim Lender's Charge in favour of RCM for this amount;
- (d) subsequently reduced the amount of the Administration Charge;
- (e) approved a claims procedure for soliciting and determining claims against the Petitioners and against the Petitioners' directors and officers (the "**Claims Process**" and the "**Claims Process Order**");
- (f) approved a key employee retention plan for certain of ACC's employees and granted the KERP Charge;
- (g) approved the consulting agreement (the "**Consulting Agreement**") between ACC and Kingsman Scientific Management Inc. (the "**Consultant**"), pursuant to which ACC engaged the Consultant to provide the services of Kyle Makofka as Chief Restructuring Officer of the Petitioners, and authorizing and directing ACC to enter into and carry out the terms of the Consulting Agreement;
- (h) granted the CRO Charge in favour of the Consultant in the amount of \$200,000;
- (a) approved the Meetings Order;
- (b) sanctioned the Plan;
- (c) terminated the Intercompany Charge, CRO Charge, and D&O Charge;
- (d) varied and amended the KERP Charge; and
- (e) extended the Stay Period over various time periods, with a final expiry on January 31, 2022.

9. An unresolved Disputed Claim submitted by Stewart Paul Hamilton Scott (“**Mr. Scott**”) to the Monitor alleges damages resulting from ACC’s termination of his employment (the “**Scott Claim**”). Mr. Scott disputes the Monitor’s disallowance of an amount totalling \$443,940.99 in respect of his Claim totalling \$525,441.00. In the event that the parties cannot resolve the Scott Claim, the Monitor intends to refer same to this Honourable Court for adjudication in due course in accordance with the provisions of the Claims Process Order granted by this Honourable Court on March 31, 2021.

Termination of CCAA Proceedings and Related Relief

10. As set out in the Third Crawford Affidavit, the Monitor implemented the Plan effective December 1, 2021. Specifically, on December 7, 2021, the Monitor filed the Monitor’s Plan Certificate and a Plan condition waiver with this Honourable Court. Except for the resolution or adjudication of the Scott Claim, these CCAA Proceedings are substantially completed.
11. In light of the successful implementation of the Plan and except for the adjudication or resolution of the Scott Claim and the Monitor’s assistance in respect of any remaining administrative or incidental matters that may arise in these CCAA Proceedings prior to the filing of a further Monitor’s certificate by the Monitor, the Petitioners no longer require the benefit of the relief granted by this Honourable Court in these CCAA Proceedings, except in respect of the Monitor’s Protections. The Scott Claim can be resolved or adjudicated notwithstanding the termination of the other aspects of these CCAA Proceedings.
12. In respect of the KERP Charge, the Petitioners have (a) made the first installment payment under the KERP, and (b) made arrangements for the second installment payment to all of the critical employees who might have otherwise relied upon the KERP Charge within the CCAA Proceedings. The Petitioners support terminating the KERP Charge upon the occurrence of the following events:

- (a) all payments have been made to key employees entitled to receive same under the KERP in accordance with the provisions of paragraph 3 of the Order granted by this Court on May 6, 2021 (the “**KERP Payments**”); and
 - (b) the Petitioners file an affidavit in these CCAA Proceedings confirming the KERP Payments have been issued.
- 13. The Petitioners have repaid the DIP Facility, including the RCM Exit Facility, in full. Accordingly, the Interim Lender’s Charge is automatically terminated, discharged, expunged and released in accordance with the provisions of paragraph 11 of the Sanction Order.
- 14. It is appropriate to discharge the Court-appointed Monitor in these CCAA Proceedings, except in respect of oversight of and assistance with the Scott Claim and in respect of any remaining administrative or incidental matters that may arise prior to the filing of a further Monitor’s certificate. In this regard, it is appropriate to maintain and reduce the Administration Charge to an amount totalling \$200,000.
- 15. The Monitor has duly and properly discharged and performed its duties in these CCAA Proceedings in compliance with the CCAA and all orders of this Court made in these CCAA Proceedings. The Petitioners have reviewed the Monitor’s accounts and do not object to the fees charged by the Monitor to date in these CCAA Proceedings.
- 16. Upon the termination of these CCAA Proceedings, it is appropriate to release the Monitor and its counsel, legal counsel to the Petitioners, and any affiliates of the foregoing entities from any and all liability that they have or may have in connection with these CCAA Proceedings, save and except for any gross negligence or willful misconduct.

PART 3 LEGAL BASIS

- 1. The Petitioners rely on:
 - (a) the CCAA;
 - (b) the *Supreme Court Civil Rules*;

- (c) the inherent and equitable jurisdiction of this Honourable Court; and
- (d) such further and other legal basis and authorities as counsel may advise and this Honourable Court may permit.

Termination of CCAA Proceedings

- 2. Pursuant to s.11 of the CCAA, this Honourable Court may terminate the CCAA Proceedings if it is satisfied on the material before that it is appropriate to do so.

CCAA at s.11.

Re JTI-Macdonald Corp., 2010 ONSC 4212 at para 19.

- 3. Similarly, on the termination of the CCAA Proceedings, this Honourable Court may exercise its authority under s.11 of the CCAA to terminate any relief related to concluded CCAA proceedings, such as charges, entitlements, and obligations.

CCAA at s.11.

Re JTI-Macdonald Corp., 2010 ONSC 4212 at para 19.

- 4. Specifically, on the termination of CCAA proceedings, this Honourable Court may exercise its authority under s.11 of the CCAA to terminate extant charges upon the conclusion of CCAA proceedings, provided such charges are no longer necessary in order to address matters which are incidental to the conclusion of CCAA proceedings.

CCAA at s.11.

Re JTI-Macdonald Corp., 2010 ONSC 4212 at para 19.

- 5. Additionally, on the termination of CCAA proceedings, this Honourable Court may exercise its authority under s.11 of the CCAA to discharge a monitor, subject to the monitor retaining certain powers which may be required in order to address any matters which might be incidental or ancillary to the terminated CCAA proceedings.

CCAA at s.11.

Re JTI-Macdonald Corp., 2010 ONSC 4212 at para 19.

Reduction of Administration Charge

- 6. Pursuant to s.11 of the CCAA, this Honourable Court may amend the amount of an administration charge to an amount this it considers to be appropriate in the circumstances. Canadian jurisprudence provides numerous examples of courts exercising their discretion

to amend an administration charge. Two jurisprudential examples from the Province of British Columbia are cited below.

CCAA at s.11.

United Used Auto & Truck Parts Ltd. v Aziz, 2000 BCCA 146 at para 3.

Pacific Shores Resort & Spa Ltd. (Re), 2011 BCSC 1775 at para 59.

Granting of Release

7. Pursuant to s.11 of the CCAA, this Honourable Court may grant releases to parties who contribute to a successful restructuring (including a monitor, legal counsel to the monitor and the debtor), provided such releases are rationally connected to the purposes of the CCAA and to the plan of compromise and arrangement.

CCAA at s.11.

Walter Energy Canada Holdings, Inc. (Re), 2018 BCSC 1135 at para 33.

Conclusion

8. Based on the foregoing, it is appropriate for this Honourable Court to grant the Termination Order and such other relief as this Honourable Court deems appropriate.

PART 4 MATERIAL TO BE RELIED ON

1. First Affidavit of Peter Crawford, sworn on September 20, 2021;
2. Second Affidavit of Peter Crawford, sworn on November 10, 2021;
3. Third Affidavit of Peter Crawford, sworn on January 21, 2022;
4. Ninth Report of the Monitor, dated January 20, 2022, to be filed; and
5. Such further and other materials as counsel may advise and this Honourable Court may allow.


The Petitioners estimate that the application will take one (1) hour.

☒ This matter is not within the jurisdiction of a master.

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).

Dated: January 21, 2022



Signature of Lynsey Gaudin,
for William E.J. Skelly
Lawyer for the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1
of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date:

Signature of ☐ Judge ☐ Master

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other 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
- ☒ other

SCHEDULE "A"
(to the Notice of Application – Termination of CCAA Proceedings)

Service List

(See attached)

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

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January 21, 2022

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SCHEDULE "B"
(to the Notice of Application – Termination of CCAA Proceedings)

Termination Order

(See attached)

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

ORDER MADE AFTER APPLICATION

(Termination of CCAA Proceedings)

BEFORE))	
))	The Honourable Mr. Justice Macintosh
))	January 28, 2022
))	

ON THE APPLICATION by Ardenton Capital Corporation and Ardenton Capital Bridging Inc. (together, the “**Petitioners**”) coming on for hearing via telephone conference at Vancouver, British Columbia, on this twenty-eighth day of January, 2022; AND ON HEARING William E.J. Skelly and Kyle Plunkett, counsel for the Petitioners, Colin Brousson, counsel for KSV Restructuring Inc., in its capacity as Monitor of the Petitioners (the “**Monitor**”), and those other counsel listed on **Appendix “A”** hereto; AND ON READING the Ninth Report of the Monitor dated January 20, 2022 (the “**Ninth Report**”), the Third Affidavit of Peter Crawford sworn on January 21, 2022 (the “**Third Crawford Affidavit**”), and the application materials filed by the Petitioners (together with the Ninth Report and the Third Crawford Affidavit, the “**Application Materials**”); AND pursuant to the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended, the British Columbia *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Definitions

1. Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended and Restated Initial Order granted in these CCAA Proceedings on March 15, 2021, the Plan of Compromise and Arrangement dated September 20, 2021 (the “**Plan**”), or the Sanction Order granted in these CCAA Proceedings on November 17, 2021.

Service

2. The time for service of the Application Materials is hereby abridged and validated so that this Application is properly returnable today, and further service is hereby dispensed with.

Termination of CCAA Proceedings

3. Subject to the terms of this Order, these CCAA Proceedings are hereby terminated (the “**CCAA Termination**”), provided however that nothing herein impacts the validity of any Order made in these CCAA Proceedings.

Termination of the KERP Charge

4. Upon the occurrence of the following events, the KERP Charge shall be automatically terminated, discharged, expunged, and released without further order of this Court:
 - (a) all payments have been made to key employees entitled to receive same under the KERP in accordance with the provisions of paragraph 3 of the Order granted by this Court on May 6, 2021 (the “**KERP Payments**”); and
 - (b) the Petitioners file an affidavit in these CCAA Proceedings confirming the KERP Payments have been issued.

Discharge of Monitor

5. The Monitor is hereby discharged as Monitor in these CCAA Proceedings and shall have no further duties or responsibilities as Monitor, provided, however, that notwithstanding the Monitor’s discharge and the CCAA Termination:

(a) the Monitor shall remain Monitor for the performance of the following duties:

- (i) oversight and assistance in respect of the resolution or adjudication of the Scott Claim, as defined at paragraph 1(a) of the Monitor's Ninth Report; and
- (ii) any remaining administrative or incidental matters that may arise prior to the filing of a further Monitor's Certificate (as defined below) by the Monitor;

and notwithstanding the Monitor's discharge or the filing of the Monitor's Certificate, the Monitor shall continue to have the benefit of the provisions of the Orders made in these CCAA Proceedings, including all approvals, protections, and stays of proceedings in favour of the Monitor in its capacity as Monitor.

- 6. Following the resolution or final adjudication of the Scott Claim and completion of any outstanding matters involving the Monitor, the Monitor shall file a certificate substantially in the form attached hereto as Schedule "**B**" (the "**Monitor's Certificate**") notifying the Court of the completion of all matters in this proceeding.
- 7. The Administration Charge is hereby reduced to an amount totalling \$200,000 and shall be automatically terminated, discharged, expunged, and released upon the Monitor filing the Monitor's Certificate.

Releases

- 8. The Monitor, the Monitor's legal counsel, legal counsel for the Petitioners, and each of their respective affiliates, subsidiaries, partners, and successors (the "**Releasees**") are hereby released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions and other recoveries on account of any liability, obligations, demand or cause of action of whatever nature, which any Person may be entitled to assert, including any and all claims in respect of payment and receipt of proceeds and statutory liabilities of D&Os and any alleged fiduciary or other duty (whether acting as D&Os or in any other capacity in connection with the Petitioners), whether known or unknown, matured or unmatured, direct, indirect or derivative, foreseen or unforeseen, existing or hereafter

arising, based in whole or in part on any omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing or other occurrence existing or taking place on or prior to the date of the granting of this Order that are in any way related to any Claims, the Petitioners' businesses and affairs whenever or however conducted, the Plan, and the CCAA Proceedings, and all claims arising out of such actions or omissions shall be forever waived and released, except that nothing in this Order shall release any Releasee, other than the Petitioners, from liability for gross negligence or willful misconduct.

9. No action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court and on prior written notice to the Monitor.

General

10. This Order shall have full force and effect in all provinces and territories in Canada.
11. This Order and all of its provisions are effective from the date of this Order without any need for entry and filing.
12. This Court requests the aid and recognition of other Canadian and foreign Courts, tribunals, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America or the United Kingdom, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

13. Endorsement of this Order by counsel appearing on this Notice of Application, except for counsel for the Petitioners, 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 William E.J. Skelly
☐ Party ☒ Lawyer for the Petitioners

BY THE COURT

REGISTRAR

APPENDIX “A”
(to the Termination of CCAA Proceedings Order)

List of Counsel

Name of Counsel	Party Represented
William E.J. Skelly Kyle Plunkett	The Petitioners, Ardenton Capital Corporation and Ardenton Capital Bridging Inc.
Colin Brousson	The Monitor, KSV Restructuring Inc.
Brendan C. Harvey	Stewart Scott

APPENDIX “B”
(to the Termination of CCAA Proceedings Order)

Monitor’s Certificate

(See attached)

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

MONITOR'S CERTIFICATE

RECITALS

- A. Pursuant to the Order of this Honourable Court dated January 28, 2022 (the "**Termination Order**") wherein this Honourable Court terminated these CCAA Proceedings, discharged KSV Restructuring Inc. as the Monitor of the Petitioners ("**Monitor**"), and directed the Monitor to file this certificate upon:
- i. the resolution or final adjudication of the Scott Claim, as defined at paragraph 1(a) of the Monitor's Ninth Report dated January 20, 2022; and
 - ii. the Monitor's completion of any remaining administrative or incidental matters that may arise prior to the filing of a further Monitor's Certificate by the Monitor.
- B. Pursuant to paragraph 7 of the Termination Order, the Administration Charge is automatically terminated, discharged, expunged, and released upon the Monitor filing this Monitor's Certificate.

THE MONITOR HEREBY CERTIFIES the following:

1. the Scott Claim was [resolved / finally adjudicated] on _____ and, accordingly, the Administration Charge is hereby terminated, discharged, expunged, and released in accordance with paragraph 7 of the Termination Order; and
2. the Monitor has completed all remaining administrative and incidental matters that have arisen in these CCAA Proceedings.

DATED at _____, this ____ day of _____, 2022.

KSV RESTRUCTURING INC. in its capacity
as the discharged Monitor of the Petitioners and
not in its personal or corporate capacity

Per: _____
Name:
Title: