

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY
GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE
PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE
MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS
INC. AND JOINT CAPTAIN REAL ESTATE INC.**

**FACTUM OF THE MONITOR
APPROVAL AND VESTING ORDERS & ANCILLARY MATTERS ORDER**

January 24, 2026

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO #: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Shayne Kukulowicz LSO#: 30729S
Tel: 416.860.6463
skukulowicz@cassels.com

Joseph J. Bellissimo LSO#: #46555R
Tel: 416.860.6572
jbelissimo@cassels.com

Lawyers for the Monitor, KSV Restructuring Inc.

TO: SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY
GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE
PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE
MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS
INC. AND JOINT CAPTAIN REAL ESTATE INC.**

**FACTUM OF THE MONITOR
APPROVAL AND VESTING ORDERS & ANCILLARY MATTERS ORDER**

TABLE OF CONTENTS

	Page No.
PART I - NATURE OF THIS MOTION	1
PART II - SUMMARY OF FACTS	3
A. Background	3
B. The Third Omnibus Approval and Vesting Order	5
C. The Kimberly Transaction and the Proposed Approval and Vesting Order (Kimberly).....	6
D. The Ancillary Matters Order.....	7
PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES	9
A. The Court Ought to Grant the Third Omnibus Approval and Vesting Order and the Approval and Vesting Order (Kimberly)	10
B. The Court Ought to Grant the Ancillary Matters Order	14
PART IV - ORDER REQUESTED	19
SCHEDULE "A"	i
SCHEDULE "B"	iii

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC., HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

**FACTUM OF THE MONITOR
APPROVAL AND VESTING ORDERS & ANCILLARY MATTERS ORDER**

PART I - NATURE OF THIS MOTION

1. This Factum is filed in support of a motion by KSV Restructuring Inc., in its capacity as court-appointed monitor (in such capacity, the “**Monitor**”), pursuant to the Order (Expansion of Monitor’s Powers) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 25, 2024 (the “**Expanded Powers Order**”), seeking the following Orders:

(a) an Order (the “**Third Omnibus Approval and Vesting Order**”), *inter alia*:

(i) approving seven individual real property sale transactions (collectively, the “**Transactions**” and each a “**Transaction**”) contemplated by agreements of purchase and sale, attached at Appendices “G” to “M” to the Fourteenth Report (as defined below) (collectively, the “**Sale Agreements**” and each a “**Sale Agreement**”), between, in each case, the Monitor, on behalf of an Applicant, as seller, and a Purchaser (as hereinafter defined), as buyer; and

- (ii) following the Monitor's delivery of the Monitor's certificate substantially in the form attached as Schedule "B" to the Third Omnibus Approval and Vesting Order, vesting in the applicable person(s) or entity(ies) listed on Schedule "A" to the Third Omnibus Approval and Vesting Order (each, a "**Purchaser**") the applicable Applicant's right, title and interest in and to the applicable lands and premises legally described in Schedule "A" to the Third Omnibus Approval and Vesting Order (collectively, the "**Purchased Properties**" and each a "**Purchased Property**");

(b) an Order (the "**Approval and Vesting Order (Kimberly)**"), *inter alia*:

- (i) approving the transaction (the "**Kimberly Transaction**") contemplated by an agreement between the Monitor and the Corporation of the City of Timmins (the "**City**") dated January 21, 2026; and
- (ii) following the Monitor's delivery of the Monitor's certificate substantially in the form attached as Schedule "A" to the Approval and Vesting Order (Kimberly), transferring and vesting in the City all of the Applicants' right, title and interest in and to the Kimberly Avenue Property (as defined below); and

(c) an Order (the "**Ancillary Matters Order**"), *inter alia*:

- (i) extending the Stay Period (as defined in the SARIO, defined below) to and including July 31, 2026;

- (ii) authorizing the repayment of the Viscount DIP Facility and the termination of the DIP Lender's Charge and certain associated rights of the DIP Lender (each term as defined below);
- (iii) approving the Fourteenth Report and the Monitor's activities described therein; and
- (iv) approving the fees and disbursements of the Monitor and its counsel, as set out in the Fee Affidavits (as defined below) appended to the Fourteenth Report.

2. Capitalized terms not defined herein have their meaning as set out in the Fourteenth Report of the Monitor dated January 21, 2026 (the “**Fourteenth Report**”).

PART II - SUMMARY OF FACTS

A. Background

3. On January 23, 2024, the Applicants obtained an Initial Order pursuant to the *Companies' Creditors Arrangement Act* (“**CCAA**”) and KSV was appointed as the Monitor in the CCAA proceedings.¹ The Initial Order was subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as amended and restated, and as further amended from time to time, including by Order dated December 6, 2024, the “**SARIO**”).²

¹ Fourteenth Report of the Monitor dated January 21, 2026 at 1.1 [*Fourteenth Report*].

² Fourteenth Report at 1.2.5 & 1.2.6.

4. The Applicants were a group of companies that owned a portfolio of 407 residential properties located in tertiary Ontario markets (the “**Properties**”).³

5. On June 25, 2024, the Court granted the Expanded Powers Order, which, among other things, authorized and empowered the Monitor to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicants, including marketing and selling the Properties.⁴

6. On December 6, 2024, the Court granted:

- (a) an Order, which, among other things, approved agreements of purchase and sale, and the transactions contemplated thereby, in respect of 323 of the Properties (all but two of which subsequently closed); and
- (b) an Order, which, among other things, approved a debtor-in-possession loan facility (the “**Viscount DIP Facility**”) from Viscount Capital Inc. (the “**DIP Lender**”) and amended the SARO to provide that the DIP Lender was the beneficiary of the DIP Lender’s Charge (as defined in the SARO).⁵

7. On April 14, 2025, the Court granted an Order approving transactions in respect of twelve additional Properties of the Applicants (the “**Second Omnibus Approval and Vesting Order**”). Following the closing of the transactions approved by the Second Omnibus Approval and Vesting Order, there were 74 remaining Properties (the “**Liquidation Portfolio Properties**”).⁶

³ Fourteenth Report at 2.0.2.

⁴ Fourteenth Report at 1.2.8.

⁵ Fourteenth Report at 1.2.14.

⁶ Fourteenth Report at 1.2.17.

8. Also on April 14, 2025, the Court granted an Order (the “**Orderly Liquidation Mechanics Order**”), which, among other things:

- (a) authorized the Monitor, on behalf of the Applicants, without further order of the Court, to sell the Liquidation Portfolio Properties with the consent of the applicable prescribed stakeholders for each Liquidation Portfolio Property; and
- (b) approved the Second DIP Allocation and prescribed a method by which the proceeds from the sale of the Liquidation Portfolio Properties would be used to repay the outstanding obligations under the Viscount DIP Facility.⁷

9. The Monitor has marketed the Liquidation Portfolio Properties in accordance with the Orderly Liquidation Mechanics Order, which, as of the date of the Fourteenth Report, has resulted in the sale of forty-seven of the Liquidation Portfolio Properties, leaving twenty-seven remaining Liquidation Portfolio Properties (the “**Remaining Liquidation Properties**”).⁸

10. On July 28, 2025, among other Orders, this Court granted an Order, which, among other things: (i) extended the Stay Period to January 31, 2026; and (ii) approved the fees and disbursements of the Monitor and Cassels through to June 30, 2025.⁹

B. The Third Omnibus Approval and Vesting Order

11. The proposed Third Omnibus Approval and Vesting Order seeks the Court’s approval of Transactions in respect of seven of the Liquidation Portfolio Properties. The relief is necessitated

⁷ Fourteenth Report at 1.2.17.

⁸ Fourteenth Report at 2.0.2.

⁹ Fourteenth Report at 1.2.19.

by the Monitor: (a) being unable to obtain the requisite consents of certain “out-of-the-money” creditors for the Liquidation Portfolio Property subject to the applicable Transaction; or (b) taking proactive steps to ensure the closing of the Transaction, in respect of certain Liquidation Portfolio Properties whose circumstances have necessitated the Monitor incurring additional maintenance costs.¹⁰

12. The Transactions arose through the Monitor, with the assistance of the Listing Agents, marketing the Liquidation Portfolio Properties in accordance with the Orderly Liquidation Mechanics Order.¹¹

13. The Transactions, in each instance, represent the best or only actionable transaction available in respect of the applicable Liquidation Portfolio Property and provide for the greatest recovery to stakeholders.¹²

C. The Kimberly Transaction and the Proposed Approval and Vesting Order (Kimberly)

14. The Kimberly Transaction contemplates the Liquidation Portfolio Property municipally known as 269 Kimberly Avenue, Timmins (the “**Kimberly Avenue Property**”) being transferred to the City in full and complete satisfaction of the property tax arrears, demolition costs and other charges which constitute a priority lien against the Kimberly Avenue Property (collectively, the

¹⁰ Fourteenth Report at 5.1-5.7.

¹¹ Fourteenth Report at 4.0.4 & 5.1-5.7.

¹² Fourteenth Report at 5.1-5.7.

“Property Tax Arrears”).¹³ The Property Tax Arrears are currently approximately \$67,000, with interest and fees continuing to accrue.¹⁴

15. The Kimberly Avenue Property was actively listed for sale for approximately six months, during which time it was marketed by the Monitor, with the assistance of the applicable Listing Agent, in accordance with the terms of the Orderly Liquidation Mechanics Order.¹⁵ However, despite the Monitor’s efforts, the sole offer received for the Kimberly Avenue Property was grossly insufficient to satisfy the Property Tax Arrears.¹⁶ In response to the Monitor’s inquiry, that party advised that they were not willing to increase their offer to the amount necessary to satisfy, or otherwise assume, the Property Tax Arrears.¹⁷

16. Accordingly, the proposed transfer of the Kimberly Avenue Property, in satisfaction of the Property Tax Arrears, represents a value maximizing transaction and is reasonable and appropriate in the circumstances.¹⁸

D. The Ancillary Matters Order

Repayment of the Viscount DIP Facility

17. The Monitor is seeking authorization to repay the Viscount DIP Facility from the amounts held by the Monitor.

¹³ Fourteenth Report at 5.8.6 & 5.8.7.

¹⁴ Fourteenth Report at 5.8.2.

¹⁵ Fourteenth Report at 5.8.3.

¹⁶ Fourteenth Report at 5.8.3.

¹⁷ Fourteenth Report at 5.8.4.

¹⁸ Fourteenth Report at 5.8.8.

18. As of the date of the Fourteenth Report, the Monitor is holding approximately \$2.5 million in its trust account, which funds are largely the net sale proceeds from sold Properties, net of the Second DIP Allocation amounts previously remitted to the DIP Lender and ongoing expenses, including the expenses of these CCAA proceedings.¹⁹ The outstanding amount owing under the Viscount DIP Facility is approximately \$877,000.²⁰

19. Pursuant to the Orderly Liquidation Mechanics Order, the Monitor is not permitted, without Court approval, to repay the Viscount DIP Facility other than in accordance with the Second DIP Allocation from the proceeds of sold Liquidation Portfolio Properties.²¹

20. Based on the Monitor's projections, there are sufficient funds in the Monitor's trust account to repay all amounts outstanding under the Viscount DIP Facility, without impairment to the Monitor's ability to fund the remaining costs anticipated in these CCAA proceedings.²² Further, the repayment, and resulting termination, of the Viscount DIP Facility will eliminate various costs in these CCAA proceedings, including interest payable under the Viscount DIP Facility and costs related to the Monitor's reporting obligations under the Viscount DIP Facility.²³

21. The proposed Ancillary Matters Order also contemplates that, upon repayment, the Viscount DIP Facility will be terminated. Accordingly, the Ancillary Matters Order provides that, upon termination of the Viscount DIP Facility, the DIP Lender's Charge will be discharged, as

¹⁹ Fourteenth Report at 4.1.4.

²⁰ Fourteenth Report at 4.1.5.

²¹ Fourteenth Report at 4.1.5.

²² Fourteenth Report at 4.1.5 & 6.0.4.

²³ Fourteenth Report at 4.1.5.

there will no amounts secured thereby, and the DIP Lender will cease to have any further consent rights or involvement in the ongoing liquidation process previously approved by this Court.

Approval of the Monitor's Reports, Activities, and Fees and Disbursements

22. The Monitor is seeking approval of the Fourteenth Report, and the activities of the Monitor described therein, as well as the fees and disbursements of the Monitor and its legal counsel, Cassels Brock & Blackwell LLP (“Cassels”).

23. In support of this motion, the Fourteenth Report attaches the Affidavit of David Sieradzki sworn January 21, 2026 and the Affidavit of Joseph Bellissimo sworn January 20, 2026 (together, the “Fee Affidavits”), which provide a comprehensive listing of accounts sought to be passed, including each account (redacted for matters of privilege or confidentiality) and summary tables identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.²⁴

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

24. The issues to be determined on this Motion are whether this Court should:

- (a) approve the Third Omnibus Approval and Vesting Order, among other things, granting the relief set out in paragraph Part I1 hereof;
- (b) approve the Approval and Vesting Order (Kimberly), among other things, granting the relief set out in paragraph Part I1(a)(ii) hereof; and

²⁴ Fourteenth Report at 8.0.5 & 8.0.6.

(c) approve the Ancillary Matters Order, among other things, granting the relief set out in paragraph Part I1(b)(ii) hereof.

A. The Court Ought to Grant the Third Omnibus Approval and Vesting Order and the Approval and Vesting Order (Kimberly)

25. In accordance with the Expanded Powers Order, the Monitor is authorized and empowered to exercise any powers which may properly be exercised by a board of directors or any officers of the Applicants, including selling any of the Properties.²⁵

26. In addition, as noted above, the Orderly Liquidation Mechanics Order authorizes the Monitor, on behalf of the Applicants, to market and sell the Liquidation Portfolio Properties in accordance with the Orderly Liquidation Mechanics.²⁶

27. Pursuant to section 36 of the CCAA, this Court may authorize a debtor company to sell or otherwise dispose of its assets outside of the ordinary course of business free and clear of any security, charge or other restriction.²⁷ In considering whether to approve a sale, section 36(3) of the CCAA requires the Court to consider: (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.²⁸

²⁵ *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (June 25, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Expanded Powers Order](#)) at para 3.

²⁶ *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Orderly Liquidation Mechanics Order](#)) at para 6.

²⁷ *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, [2001 CanLII 6708](#) (ONCA) at paras [5](#) & [9](#); *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) at para [35-40](#) & [48](#) (ONSC); *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 3367](#) at para [35](#).

²⁸ *Companies' Creditors Arrangement Act*, [R.S.C. 1985, c. C-36](#), s. [36\(3\)](#) [CCAA].

28. The section 36(3) factors largely overlap with the factors set out by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.*:

- (a) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently;
- (b) whether the interests of all parties had been considered;
- (c) the integrity and efficacy of the process for obtaining offers; and
- (d) whether there was any unfairness in working out the process.²⁹

29. The factors listed in section 36(3) and *Soundair* are intended to be informative, and are not an exhaustive checklist to be followed in every case.³⁰ Rather, the Court is required to look at the transaction as a whole, and consider whether the sale is appropriate, fair and reasonable in the circumstances.³¹

30. The Monitor submits that both the section 36(3) factors and the *Soundair* criteria are satisfied and weigh in favour of granting the Third Omnibus Approval and Vesting Order and the Approval and Vesting Order (Kimberly) for the reasons that follow.

²⁹ [1991 CanLII 2727](#) (ONCA) at para 16 [*Soundair*].

³⁰ *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para 15.

³¹ *Stelco Inc. (Re)*, [2005 CanLII 8671](#) (ONCA) at paras [65-68](#); *Bloom Lake, g.p.l. (Arrangement relativà)*, [2015 QCCS 1920](#) at para [28](#).

The Third Omnibus Approval and Vesting Order Ought to be Approved

31. The proposed Third Omnibus Approval and Vesting Order is intended to provide an efficient means to facilitate the Transactions in respect of seven of the Remaining Liquidation Properties. Similar relief has been granted by this Court in these CCAA proceedings.³²

32. The Third Omnibus Approval and Vesting Order is necessitated in the circumstances as a result of: (a) in respect of five of the Transactions, an “out-of-the-money” creditor refusing to consent to the Transaction or failing altogether to respond to the Monitor’s requests for consent and (b) in respect of two of the Transactions, the Monitor proactively taking steps to ensure a timely approval of the Transaction and transfer of the corresponding Property.³³

33. The applicable Properties were marketed by the Monitor and the Listing Agents in accordance with the Orderly Liquidation Mechanics Order.³⁴ As set out in the Fourteenth Report, the Properties were subject to a reasonable marketing process which included, among other things, a reasonable amount of time publicly listed and marketed by a listing agent with specialized expertise in the applicable geographic market and multiple price adjustments to reflect market interest, all in accordance with the Orderly Liquidation Mechanics previously approved by this Court.³⁵

³² *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (December 6, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Omnibus Approval and Vesting Order](#)); *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (February 27, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Approval and Vesting Order](#)); *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Second Omnibus Approval and Vesting Order](#)).

³³ Fourteenth Report at 5.1-5.7.

³⁴ Fourteenth Report at 4.0.4 & 5.1-5.7.

³⁵ Fourteenth Report at 5.1-5.7.

34. In light of the marketing process undertaken in respect of the applicable Properties, the Monitor understands that the Transactions, in each case, reflect the market value for the Properties and represent a value maximizing transaction and does not believe that further marketing of any of the Properties would result in a superior transaction.³⁶

35. The Monitor has served its Motion Record on each secured creditor or other party whose interest in the Properties is proposed to be discharged by the Third Omnibus Approval and Vesting Order.

The Approval and Vesting Order (Kimberly) Ought to be Approved

36. The Kimberly Transaction is a value maximizing transaction and should be approved.

37. The Property Tax Arrears, including the demolition costs and other charges which have been added to the City’s “tax roll”, are subject to a lien on the Kimberly Avenue Property, in priority to the instruments registered on title.³⁷ Accordingly, the proposed transfer of the Kimberly Avenue Property to the City is effectively a credit bid by the City, as a creditor holding a priority interest, and represents a transaction value that is significantly higher than any other offer received for the Kimberly Avenue Property.³⁸

38. The Kimberly Avenue Property was marketed by the Monitor and the applicable Listing Agent in accordance with the Orderly Liquidation Mechanics Order, namely through public listings for an appropriate length of time, and reasonable efforts were made to identify an

³⁶ Fourteenth Report at 5.1-5.7.

³⁷ See *Municipal Act, 2001*, S.O. 2001, c. 25 at ss. 1(2.1), 1(3), 349(3) & 446(1), (3), (6).

³⁸ Fourteenth Report at 5.8.2 & 5.8.5.

alternative transaction for the Kimberly Avenue Property.³⁹ However, in light of the distressed condition of the Kimberly Avenue Property, the demolition by the City and the significant quantum of the Property Tax Arrears outstanding thereon, the realizable value of the Kimberly Avenue Property is effectively negative, and no transaction was or is available that provided sufficient proceeds to satisfy the Property Tax Arrears.⁴⁰

39. The Kimberly Transaction contemplates a transaction value that significantly exceeds any alternative transaction offered for the Kimberly Avenue Property and will provide for a greater recovery to the Kimberly Avenue Property's creditors than any alternative transaction available.⁴¹ Accordingly, the Monitor has determined that the Kimberly Transaction is a value maximizing transaction and ought to be approved.

40. The Monitor has provided notice of the proposed Kimberly Transaction to each creditor with a registration against the Kimberly Avenue Property of which the Monitor is aware.

B. The Court Ought to Grant the Ancillary Matters Order

The Stay Period Should be Extended

41. The Monitor is seeking an extension of the Stay Period from January 31, 2026 to, and including, July 31, 2026.

42. Pursuant to section 11.02(2) of the CCAA, this Court is empowered to grant a stay extension, for any period it considers necessary, where satisfied that: (a) circumstances exist which

³⁹ Fourteenth Report at 4.0.4 & 5.8.3.

⁴⁰ Fourteenth Report at 5.8.3 & 5.8.4.

⁴¹ Fourteenth Report at 5.8.2 & 5.8.6.

make such an order appropriate; and (b) the applicants have acted and are continuing to act in good faith and with due diligence.⁴²

43. As endorsed by the Court in this proceeding and other CCAA proceedings, in the context of a “super monitor”, the monitor is held to the good faith standard.⁴³

44. Extending the Stay Period is necessary and appropriate in the circumstances to allow the Monitor time to realize on the Remaining Liquidation Properties, consistent with the Court-approved Orderly Liquidation Plan. The extension of the Stay Period is not expected to materially prejudice any creditors. Further, the Cash Flow Forecast projects that there will be sufficient funding available to fund operations and the costs of these proceedings during the proposed extension period.⁴⁴

45. The Monitor has acted in good faith and with due diligence in discharging its duties and obligations under the CCAA and submits that the Stay Period should be extended to July 31, 2026.⁴⁵

The Monitor Ought to be Authorized to Repay the Viscount DIP Facility

46. Section 11 of the CCAA provides this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”⁴⁶ The discretion conferred upon this Court by section 11 of the CCAA must be exercised in furtherance of the CCAA’s remedial objectives,

⁴² CCAA, ss. [11.02\(2\)-\(3\)](#).

⁴³ *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)); *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)).

⁴⁴ Fourteenth Report at 7.0.2.

⁴⁵ Fourteenth Report at 7.0.2.

⁴⁶ CCAA s. [11](#).

having regard to whether (a) the order sought is appropriate in the circumstances; (b) the debtor company is acting in good faith; and (c) the debtor company is acting with due diligence.⁴⁷

47. Pursuant to the proposed Ancillary Matters Order, the Monitor is seeking: (a) authorization, notwithstanding paragraphs 4 or 5(a) of the Orderly Liquidation Mechanics Order, to repay all amounts outstanding under the Viscount DIP Facility; and (b) upon repayment of the Viscount DIP Facility, the termination of the DIP Lender's Charge.

48. The relief sought by the Monitor is consistent with the remedial objectives of the CCAA. Repayment of the Viscount DIP Facility will eliminate certain costs being incurred in these CCAA proceedings in connection therewith, including interest and costs related to the Monitor's reporting obligations.⁴⁸ The Monitor is holding sufficient proceeds to repay the Viscount DIP Facility and the repayment thereof will not change the manner in which the Second DIP Allocation is applied to sales of the Liquidation Portfolio Properties going forward.⁴⁹

49. Upon repayment of the Viscount DIP Facility, the Viscount DIP Facility shall be terminated. Accordingly, there will be no amounts secured by the DIP Lender's Charge and the Monitor believes it should also be terminated.

50. The Monitor submits that the proposed relief is appropriate in the circumstances and should be granted.

⁴⁷ 9354-9186 *Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#) at para. 49.

⁴⁸ Fourteenth Report at 4.1.5.

⁴⁹ Fourteenth Report at 4.1.4 & 4.1.5.

The Monitor's Activities and the Fourteenth Report Should be Approved

51. As has been noted by this Court, requests to approve a monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:

- (a) allowing the Monitor to move forward with the next steps in these CCAA proceedings;
- (b) allowing the Monitor to bring its activities before the Court;
- (c) allowing an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enabling the court to satisfy itself that a monitor's activities have been conducted in prudent and diligent manners;
- (e) providing protection for the Monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from delay that may be caused by re-litigation of steps and potential indemnity claims by the Monitor.⁵⁰

52. This Court has previously approved the Monitor's reports and activities in these CCAA proceedings, including most recently on July 28, 2025.⁵¹

⁵⁰ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at paras 2 & 22-23.

⁵¹ Fourteenth Report at 1.2.19.

53. The Fourteenth Report and the actions, conduct and activities of the Monitor described therein should be approved, as the Monitor has acted reasonably and in good faith, and in compliance with the Orders of the Court, throughout these CCAA proceedings.⁵²

The Fees and Disbursements of the Monitor and Cassels Should be Approved

54. The Ancillary Matters Order also seeks to approve the fees and disbursements of the Monitor and its legal counsel, Cassels, incurred between July 1, 2025 to December 31, 2025.

55. In considering whether to approve fees and disbursements, the Court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.⁵³ The guiding principle is whether the fees are fair, reasonable and proportionate given the value of the Applicant’s assets and liabilities, as well as the complexity of the Applicant’s business and the CCAA proceedings. As a non-exhaustive list of factors for consideration, the Ontario Court of Appeal has cited: (a) the time spent; (b) the Monitor’s knowledge, experience and skill; (c) the responsibilities assumed; (d) the complications and difficulties encountered; (e) the results achieved; and (f) the cost of comparable services when performed in a prudent and economical manner.⁵⁴

56. The Fee Affidavits provide detailed information on the fees and disbursements of the Monitor and of Cassels, in each case from July 1, 2025 to December 31, 2025.⁵⁵

⁵² Fourteenth Report at 7.0.2.

⁵³ *Nortel Networks Inc.*, [2022 ONSC 6680](#) at para 10.

⁵⁴ *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA) at paras 42-54; *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at para 33.

⁵⁵ Fourteenth Report at 8.0.4.

57. The Monitor and its counsel have played a significant role in these CCAA proceedings, and the activities of the Monitor have been carried out in good faith and in accordance with the Orders issued by this Court in these CCAA proceedings.⁵⁶

58. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by large corporate law firms practicing in the area of corporate insolvency and restructuring in the Toronto market, that Cassels' billings reflect work performed consistent with the Monitor's instructions and that the overall fees charged by Cassels and the Monitor are reasonable and appropriate in the circumstances.⁵⁷

PART IV - ORDER REQUESTED

59. For the reasons set out above, the Monitor respectfully requests that this Court grant the:

- (i) Third Omnibus Approval and Vesting Order, (ii) Approval and Vesting Order (Kimberly) and
- (iii) Ancillary Matters Order.

⁵⁶ Fourteenth Report at 7.0.2.

⁵⁷ Fourteenth Report at 8.0.6.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of January, 2026.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North
Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO #: 59510J

Tel: 416.860.6465

rjacobs@cassels.com

Shayne Kukulowicz LSO#: 30729S

Tel: 416.860.6463

skukulowicz@cassels.com

Joseph J. Bellissimo LSO#: #46555R

Tel: 416.860.6572

jbellissimo@cassels.com

*Lawyers for the Monitor, KSV Restructuring
Inc.*

SCHEDULE “A”
LIST OF AUTHORITIES

1. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
2. *Bloom Lake, g.p.l. (Arrangement relatif à)*, [2015 QCCS 1920](#) at para [28](#).
3. *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA)
4. *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, [2001 CanLII 6708](#) (ONCA)
5. *Forme Development Group Inc. (Re)* (February 20, 2020), ONSC (Commercial List), Court File No. CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#))
6. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (June 25, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Expanded Powers Order](#))
7. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (July 31, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#))
8. *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (December 6, 2024), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Omnibus Approval and Vesting Order](#))
9. *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (February 27, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Approval and Vesting Order](#))
10. *In the Matter of a Compromise or Arrangement of Balboa Inc. et al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Second Omnibus Approval and Vesting Order](#))
11. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al.* (April 14, 2025), ONSC (Commercial List), Court File No. CV-24-00713245-00CL ([Orderly Liquidation Mechanics Order](#))
12. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#)
13. *Nortel Networks Inc.*, [2022 ONSC 6680](#)
14. *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 3367](#)
15. *Royal Bank of Canada v Soundair Corp*, [1991 CanLII 2727](#) (ONCA)
16. *Stelco Inc. (Re)*, [2005 CanLII 8671](#) (ONCA)
17. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
18. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
19. *9354-9186 Quebec Inc v Callidus Capital Corp*, [2020 SCC 10](#)

I, Alec Hoy, am satisfied as to the authenticity of every authority cited in this factum, in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Dated as of January 24, 2026



Alec Hoy

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[...]

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Municipal Act, 2001, S.O. 2001, c. 25

Amount added to tax roll

1 (2.1) If, under this or any other Act, an amount is given priority lien status, the amount may be added to the tax roll against the property in respect of which the amount was imposed or against any other property in respect of which the amount was authorized to be added by this or any other Act.

[...]

Priority lien status

(3) If an amount is added to the tax roll in respect of a property under subsection (2.1) or (2.2), that amount, including interest,

- (a) may be collected in the same manner as taxes on the property;
- (b) may be recovered with costs as a debt due to the municipality from the assessed owner of the property at the time the fee or charge was added to the tax roll and from any subsequent owner of the property or any part of it;
- (c) is a special lien on the property in the same manner as are taxes under subsection 349 (3); and
- (d) may be included in the cancellation price under Part XI in the same manner as are taxes on the property.

[...]

Special lien

349 (3) Taxes are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority are not lost or impaired by any neglect, omission or error of the municipality or its agents or through taking no action to register a tax arrears certificate.

[...]

Remedial action

446 (1) If a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense.

[...]

Recovery of costs

(3) The municipality may recover the costs of doing a matter or thing under subsection (1) from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

[...]

Lien for costs

(6) The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien.

[...]

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BALBOA INC., DSPLN INC., HAPPY GILMORE
INC., INTERLUDE INC., MULTIVILLE INC., THE PINK FLAMINGO INC., HOMETOWN HOUSING INC., THE MULLIGAN INC.,
HORSES IN THE BACK INC., NEAT NESTS INC. AND JOINT CAPTAIN REAL ESTATE INC.

Court File No. CV-24-00713245-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
APPROVAL AND VESTING ORDERS & ANCILLARY
MATTERS ORDER

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO #: 59510J
Tel: 416.860.6465
rjacobs@cassels.com

Shayne Kukulowicz LSO#: 30729S
Tel: 416.860.6463
skukulowicz@cassels.com

Joseph J. Bellissimo LSO#: 46555R
Tel: 416.860.6572
jbellissimo@cassels.com

Lawyers for the Monitor, KSV Restructuring Inc.