

**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. (collectively the "Applicants", and each an "Applicant")**

**FACTUM OF THE MONITOR
(MOTION RETURNABLE JULY 28, 2025)**

July 24, 2025

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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**”) of the Applicants pursuant to the Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 23, 2024 as subsequently amended and restated by Orders dated February 15, 2024 and March 28, 2024 (as further amended from time to time, including by Order dated December 6, 2024, the “**SARIO**”) and pursuant to the Order (Expansion of Monitor’s Powers) of the Court dated June 25, 2024 (the “**Expanded Powers Order**”), seeking two orders from the Court:

- (a) an assignment of claims order approving the assignment of the Core Claim (as defined and discussed below) to Viscount Capital Inc. (“**Viscount**” or the “**Assignee**”); and
- (b) an ancillary matters order which, among other things, amends the SARIO to replace Goldman Sloan Nash & Haber LLP (“**GSNH**”) with Reconstruct LLP (“**Recon**”) as Unsecured Lender Representative Counsel (as defined and discussed below), extends the Stay Period to January 31, 2026 and approves the Monitor’s report, activities and fees.

2. More specifically, the Monitor seeks the following:

- (a) an order substantially in the form attached at Tab 3 of the Motion Record (the “**Assignment of Claims Order**”), among other things:

- (i) abridging the manner and time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on July 28, 2025 and dispensing with further service thereof;
- (ii) approving the assignment agreement (the “**Core Claim Assignment Agreement**”) between the Applicants and Viscount dated as of May 31, 2025 attached at Appendix “D” to the Thirteenth Report of the Monitor dated July 21, 2025 (the “**Thirteenth Report**”) and authorizing and directing the Monitor, *nunc pro tunc*, on behalf of the Applicants in accordance with the Expanded Powers Order, to execute the Assignment Agreement and to give full effect to the terms of the Core Claim Assignment Agreement in accordance with the Assignment of Claims Order; and
- (iii) subject to the terms and provisions of the Core Claim Assignment Agreement and the Assignment of Claims Order, authorizing the Assignee to continue proceedings, including the action bearing Court File No. CV-25-00742331-0000, in its own name and at its own expense and risk regarding the Applicants’ claims as against Core Acquisition Co. Inc. (“**Core**”) as a defendant for, *inter alia*, damages arising from breach of contract and/or unjust enrichment relating to unpaid portions of the purchase price required to be paid under the agreement of purchase and sale dated February 24, 2022 (the “**Core Claim**”).

(b) an order, substantially in the form attached at Tab 4 of the Motion Record (the “**Ancillary Matters Order**”, together with the Assignment of Claims Order, the “**Proposed Orders**”), among other things:

- (i) abridging the manner and time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on July 28, 2025 and dispensing with further service thereof;
- (ii) extending the Stay Period (as defined in the SARIO) to and including January 31, 2026;
- (iii) amending the SARIO to replace GSNH with Recon as Unsecured Lender Representative Counsel; and
- (iv) approving (i) the Thirteenth Report and the activities of the Monitor referred to therein, and (ii) the fees and disbursements of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), from April 1, 2025 to and including June 30, 2025, as set out in the Thirteenth Report, the Affidavit of David Sieradzki sworn July 21, 2025 (the “**Sieradzki Affidavit**”), and the Affidavit of Ryan Jacobs sworn July 21, 2025 (the “**Jacobs Affidavit**”).

3. Capitalized terms not defined herein have their meaning as set out in the Thirteenth Report.

PART II - SUMMARY OF FACTS

A. Background

4. On January 23, 2024, the Applicants obtained an initial order (the "**Initial Order**") under the CCAA, which among other things, appointed KSV Restructuring Inc. as the Monitor in these CCAA proceedings.¹ The Initial Order was subsequently amended and restated and thereafter further amended ultimately resulting in the SARIO.²

5. On June 25, 2024, the Court granted the Expanded Powers Order, which, among other things:

- (a) 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 to cause the Applicants to take various actions or steps as set out in paragraph 3 of the Expanded Powers Order;
- (b) provided for a process for the Monitor to transition the Applicants' property and other management service providers from the SID Companies (as defined in the Expanded Powers Order) as determined necessary by the Monitor; and
- (c) granted various additional and ancillary relief to facilitate the foregoing.³

6. On April 15, 2025, this Court granted an order, which, among other things:

- (a) extended the Stay Period to August 31, 2025;

¹ The Thirteenth Report of the Monitor dated July 21, 2025 at section 1.0(1) [Thirteenth Report].

² Thirteenth Report at section 1.0(2).

³ Thirteenth Report at section 1.2(8).

- (b) approved the Second Omnibus Credit Bid Vesting Order, including assigning tenant leases for the properties subject to the Second Omnibus Credit Bid Vesting Order to the respective purchasers;
- (c) approved the Orderly Liquidation Mechanics;
- (d) approved the Second DIP Allocation; and
- (e) approved the fees and disbursements of the Monitor and its counsel through to March 31, 2025.⁴

B. The Proposed Assignment of Claims Order

- 7. The Monitor seeks approval of the Core Claim Assignment Agreement.⁵
- 8. In May 2025, Viscount approached the Monitor to express an interest in acquiring the Core Claim.⁶
- 9. In order to preserve the Core Claim, on behalf of the Applicants, the Monitor took steps to file a Notice of Action in May 2025 and subsequently took steps to file a Statement of Claim against Core. Notwithstanding the preliminary steps taken by the Monitor to preserve the Core Claim, the Monitor does not have the resources or stakeholder support to pursue it.⁷
- 10. Following extensive discussions and negotiations with Viscount (in consultation with Secured Lender Representative Counsel and Unsecured Lender Representative Counsel), in accordance with the Monitor's authority under the Expanded Powers Order, the Monitor, on behalf

⁴ Thirteenth Report at section 1.2(17).

⁵ Thirteenth Report at section 1.1(1)(f).

⁶ Thirteenth Report at section 4.0(1).

⁷ Thirteenth Report at section 4.0(3).

of the Applicants, entered into the Core Claim Assignment Agreement with Viscount, pursuant to which Viscount would, subject to certain conditions (including Court approval), acquire all of the Applicants' right, title and interest in the Core Claim.⁸

C. The Proposed Ancillary Matters Order

Administrative Change to Unsecured Lender Representative Counsel

11. From the commencement of these proceedings, GSNH has acted as Unsecured Lender Representative Counsel.⁹ From the outset, Mario Forte has been the lawyer with principal carriage acting in the role of Unsecured Lender Representative Counsel in these proceedings. In March 2025, Mr. Forte switched firms from GSNH to Recon. Since that time, and as more particularly described in the Thirteenth Report, the Monitor has continued to deal with Mr. Forte on various matters given his familiarity and knowledge of the issues and his constituency.¹⁰

12. At this time, the Monitor is proposing that Recon replace GSNH in the role of Unsecured Lender Representative Counsel given, among other things, Mr. Forte's familiarity with these proceedings, the role that Unsecured Lender Representative Counsel will continue to have as the Monitor continues to implement the Orderly Liquidation Plan, the matters to be addressed in due course concerning future distributions in these proceedings, and the continuation of the previously-agreed monthly fee cap of \$10,000/month.¹¹

⁸ Thirteenth Report at section 4.0(4).

⁹ Thirteenth Report at section 8.0(1).

¹⁰ Thirteenth Report at section 8.0(2).

¹¹ Thirteenth Report at section 8.0(3).

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

13. The Monitor is seeking approval of the Thirteenth Report, and the activities of the Monitor described therein, as well as the fees and disbursements of the Monitor and its counsel, Cassels.

14. In support of this motion, the Thirteenth Report attaches the Sieradzki Affidavit and the Jacobs Affidavit, which provides a comprehensive listing of accounts sought to be passed, including each account 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.¹²

15. The fees (excluding disbursements and HST) of the Monitor and Cassels from April 1, 2025 to June 30, 2025 total \$178,474 and \$93,103, respectively.¹³

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

16. The issues to be determined on this Motion are whether the Court should grant the Assignment of Claims Order and the Ancillary Matters Order.

A. THE PROPOSED ASSIGNMENT OF CLAIMS ORDER

The Core Claim Assignment Agreement should be Approved

17. Under s. 36 of the CCAA, this Court may authorize an applicant to sell or otherwise dispose of its assets outside of the ordinary course of business.¹⁴

¹² Thirteenth Report at Appendix "J" and Appendix "K".

¹³ Thirteenth Report at section 9.0(2).

¹⁴ *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, [2001 CanLII 6708](#) at paras [5](#), [9](#) (CA); *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#) at para [35 – 40](#), [48](#) (ON SC) [*Nortel 2009*]; *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 3367](#) at [para 35](#) [PCAS].

18. In deciding whether to exercise its discretion to approve a transaction, this Court must review a transaction as a whole and decide whether it is appropriate, fair, and reasonable.¹⁵ Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered:¹⁶

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances.¹⁷ The Monitor believes that, by way of the Notice process described in the Thirteenth Report, the market of potentially interested parties was broadly canvassed to solicit if any party was interested in submitting a proposal to acquire the Core Claim on terms more favourable than those contemplated under the Core Claim Assignment Agreement. The Monitor received no interest from any party over the course of the process, including no interest from the secured and unsecured lender representatives.¹⁸

Further, given the nature of the Core Claim and the circumstances of the Applicants, the Monitor does not believe that a more formal “sale process” for the Core Claim would generate any additional interest in acquiring the Core Claim and, as such, the time and expense of a further sale process is not warranted in the circumstances.¹⁹

¹⁵ PCAS at [para 54](#); *Veris Gold Corp. (Re)*, [2015 BCSC 1204](#) at [para 23](#) [*Veris Gold*], citing *White Birch Paper Holding Co., Re*, [2010 QCCS 4915](#) at [para 49](#) [*White Birch*]; *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) at paras [156](#), [157](#).

¹⁶ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, ss. [36\(3\)](#) [CCAA]; and see *White Birch* at [para 48](#).

¹⁷ CCAA, s. [36\(3\)\(a\)](#).

¹⁸ Thirteenth Report at section 4.0(8)(b).

¹⁹ Thirteenth Report at section 4.0(8)(c).

- (b) 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.²⁰ The Monitor discussed with Viscount, the Secured Lender Representative Counsel and the Unsecured Lender Representative Counsel the possibility of the Core Claim being assigned and pursued in accordance with a process similar to Section 38 of the *Bankruptcy and Insolvency Act* (the “BIA”), but Viscount advised that it was not interested in doing so in the circumstances and neither the Secured Lender Representative Counsel nor the Unsecured Lender Representative Counsel expressed an interest in leading such a Section 38 process.²¹
- (c) the extent to which the creditors were consulted.²² The Monitor consulted with Secured Lender Representative Counsel and Unsecured Lender Representative Counsel with respect Core Claim Assignment Agreement and the terms thereof.²³ The constituencies represented by the aforementioned Court-appointed representative counsel comprise all or substantially all of the Applicants’ known creditors.
- (d) the effects of the proposed sale or disposition on the creditors and other interested parties.²⁴ The proceeds generated from any recovery under successful order or judgment under the Core Claim shall be paid to Viscount firstly, and Recovered

²⁰ CCAA, s. [36\(3\)\(c\)](#).

²¹ Thirteenth Report at section 4.0(8)(e).

²² CCAA, s. [36\(3\)\(d\)](#).

²³ Thirteenth Report at section 4.0(2).

²⁴ CCAA, s. [36\(3\)\(e\)](#).

Amounts (if any) will be paid to general unsecured creditors on a *pro rata* basis.²⁵

The Monitor does not have the stakeholder support nor the funding to adequately pursue the Core Claim directly on behalf of the Applicants' estate. Accordingly, absent an assignment pursuant to the Core Claim Assignment Agreement, the Monitor does not believe that there is any reasonable and viable way for the Core Claim to be advanced for the benefit of the Applicants' estate beyond the preliminary steps taken to-date by the Monitor to preserve the claim.²⁶

- (e) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²⁷ The Monitor believes that the terms of the Core Claim Assignment Agreement, including the basis on which the Applicants' general unsecured creditors would participate in the Recovered Amounts (if any), is fair and reasonable consideration for the assignment of the Core Claim as it provides the possibility of some recovery for the unsecured creditors.²⁸

19. The s. 36(3) factors are not intended to be exhaustive and the principles established in *Royal Bank v. Soundair Corp.* for approval of a sale in an insolvency proceeding remain relevant.²⁹ Applying these principles, courts examine: (i) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (ii) the interests of all

²⁵ Thirteenth Report at section 4.0(7)(c).

²⁶ Thirteenth Report at section 4.0(8)(d).

²⁷ CCAA, s. [36\(3\)\(f\)](#).

²⁸ Thirteenth Report at section 4.0(8)(f).

²⁹ *Veris Gold* at [paras 22 – 25](#); *Arrangement relative à Black Rock Metals Inc.*, [2022 QCCS 2828](#) at [para 95](#), citing *Harte Gold (Re)*, [2022 ONSC 653](#); see also *CCAA Plan of Arrangement – Clearbeach and Forbes (Re)*, [2021 ONSC 5564](#) at para [24](#), [25](#).

parties; (iii) the efficacy and integrity of the process by which offers were obtained; and (iv) whether there has been unfairness in the working out of the process.³⁰

20. The acquisition of the Core Claim by Viscount was subject to any other creditors and/or interested parties making a better offer to acquire the Core Claim. In this regard, on June 10, 2025, the Monitor provided notice (the “**Notice**”) by email to all known lenders and to the Service List soliciting any offers to take an assignment of the Core Claim by July 7, 2025. A copy of the Notice was also posted on the Case Website.³¹ The Monitor did not receive any other expression of interest in the Core Claim nor were any other offers submitted by the deadline of July 7, 2025.³² Further, Viscount advised the Monitor that it was not interested in having the Core Claim assigned and pursued in accordance with a process similar to Section 38 of the BIA, and neither the Secured Lender Representative Counsel nor the Unsecured Lender Representative Counsel expressed an interest in leading such a Section 38 process.³³ Accordingly, the process and transaction contemplated by the Core Claim Assignment Agreement viewed as a whole, is appropriate, fair, and reasonable in the circumstances and should be approved by this Court.

21. To the Monitor’s knowledge, Viscount is not a “related person” to the Applicants and accordingly subsection 36(5) of the CCAA is not applicable.³⁴

³⁰ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ON CA) at [para 16](#).

³¹ Thirteenth Report at section 4.0(5).

³² Thirteenth Report at section 4.0(6).

³³ Thirteenth Report at section 4.0(8)(e).

³⁴ Thirteenth Report at section 4.0(8)(g); and CCAA, s. [36\(5\)](#).

B. THE PROPOSED ANCILLARY MATTERS ORDER

The Stay Period should be Extended

22. Section 11.02(2) of the CCAA empowers courts to grant a stay extension, for any period that the court considers necessary, where a court is satisfied that: (a) circumstances exist which make such an order appropriate; and (b) the applicants have acted and are continuing to act in good faith and with due diligence.³⁵

23. 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.³⁶

24. Extending the Stay Period is necessary and appropriate in the circumstances, and the following factors support the extension of the Stay Period to January 31, 2026:

- (a) the Monitor is discharging its duties and obligations under the CCAA, the Expanded Powers Order and other orders made in these CCAA proceedings in good faith and with due diligence;
- (b) it will provide the time necessary for the Monitor to continue advancing the Court-approved Orderly Liquidation Plan, particularly listing for sale and realizing on the Remaining Liquidation Properties. In the Monitor’s view, the progress made to-date in carrying out the Orderly Liquidation Plan justifies extending these proceedings to provide the time necessary to complete the sale of the 54 Remaining Liquidation Properties;

³⁵ CCAA, ss. [11.02\(2\)-\(3\)](#).

³⁶ *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020; *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)) July 31, 2024.

- (c) the Monitor believes that no creditor will be materially prejudiced as a result of the extension of the Stay Period; and
- (d) the Cash Flow Forecast projects that there will be sufficient funding available to fund operations and the costs of these proceedings during the extension period.³⁷

The Thirteenth Report, the Monitor's Activities, and Fees and Disbursements of the Monitor and Cassels should be Approved

25. 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) allows 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 a 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.³⁸

26. This Court has approved prior Monitor's reports in these CCAA proceedings.³⁹ The Reports and the actions, conduct and activities of the Monitor described therein should be

³⁷ Thirteenth Report at section 7.0(2).

³⁸ *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23.

³⁹ See [SISP Approval Order dated April 12, 2024](#), the [Order dated June 24, 2024](#), the [Ancillary Order dated June 25, 2024](#), [Order Dated July 31, 2024](#), the [Restructuring Term Sheet and DIP Amendment Order](#) dated August 30, 2024, the [Approval of Replacement DIP Facility and Ancillary Matters](#) dated December 6, 2024, the [Credit Bid/ Liquidation](#)

approved, as the Monitor has acted reasonably and in good faith throughout these CCAA proceedings.

27. The Ancillary Matters Order also seeks to approve the fees and disbursements of the Monitor and its counsel, Cassels, incurred between April 1, 2025 to June 30, 2025.

28. 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.⁴⁰ The following factors assist a court in assessing the reasonableness of the Monitor’s fees:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Monitor’s knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.⁴¹

[Process Order](#) dated February 27, 2025, and the [Approval of Stay Extension, Second DIP Allocation, Orderly Liquidation Mechanics & Monitor’s Activities and Fees Order](#) dated April 14, 2025.

⁴⁰ *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#) [*Nortel 2022*].

⁴¹ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 33](#); *Nortel 2022* at [para 11](#).

29. Additionally, Courts will often consider whether fees and disbursements are “fair and reasonable in all circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process.”⁴²

30. The fee affidavits attached as Appendices “J” and “K” to the Thirteenth Report, provide detailed information on the fees and disbursements of the Monitor and of Cassels, in each case from April 1, 2025 to June 30, 2025.⁴³

31. 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.⁴⁴

PART IV - ORDER REQUESTED

32. For the reasons set out above, the Monitor respectfully requests that this Court grant the Proposed Orders.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of July, 2025.

Cassels Brock & Blackwell LLP

Cassels Brock & Blackwell LLP
Lawyers for the Monitor, KSV
Restructuring Inc.

⁴² *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at [para 13](#).

⁴³ Thirteenth Report at Appendix “J” and Appendix “K”.

⁴⁴ Thirteenth Report at section 9.0(6).

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Arrangement relative à Black Rock Metals Inc.*, [2022 QCCS 2828](#)
2. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
3. *CCAA Plan of Arrangement – Clearbeach and Forbes (Re)*, [2021 ONSC 5564](#)
4. *Consumers Packaging Inc., Re* (2001), 27 C.B.R. (4th) 197, [2001 CanLII 6708](#)
5. *Forme Development Group Inc. (Re)*, Court File No.: CV-18-608313-00CL ([Endorsement of Mr. Justice Hainey](#)) February 20, 2020
6. *Harte Gold (Re)*, [2022 ONSC 653](#)
7. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([SISP Approval Order](#)) dated April 12, 2024
8. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Order](#)) dated June 24, 2024
9. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Ancillary Order](#)) dated June 25, 2024
10. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Endorsement of Madame Justice Steele](#)) dated July 31, 2024
11. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Restructuring Term Sheet and DIP Amendment Order](#)) dated August 30, 2024
12. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Approval of Replacement DIP Facility and Ancillary Matters](#)) dated December 6, 2024

13. In the Matter of a Compromise or Arrangement of Balboa Inc. et. al, Court File No.: CV-24-00713245-00CL ([Credit Bid/Liquidation Process Order](#)) dated February 27, 2025
14. *In the Matter of a Compromise or Arrangement of Balboa Inc. et. al*, Court File No.: CV-24-00713245-00CL ([Approval of Stay Extension, Second DIP Allocation, Orderly Liquidation Mechanics & Monitor's Activities and Fees Order](#)) dated April 14, 2025
15. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
16. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492](#)
17. *Nortel Networks Inc.*, [2022 ONSC 6680](#)
18. *PCAS Patient Care Automation Services Inc. (Re)*, [2012 ONSC 3367](#)
19. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
20. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727](#) (ON CA)
21. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
22. *Veris Gold Corp. (Re)*, [2015 BCSC 1204](#)
23. *White Birch Paper Holding Co., Re*, [2010 QCCS 4915](#)

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date July 24, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY – LAWS

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

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.

Factors to be considered

36(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.

Related persons

36(5) For the purpose of subsection (4), a person who is related to the company includes

- (a) a director or officer of the company;
 - (b) a person who has or has had, directly or indirectly, control in fact of the company;
- and
- (c) a person who is related to a person described in paragraph (a) or (b)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MONITOR
(RETURNABLE ON JULY 28, 2025)

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