

**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 PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO B+H ARCHITECTS CORP.
(the “Applicant”)

FACTUM OF THE APPLICANT
(Approval and Reverse Vesting Order and Stay Extension and Ancillary Relief Order)
(Returnable December 30, 2025)

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PART I. INTRODUCTION

1. B+H Architects Corp. (“**BHA**”) seeks approval of a going concern sale transaction (the “**Transaction**”) pursuant to the Investment Agreement,¹ and certain related relief.
2. The Transaction is the only viable transaction identified through the extensive, court-supervised sale and investor solicitation process (“**SISP**”) and the only going concern option available to BHA and its stakeholders.
3. The reverse vesting order (“**RVO**”) structure of the Transaction is clearly required in this case. Not only is it a condition of the Investment Agreement but it is also required to preserve key contracts (including significant contracts that are subject to public procurement processes) and preserve significant tax losses. Without this structure, value would be destroyed and the going concern outcome would be jeopardized.
4. The Transaction delivers the highest and best outcome for stakeholders in the circumstances. It provides for a going concern solution for the benefit of employees, suppliers and clients, which can be implemented quickly in a manner that best preserves the essential yet delicate employee and client relationships. The Transaction also delivers cash value to be distributed to the creditors of ResidualCo.
5. The Approval and Reverse Vesting Order and the Stay Extension and Ancillary Relief Order should be granted.

¹ Any capitalized terms used but not otherwise defined herein have the meanings given to them in the Affidavit of Patrick Fejér, sworn December 23, 2025 (“**Fourth Fejér Affidavit**”), Motion Record of B+H Architects Corp. dated December 23, 2025 (“**Motion Record**”), Tab 2.

PART II. THE FACTS

6. The facts in support of this motion are more fully set out in the Affidavit of Patrick Fejér dated December 23, 2025 (the “**Fourth Fejér Affidavit**”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Fourth Fejér Affidavit.

A. BHA’s Business and Key Relationships

7. BHA is an architecture and design firm headquartered in Toronto, Ontario, operating under the “B+H” brand.² BHA has historically relied on BHI to deliver essential business services to support the work performed by BHA’s Ontario licensed architects, including administrative, financial and accounting services.³

8. Due to various financial constraints, BHA required additional financing to continue operations the week ending October 17, 2025, the day that the Initial Order was granted.⁴ SJHC supported BHA by providing “DIP” financing and acting as the Stalking Horse Bidder.⁵

B. BHA’s Key Assets

9. BHA is a services business. Its key assets are its people and client relationships, with the main realizable assets being accounts receivable, contract assets/prepaid expenses and cash.⁶

² Fourth Fejér Affidavit at para. 7, Motion Record, Tab 2.

³ Fourth Fejér Affidavit at para. 9, Motion Record, Tab 2.

⁴ Fourth Fejér Affidavit at para. 13, Motion Record, Tab 2.

⁵ Fourth Fejér Affidavit at para. 14, Motion Record, Tab 2.

⁶ Fourth Fejér Affidavit at para. 15, Motion Record, Tab 2.

C. BHA's Key Liabilities

10. BHA has limited secured debt. In addition to the DIP financing provided by SJHC and the CCAA Charges, the only other material registration relates to certain equipment which the Stalking Horse Bidder will assume.⁷

11. BHA is not aware of any other priority claims. It is current in its statutory remittances and payroll obligations.⁸

12. The asserted unsecured creditor claims against BHA include:

- (a) the Arbitral Award to SDIC, totalling approximately \$25 million (plus any applicable costs, interest and fees);
- (b) Contingent litigation claims (the “**Litigation Claims**”), consisting of contested claims by:
 - (i) Stantec Consulting Ltd. seeking \$1,590,136.26 plus interest for unpaid invoices;
 - (ii) Three defendants seeking contribution and indemnity from BHA relating to a slip and fall claim by Paula Christine Barnett seeking \$200,000;
 - (iii) Plenary Health Milton LP seeking \$2,000,000 against a number of parties, including BHA, due to alleged deficiencies in a project;

⁷ Fourth Fejér Affidavit at para. 20, Motion Record, Tab 2.

⁸ Fourth Fejér Affidavit at para. 22, Motion Record, Tab 2.

- (c) A judgment in Dubai in favour of Al-Marasem North Coast Resort Development in the amount of USD \$42,000 plus AED \$20,000 plus fees and expenses; and
- (d) Pre-filing amounts to suppliers and sub-contractors.⁹

13. Certain of the Litigation Claims are insured:

- (a) The Arbitration Insurance applies in respect of claims that were reported thereunder prior to the expiry of the policy on April 30, 2022.¹⁰ This includes the Arbitral Award but does not include any of the other Litigation Claims. The amount remaining in the Arbitration Insurance is less than the amount of the Arbitral Award. The Arbitration Insurance is also funding costs of an arbitration claim by BHA against a structural design sub-consultant (the “**UAE Sub-Consultant**”) in a confidential arbitration in the UAE (the “**Sub-Consultant Arbitration**”). No amounts have been recovered in that arbitration to date and SJHC and SDIC have indicated a preference that it be abandoned.¹¹
- (b) BHA also holds three insurance policies that act as primary or excess coverage for two outstanding litigation claims. Specifically, the claim involving Plenary Health Milton is covered by a project specific insurance policy with Allianz, professional liability insurance with Pro-Demnity, and excess coverage under a global program with AON. The claim involving Paula Christine Barnett is covered by the professional liability insurance with Pro-Demnity, with excess coverage under a

⁹ Fourth Fejér Affidavit at para. 23, Motion Record, Tab 2.

¹⁰ Fourth Fejér Affidavit at para. 19, Motion Record, Tab 2.

¹¹ Fourth Fejér Affidavit at paras. 17-18, Motion Record, Tab 2.

global program with AON.¹² The asserted claims involving Paula Christine Barnett and Plenary Health Milton LP are lower than the coverage limit of insurance policies that may be applicable, although these claims remain contested and defended by the primary insurer.¹³

D. The CCAA Process and SISP

14. The Initial Order was granted on October 17, 2025, as later amended and restated on October 27, 2025.¹⁴ Also on October 27, 2025, the Applicant obtained a Sale and Investment Solicitation Process Order, which approved the SISP and the Original Investment Agreement solely for the purpose of constituting the Stalking Horse Bid under the SISP (the “**SISP Order**”).¹⁵

15. Beginning on October 21, 2025, the Monitor distributed 93 Teaser Letters and NDAs to potential bidders and published a notice of the SISP in Canadian Newswire, Canadian Architect Magazine, the Globe and Mail and Insolvency Insider.¹⁶ 11 parties executed NDAs and were entitled to participate in Phase 1 of the SISP.

16. On November 12, 2025, prior to the Phase 1 Bid Deadline and in accordance with the Original Investment Agreement, the Stalking Horse Bidder submitted a notice (the “**November**

¹² Fourth Fejér Affidavit at para. 19, Motion Record, Tab 2.

¹³ Fourth Fejér Affidavit at para. 25, Motion Record, Tab 2.

¹⁴ Fourth Fejér Affidavit at para. 29, Motion Record, Tab 2.

¹⁵ Fourth Fejér Affidavit at para. 31, Motion Record, Tab 2.

¹⁶ Fourth Fejér Affidavit at para. 35, Motion Record, Tab 2.

12 Notice”) setting out the Contracts to be excluded, the employees to be designated as Terminated Employees and an estimate of the Purchase Price value at Closing.¹⁷

17. At the Phase 1 Bid Deadline, one bid was received. After consideration of the bid and SISP criteria, BHA and the Monitor, determined that the process should continue to Phase 2.¹⁸

18. To ensure that any Successful Bid in the SISP exceeded the anticipated liquidation value for the BHA assets, the Monitor prepared a liquidation analysis and made it available in the data room on November 28, 2025, as later amended on December 9, 2025.¹⁹

19. At the Phase 2 Bid Deadline, no binding bids were received in addition to the Original Investment Agreement.²⁰

20. After reviewing the Liquidation Analysis and coordinating with the Monitor, the Stalking Horse Bidder agreed to make certain enhancements to the Original Investment Agreement and the Applicant and the Stalking Horse Bidder are in the process of entering into an agreement to amend the Original Investment Agreement (the “**Amendment Agreement**” and the Original Investment Agreement, as amended by the Amendment Agreement, the “**Investment Agreement**”).²¹

21. In particular, the form of Amendment Agreement is expected to include the following:
(i) an increase of the cash consideration component of the Purchase Price by \$2,470,000, less any increases to the outstanding principal amounts under the DIP Facility and any greater than

¹⁷ Fourth Fejér Affidavit at para. 41, Motion Record, Tab 2.

¹⁸ Fourth Fejér Affidavit at paras. 47-48, Motion Record, Tab 2.

¹⁹ Fourth Fejér Affidavit at para. 53, Motion Record, Tab 2.

²⁰ Fourth Fejér Affidavit at para. 55, Motion Record, Tab 2.

²¹ Fourth Fejér Affidavit at para. 56, Motion Record, Tab 2.

anticipated expenditure of cash-on-hand relative to the proposed cash flow; (ii) an agreement to continue the employment of all existing BHA employees, including the two employees that had previously been designated as Terminated Employees; (iii) an agreement to designate the Arbitration Insurance and any portion of the costs deposit that is returned to BHA from the arbitration panel in the Sub-Consultant Arbitration as an Excluded Asset; and (iv) an agreement that the Stalking Horse Bidder will use commercially reasonable efforts to complete a wind down of B+H Architects Corp. (Dubai Branch).²²

E. Investment Agreement

22. The key terms of the Investment Agreement include:

- (a) the Purchase Price includes (i) all amounts outstanding under the DIP Loan at Closing, including interest and fees (the “**Credit Bid Amount**”), plus (ii) (A) \$2,470,000 in cash plus (less certain amounts such as increases in principal under the DIP Loan) (B) to the extent not funded as part of the DIP Loan or cash on hand at the Company, cash consideration sufficient to satisfy (i) any unpaid amounts secured by the Priority Charges and (ii) an Administrative Wind-Down Amount of \$100,000 (plus HST) to satisfy costs to administer ResidualCo (the “**Additional Cash Consideration**”);
- (b) the Company shall issue new Subscribed Shares to the Purchaser, and cancel all other Equity Interests;

²² Fourth Fejér Affidavit at paras. 54-55, Motion Record, Tab 2.

- (c) no employees are designated as Terminated Employees such that all employees will be retained;
- (d) the Excluded Assets, Excluded Liabilities and Excluded Contracts will be transferred to newly incorporated ResidualCo:
 - (i) the cash component of the Additional Cash Consideration in excess of the amount required for priority claims, CCAA Charges and wind-down costs (the “**Excluded Cash**”) will be paid to ResidualCo as an Excluded Asset and distributed amongst the creditors of ResidualCo with valid, proven claims;
 - (ii) Excluded Liabilities shall include among other things, the Arbitration Award and Liabilities relating to any change of control provision that may arise in connection with the Transaction;
 - (iii) Excluded Contracts include all contracts related to the Qaryat Al Hidd Resort Community Project (including those contracts with SDIC and the UAE Sub-Consultant), Al-Marasem North Coast Resort project and those with Stantec Consulting Ltd.²³

PART III. ISSUES AND THE LAW

23. The issues before this Court are as follows:

²³ Fourth Fejér Affidavit at para. 59, Motion Record, Tab 2.

- (a) Should the proposed Transaction and related relief, including releases, be approved and the reverse vesting order structure found in the proposed Approval and Reverse Vesting Order be approved? ***Yes. The Transaction is the highest and best bid received after completing the court-approved SISP; the reverse vesting structure is imperative to maintain value; and the releases are fair and appropriate in the circumstances.***
- (b) Should the powers of the Monitor be extended in relation to the newly incorporated ResidualCo? ***Yes, it is appropriate to extend the Monitor's powers to ensure that ResidualCo is able to complete any distributions and complete the remaining steps prior to completion of the CCAA.***
- (c) Should the Stay Period be extended? ***Yes, it is appropriate to grant the extension of the Stay Period to February 13, 2026 to enable the Transaction to close and to allow the parties to move towards a distribution to creditors of ResidualCo and subsequent termination of these CCAA proceedings.***
- (d) Should a Sealing Order be granted over the confidential information? ***Yes, it is appropriate to seal the information relating to the remaining insurance proceeds to prevent prejudice in the ongoing Sub-Consultant Arbitration and to seal information relating to the Phase 1 Bids to protect the integrity of the sales process.***

A. The Transaction and Approval and Reverse Vesting Order Should be Approved

(i) Reverse Vesting Structure is Appropriate

24. The proposed Approval Order contemplates a “reverse vesting” acquisition.

25. RVOs are often described as an extraordinary remedy. However, recent case law has held that RVO’s are no longer extraordinary. Rather “RVOs are now a common way for insolvency and restructuring matters to be resolved.”²⁴

26. Nonetheless, the Court must be satisfied that it is necessary and appropriate to structure the transaction in this manner and “[a]n RVO is not to be granted merely because it may be more convenient or beneficial for the purchaser. There must be an evidence-based rationale for value in the proposed RVO transaction.”²⁵ In this case, the RVO is necessary to preserve this licensed architecture services business and tax losses.

(ii) Jurisdiction to Grant RVO and Applicable Test

27. The jurisdiction to approve a transaction through an RVO is found in section 11 of the CCAA, which gives the Court broad powers to make any order it considers appropriate in the circumstances.²⁶

²⁴ *Cleo Energy Corp (Re)*, [2025 ABKB 621](#) at [para. 10](#).

²⁵ *Atlas Global Brands Inc.*, [2024 ONSC 5570](#) at [para 51](#), citing to *MCAP Financial Corporation v. QRD (Willoughby) Holdings Inc.*, [2024 BCSC 1654](#).

²⁶ *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) [*Harte Gold*] [para. 37](#); *Tacora Resources Inc. (Re)*, [2024 ONSC 4436](#) [*Tacora Resources*], at [para. 6](#); and *Xplore Inc. (Re)*, [2024 ONSC 5250](#) [*Xplore*] at [para. 54](#).

28. While an RVO is not strictly a sale of assets, many Courts also have reference to section 36 of the CCAA, which permits court approval for the sale of a debtor's assets outside of the ordinary course of business.²⁷

29. Section 36 of the CCAA provides that Courts are to consider the following factors in approving a sale:

- (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 with 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.²⁸

30. The section 36(3) factors are, on their face, not intended to be exhaustive and “need not all be fulfilled” or met to grant an order under section 36.²⁹ For example, Courts have also considered if there is another viable option for an exit from the CCAA proceedings and whether

²⁷ *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354 \[Just Energy\]](#), paras. 29-33; *Harte Gold*, [paras. 27-36](#).

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

²⁹ *White Birch Paper Holding Co (Re)*, [2010 QCCS 4915](#), para. 48.

other offers were obtained in the SISP.³⁰ Courts have held that lack of opposition is a relevant consideration in the court's exercise of its discretion under s. 11 and s. 36(3) of the CCAA.³¹

31. Additionally, pursuant to section 36(4) of the CCAA, the Court may only approve a sale to a related person if it is satisfied that: (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the Applicant; and (b) the consideration to be received is superior to the consideration that would be received under any other offer made in the SISP.³²

32. The section 36 factors have considerable overlap with the *Soundair* principles, which include: (a) whether the debtor company has made sufficient effort to obtain the best price and has not acted improvidently; (b) whether the debtor company has considered the interests of all parties; (c) the efficacy and integrity of the offer process; and (d) whether there has been unfairness in the process.³³

33. In the RVO context, the Court will consider the following factors set out by Justice Penny in *Harte Gold Corp. (Re)* (the “**Harte Gold Factors**”)³⁴:

(a) why is the RVO necessary in this case?

³⁰ *Just Energy*, [paras. 54-55](#).

³¹ *Tacora Resources* at [para. 8](#).

³² *CCAA*, [s. 36\(4\)](#).

³³ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727, 4 O.R. \(3d\) 1 \(ONCA\)](#).

³⁴ *Harte Gold* at [para. 38](#), which has been followed in other cases, see *Acerus Pharmaceuticals Corporation (re)*, [2023 ONSC 3314](#) at [para. 12](#); *Delta 9 Cannabis Inc (Re)*, [2025 ABKB 52](#), at [para. 61](#); *Invico Diversified Income Limited Partnership v. NewGrange Energy Inc.*, [2024 ABKB 214](#), at [para. 20](#).

- (b) does the RVO structure produce an economic result at least as favourable as any other viable alternative?
- (c) is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?
- (d) does the consideration being paid for the debtor's business reflect the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure.

(iii) The Transaction meets the Applicable Tests and Should be Approved

34. RVOs are appropriate in circumstances in which there are assets that are difficult to transfer to the purchaser through a typical asset sale. Specifically, where debtors operate in a highly regulated environment, having permits or licenses in their name or who are parties to key agreements that are difficult to assign without an RVO.³⁵

35. As Justice Kimmel noted in *Xplore Inc. (Re)*,³⁶ “there are many examples of cases in which RVOs have been used to avoid the expense, delay and uncertainty of an asset sale where there are valuable assets, but some that might be difficult or impossible to transfer to a purchaser (such as licences and tax attributes) and where there are unwanted liabilities (rendering a traditional share sale undesirable for a purchaser)”.

³⁵ *Arrangement relatif à Elna Medical Group inc. / Groupe médical Elna inc.*, [2025 QCCS 3880](#) at [para. 36](#). See also *Just Energy* at [para. 36](#); *Delta 9* at [para. 68](#); *Arrangement relative à Nemaska Lithium*, [2020 QCCA 1488](#), at [para 5](#); *Quest University (re)*, [2020 BCSC 1883](#), at [para. 173](#).

³⁶ *Xplore* at [para. 59](#), citing to *Harte Gold* at [para. 71](#); *Tacora Resources* at [para. 7](#); *Just Energy* at paras. [34](#), [40](#) and [41](#).

36. Similarly, in *Just Energy*,³⁷ Justice McEwen noted that reverse vesting orders have been approved in circumstances in which:

- (a) The debtor operated in a highly-regulated environment in which its existing permits, licenses or other rights were difficult or impossible to reassign to a purchaser.
- (b) The debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser.
- (c) Where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.

37. Similar circumstances apply in this case and the reverse vesting order structure is necessary to preserve the going concern value of the BHA business. In particular, the RVO is required to, (i) preserve client contracts including contracts with public clients such as hospitals that require a public procurement process, and (ii) preserve BHA tax losses.

38. As a services business without typical “hard” assets, the core of the BHA business is its portfolio of client contracts and relationships. While client contracts are centrally important to BHA’s business and revenue, in general, they may be terminated by clients without cause.³⁸

39. A transaction structure that requires an assignment of contracts to a new entity would create a greater risk of contract terminations. In addition, approximately 25% of the BHA client

³⁷ *Just Energy* at [para. 34](#).

³⁸ Fourth Fejér Affidavit at para. 62, Motion Record, Tab 2.

contracts by value are contracts with public entities such as hospitals in which BHA was selected following a public procurement process.³⁹

40. If BHA or the purchaser were to seek an assignment of such contracts, then a new procurement process would be triggered. Such a process would not only require the new buyer to compete for the business again but also, the procurement process typically takes anywhere from six to nine months.⁴⁰ The reverse vesting structure will allow the contracts to remain in place with the same entity that was selected in the procurement process, thereby best preserving these key BHA assets.

41. Lastly, the reverse vesting structure will allow the preservation of nearly \$37 million of tax losses which no other structure would be able to similarly preserve.⁴¹

42. Accordingly, the fundamental assets being sold in this process – which enable the BHA business to be sold and continued as a going concern – are assets that would be difficult or impossible to transfer through a traditional asset sale. The RVO is required by the Purchaser to protect this value and is demonstrably necessary in this case.

43. In addition, the economic result of the RVO is at least as favourable as any other viable alternative, no stakeholder is worse off under the RVO structure and the consideration being paid for the debtor's business reflect the importance and value of the RVO structure.

44. There is no other viable alternative available other than a liquidation. No other bids were received at the Phase 2 Bid Deadline and the other Phase 1 Bids contemplated an RVO structure

³⁹ Fourth Fejér Affidavit at para. 63, Motion Record, Tab 2.

⁴⁰ Fourth Fejér Affidavit at para. 63, Motion Record, Tab 2.

⁴¹ Fourth Fejér Affidavit at paras. 65-66, Motion Record, Tab 2.

as well.⁴² Considering the amendment to the Stalking Horse Bid to increase the Purchase Price, the Monitor is satisfied that no creditor will be worse off when compared to the likely median outcome in a liquidation.⁴³

45. The Investment Agreement provides for a going concern solution that will improve outcomes for employees (all of whom will be retained at Closing) as well as other suppliers and subcontractors and will reduce the claims against the creditor pool by assuming obligations relating to contracts and any intercompany debt.⁴⁴

46. In addition, a CCAA plan at this stage would impose additional costs and delays that would imperil the ability of BHA to close the Transaction prior to the Outside Date and would threaten the stability of the business. BHA is facing mounting pressure to close the Transaction rapidly and exit the CCAA proceedings to protect and preserve the business.

47. Ultimately, the Transaction is fair and reasonable in the circumstances and represents the best available option for stakeholders, because, among other things:

- (a) it is the result of a robust, transparent and fair canvassing of the market which was carried out with the Monitor's oversight pursuant to the Court-approved SISP for a period of nearly seven weeks;
- (b) the Transaction is the only viable bid at the end of the SISP despite good faith efforts to identify other parties;

⁴² Fourth Fejér Affidavit at paras. 55, 48, Motion Record, Tab 2.

⁴³ Fourth Fejér Affidavit at para. 71, Motion Record, Tab 2.

⁴⁴ Fourth Fejér Affidavit at para. 72, Motion Record, Tab 2.

- (c) SJHC as BHA's only secured financier and the 100% shareholder of BHI, is a logical purchaser that is familiar with, and well positioned to continue the business for the benefit of BHA's stakeholders;
- (d) BHA and the Monitor considered the interests of all stakeholders, and consulted with key stakeholders throughout the process. The Transaction is supported by SJHC and BHI;
- (e) the Transaction provides a going concern solution for the BHA business that is a better outcome for stakeholders than a liquidation. Among other things, it:
 - (i) allows all employees to continue to be employed by the Purchaser at Closing; and
 - (ii) provides for the restructured BHA to continue in business, allowing it to service clients and engage with suppliers and other stakeholders post-Closing;
- (f) the consideration provided in the Investment Agreement is higher than the consideration offered under any other offer received in the SISP (including any Phase 1 Bids);
- (g) the Monitor is supportive of the approval of the Transaction and will describe the Liquidation Analysis in its Third Report; and

- (h) the *Harte Gold* factors are met. The reverse vesting structure is necessary and appropriate and delivers an economic result for stakeholders at least as favourable as any other viable alternative.⁴⁵

B. The Releases Should be Approved

i) *D&O and Advisor Releases*

48. The proposed Approval and Reverse Vesting Order seeks releases (the “**Releases**”) in favour of:

- (a) the current directors, officers, employees, legal counsel and advisors of BHA, the Purchaser (in such capacity and as DIP Lender), BHI and/or ResidualCo;
- (b) the Monitor and its legal counsel, and their respective current and former directors, officers, partners, employees, legal counsel and advisors (collectively, the “**Released Parties**”).

49. The Releases release matters arising out of or relating to: (i) the business, operations, assets, property and affairs of BHA, the administration and/or management of BHA and these CCAA Proceedings; or (ii) the Investment Agreement, any agreement, document, instrument, matter or transaction involving BHA arising in connection with or pursuant to any of the foregoing, and/or the consummation of the Transaction (the “**Released Claims**”).

50. The proposed Releases do not seek to release:

⁴⁵ Fourth Fejér Affidavit at para. 85, Motion Record, Tab 2.

- (a) any claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA or claim with respect to any act or omission that is determined in a final order to have constituted actual fraud or wilful misconduct; or
- (b) any obligations of any of the Released Parties under or pursuant to the Investment Agreement.

51. The Court has the power to sanction third-party releases and should take into consideration the factors set out in *Lydian* when deciding whether to grant releases of third parties. No one factor is determinative, but the Court will consider, among other things, whether the releases benefit the debtors and creditors generally and whether the releases are fair, reasonable and not overly broad.⁴⁶

52. The factors, which also apply to granting releases in an RVO, include the following:

- (a) whether the parties to be released were necessary to the restructuring of the debtor;
- (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it;
- (c) whether the restructuring could succeed without the releases;
- (d) whether the parties being released contributed to the restructuring; and

⁴⁶ *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at [para. 54](#).

- (e) whether the releases benefit the debtors as well as the creditors generally.⁴⁷

53. A Court will also consider whether releases in a proposed transaction are “proportional in scope and consistent with releases granted in similar CCAA proceedings.”⁴⁸

54. In this case, the Releases should be approved because:

- (f) the proposed Releases are limited, sufficiently narrow and do not release any claim that is not permitted under section 5.1(2) of the CCAA, with respect to any act or omission that is determined by a court of competent jurisdiction to be constituted actual fraud or willful misconduct, or any obligations of the Released Parties in connection with the proposed Transaction;
- (g) the Released Parties have contributed significantly and in tangible ways to the CCAA Proceedings. They have assisted with: (i) ensuring the stability of the business during the CCAA Proceedings, (ii) continuing to work on ongoing projects, (iii) developing and conducting the SISP; and/or (iv) negotiating and preparing for the closing of the Transaction. In the case of the DIP Lender, it has also contributed by making the DIP Facility available, thereby funding the Applicant’s operations, professional fees and other amounts during these CCAA proceedings. In the case of BHI, it has provided ongoing services throughout the CCAA proceedings, including critical financial services in cooperation with the Monitor;

⁴⁷ *Blackrock Metals* at [para. 130](#), citing *Re Lydian International Limited*, [2020 ONSC 4006](#), at [para. 54](#); *Metcalfe & Mansfield Alternative Investments II Cord. (Re)*, [2008 ONCA 587](#).

⁴⁸ *Just Energy*, [para. 67](#).

- (h) the contributions of the Released Parties directly resulted in the completion of the SISP and successful negotiation of the proposed Transaction including the continued employment of the majority of the BHA employees and the future exit from the CCAA proceedings;
- (i) the proposed Releases are necessary to bring finality to the CCAA proceedings, facilitate the release of the Court-ordered charges, including the Directors' Charge, without requiring a reserve for potential claims that would prevent the proposed Transaction from Closing, and to protect the Released Parties from the Released Claims; and
- (j) the Monitor and SJHC supports the Releases.

55. The Releases meet the factors in *Lydian* and are necessary to the closing of the Transaction and the completion of the CCAA Proceedings. There are numerous examples where such releases have been granted in RVO transactions.⁴⁹

ii) Excluded Claims Release

56. In addition to the Releases, the Approval and Reverse Vesting Order also provides that all Excluded Liabilities are excluded and no longer binding on BHA post-closing and that the "Purchased Entity's Property" is released and discharged from all Expunged Claims, including all Excluded Liabilities, which continue to exist only against the Excluded Assets and Excluded

⁴⁹ *Just Energy*, para 67; *Harte Gold*, para. 79; *Re Pure Gold Mining Inc.*, Court File No. S-228723 (BC), Approval and Vesting Order dated May 29, 2023, para. 29; *Re Clarkson Road Developments GP Inc., Clarkson Road Holdings Inc., and 2813427 Ontario Inc.*, Court File No. CV-24-00719589-00CL, Transaction Approval and Reverse Vesting Order dated September 11, 2025 at para. 17; *Contract Pharmaceuticals Limited et al.* (Court File No. CV-23-711401-00CL), Approval and Reverse Vesting Order issued April 17, 2024 at para. 24.

Liabilities vested in ResidualCo (the “**Excluded Claims Release**”). This is a typical and essential component of a RVO.

57. There are two limited exceptions to the Excluded Claims Release. They relate to (i) the two outstanding Litigation Claims against BHA, that are disputed and that were being defended by insurance as set out in paragraph 23 above (the “**Insured Litigation Claims**”); and (ii) the portion of the SDIC Claim to be satisfied from the Insurance Funds (the “**SDIC Insured Claim**”). The Insured Litigation Claims and SDIC Insured Claim will not be transferred to ResidualCo but rather BHA shall be forever released and discharged from such claims *except* and solely to the extent necessary to pursue recovery from the applicable insurance policies held by BHA, with any recovery coming solely from insurance (if any).⁵⁰

58. This treatment will allow the claimants to proceed against insurance and recover solely from insurance to the extent of any proven claim, without prejudicing any right, defence or obligation of any insurer. This kind of channelling relief has been granted in other cases⁵¹ and is appropriate here to enable the claimants to continue to pursue their claims against insurance, which has limits exceeding the claimed amounts.

C. The Expanded Monitor Powers Should be Approved

59. The Applicant is seeking an order expanding the powers of the Monitor to, among other things, authorize the Monitor to take all actions required to facilitate the administration of

⁵⁰ Fourth Fejér Affidavit at paras. 82-84, Motion Record, Tab 2.

⁵¹ See e.g. *In the Matter of a Plan of Compromise or Arrangement of Razor Energy Corp. et al.* (Court File No. 2401-02680), [Approval and Reverse Vesting Order](#) granted by the Honourable Justice B.E.C. Romaine dated December 6, 2024 at paras. 28-29; *IMV Inc. et al.* (Court File No. 523334), *In the Matter of a Plan of Compromise or Arrangement of IMV Inc. et al.*, [Order](#) granted by the Honourable Justice John P. Bodurtha dated October 18, 2023 at paras. 5-6; See *In the Matter of a Plan of Compromise or Arrangement of Li-Cycle Holdings Corp. et al.* (Court File No. CV-25-00743053-00CL) [Approval and Vesting Order](#) granted by the Honourable Justice Kimmel dated August 1, 2025 at para. 33.

ResidualCo and authorize and empower the Monitor to take all actions necessary to, among other things, bankrupt ResidualCo. This relief is intended to facilitate the RVO structure and has been granted in other RVO cases.⁵²

60. A decision maker will be needed to oversee ResidualCo while it is administered, which steps will involve distributing the available Cash Consideration in ResidualCo to the Applicant's creditors.

61. Section 23(1)(k) of the CCAA directs that a Monitor shall carry out "any other functions in relation to the company that the court may direct".⁵³ It is customary to grant relief expanding the Monitor's powers in an RVO.⁵⁴

62. The proposed expanded powers of the Monitor are reasonable and appropriate in the circumstances because ResidualCo will need a decision maker to oversee its administration. The Monitor has the experience necessary to oversee ResidualCo and the Monitor consents to having its powers expanded.

D. The Stay Period Should be Extended

63. The Stay Period currently expires on December 17, 2025. The Applicant is seeking to extend the Stay period until February 13, 2026.

⁵² See for example, *In the Matter of a Plan of Compromise or Arrangement of Quest University*, Court File No. S-200586 (BC), [Order Made After Application](#) – Expansion of Monitor's Powers and Stay Extension dated December 17, 2020, para. 3; *Re Clarkson Road Developments GP Inc., Clarkson Road Holdings Inc., and 2813427 Ontario Inc.*, Court File No. CV-24-00719589-00CL, [Transaction Approval and Reverse Vesting Order](#) dated September 11, 2025.

⁵³ CCAA, s. 23(1)(k).

⁵⁴ *In the Matter of a Plan of Compromise or Arrangement of Just Energy*, [Monitor's Enhanced Powers & Other Relief Order](#) dated November 3, 2022, para. 3; Harte Gold, [paras. 91-93](#); *In the Matter of a Plan of Compromise or Arrangement of Quest University*, Court File No. S-200586 (BC), [Order Made After Application](#) – Expansion of Monitor's Powers and Stay Extension dated December 17, 2020, para. 3

64. Section 11.02(2) of the CCAA gives the court the discretion to grant or extend a stay of proceedings, “for any period that the court considers necessary”.⁵⁵ Pursuant to section 11.02(3) of the CCAA, to exercise its discretion to extend the stay of proceedings, the court must be satisfied that: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted and is acting in good faith and with due diligence.⁵⁶

65. The court will consider, among other factors, whether the debtor company has sufficient available cash resources during the proposed extension of the Stay Period, and whether the Monitor supports the requested stay extension.⁵⁷

66. The extension of the Stay Period will assist with time to address the process to determine claims against ResidualCo and next steps towards terminating the CCAA proceedings post-closing of the Transaction.⁵⁸

67. The Applicant have continued to act in good faith and with due diligence.⁵⁹ There is adequate liquidity to fund the remaining operations and activities during the proposed extension of the Stay Period. The Applicant will be able to utilize its own funds before Closing, and thereafter will have the Administrative Wind-Down Amount from the Purchaser to the extent required, to assist with the administration of ResidualCo.⁶⁰

⁵⁵ CCAA, s. 11.02(2).

⁵⁶ CCAA, s. 11.02(3).

⁵⁷ *Canwest Global Communications Corp. (Re.)*, [2009 CanLII 63368](#) (O.N.S.C.) at [para. 43](#).

⁵⁸ Fourth Fejér Affidavit at para. 93, Motion Record, Tab 2.

⁵⁹ Fourth Fejér Affidavit at para. 94, Motion Record, Tab 2.

⁶⁰ Fourth Fejér Affidavit at para. 95, Motion Record, Tab 2.

68. The requested stay extension is supported by the Monitor. No creditor will be materially prejudiced by the requested extension.⁶¹

E. Sealing Order Appropriate

69. The Applicant seeks sealing of over the confidential summary of the Phase 1 Bids and Liquidation Analysis attached to the Third Report. These documents contain commercially sensitive information and should be sealed prevent any negative impact to realization efforts in the event that the Transaction does not close. Courts have previously held that sealing bid summaries⁶² meet the test in *Sherman Estates* and is appropriate.⁶³

70. The Applicant also seeks sealing of a summary of the approximate remaining coverage amounts pursuant to the Arbitration Insurance which is commercially sensitive information and should be sealed to prevent negative impacts to the insurer.

PART IV. ORDER REQUESTED

71. For the reasons set out above, the Applicants request that this Court grant the proposed Approval and Reverse Vesting Order and the Stay Extension and Ancillary Relief Order.

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

McCarthy Tétrault LLP

Lawyer for the Applicant

⁶¹ Fourth Fejér Affidavit at paras. 96-97, Motion Record, Tab 2.

⁶² See e.g. *In the Matter of a Plan of Compromise or Arrangement of The Body Shop Canada Limited* (Court File No. CV-24-00723586-00CL), [Approval and Vesting Order](#) granted by the Honourable Justice Osborne dated February 13, 2024 at para. 14.

⁶³ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)
2. *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828
3. *Arrangement relatif à Elna Medical Group inc. / Groupe médical Elna inc.*, [2025 QCCS 3880](#)
4. *Arrangement relatif à Nemaska Lithium*, [2020 QCCA 1488](#)
5. *Atlas Global Brands Inc.*, [2024 ONSC 5570](#)
6. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 63368](#) (O.N.S.C.)
7. *Contract Pharmaceuticals Limited et al. (Court File No. CV-23-711401-00CL)*, [Approval and Reverse Vesting Order issued April 17, 2024](#)
8. *Cleo Energy Corp (Re)*, [2025 ABKB 621](#)
9. *Delta 9 Cannabis Inc (Re)*, [2025 ABKB 52](#)
10. *Harte Gold Corp. (Re)*, [2022 ONSC 653](#)
11. *In the Matter of a Plan of Compromise or Arrangement of IMV Inc. et. al.*, [Order](#) granted by the Honourable Justice John P. Bodurtha dated October 18, 2023
12. *In the Matter of a Plan of Compromise or Arrangement of Just Energy*, [Monitor’s Enhanced Powers & Other Relief Order](#) dated November 3, 2022
13. *In the Matter of a Plan of Compromise or Arrangement of Li-Cycle Holdings Corp. et. al. (Court File No. CV-25-00743053-00CL)* [Approval and Vesting Order](#) granted by the Honourable Justice Kimmel dated August 1, 2025
14. *In the Matter of a Plan of Compromise or Arrangement of Quest University*, Court File No. S-200586 (BC), [Order Made After Application](#) – Expansion of Monitor’s Powers and Stay Extension dated December 17, 2020
15. *In the Matter of a Plan of Compromise or Arrangement of Razor Energy Corp. et al. (Court File No. 2401-02680)*, [Approval and Reverse Vesting Order](#) granted by the Honourable Justice B.E.C. Romaine dated December 6, 2024
16. *In the Matter of a Plan of Compromise or Arrangement of The Body Shop Canada Limited (Court File No. CV-24-00723586-00CL)*, [Approval and Vesting Order](#) granted by the Honourable Justice Osborne dated February 13, 2024
17. *Invico Diversified Income Limited Partnership v. NewGrange Energy Inc.*, [2024 ABKB 214](#)
18. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, [2022 ONSC 6354](#)
19. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)

20. *MCAP Financial Corporation v. QRD (Willoughby) Holdings Inc.*, [2024 BCSC 1654](#)
21. *Metcalfe & Mansfield Alternative Investments II Cord. (Re)*, [2008 ONCA 587](#)
22. *Quest University (re)*, [2020 BCSC 1883](#)
23. *Re Clarkson Road Developments GP Inc., Clarkson Road Holdings Inc., and 2813427 Ontario Inc.*, Court File No. CV-24-00719589-00CL, [Transaction Approval and Reverse Vesting Order dated September 11, 2025](#)
24. *Re Green Relief Inc.*, [2020 ONSC 6837](#)
25. *Re Lydian International Limited*, [2020 ONSC 4006](#)
26. *Re Pure Gold Mining Inc.*, [Court File No. S-228723 \(BC\), Approval and Vesting Order dated May 29, 2023](#)
27. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727, 4 O.R. \(3d\) 1 \(ONCA\)](#)
28. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
29. *Tacora Resources Inc. (Re)*, [2024 ONSC 4436](#)
30. *White Birch Paper Holding Co (Re)*, [2010 QCCS 4915](#)
31. *Xplore Inc. (Re)*, [2024 ONSC 5250](#)

**SCHEDULE “B”
RELEVANT STATUTES**

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

Compromise with secured creditors

s. 5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

s. 11

General power of court – 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.

s. 11.02

Stays, etc. — other than initial application

(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.

s. 23

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

- (d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the [Bankruptcy and Insolvency Act](#) do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;
- (e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);
- (f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;
- (f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;
- (g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;
- (h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the [Bankruptcy and Insolvency Act](#), so advise the court without delay after coming to that opinion;
- (i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- (j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and
- (k) carry out any other functions in relation to the company that the court may direct.

Restriction on disposition of business assets

s. 36

Additional factors — related persons

- (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(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).

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36,
AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO B+H ARCHITECTS CORP.

Court File No. CL-25-00753537-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**FACTUM
(Approval and Reverse Vesting Order and Stay
Extension and Ancillary Relief Order)
(Returnable December 30, 2025)**

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