



No. S-240259  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS  
AMENDED

AND

**IN THE MATTER OF BLACK PRESS LTD., 311773 B.C. LTD.,  
AND THOSE ENTITIES LISTED IN SCHEDULE "A"**

**PETITIONERS**

**NOTICE OF APPLICATION**

**NAME OF APPLICANTS:** The Petitioners Black Press Ltd., 311773 B.C. Ltd. and those  
entities listed in **Schedule "A"**

**TO:** Service List, attached hereto as **Schedule "B"**

TAKE NOTICE that an application will be made by the Petitioners to the Honourable Justice  
Stephens at the courthouse at 800 Smithe Street, Vancouver, British Columbia V6Z 2E1 on  
Thursday, January 25, 2024, at 10:00 a.m. for the orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. An amended and restated initial order substantially in the form attached hereto as  
**Schedule "C"** (the "**ARIO**"), among other things:
  - (a) extending the Stay Period (as defined below) to and including March 15, 2024;
  - (b) approving, authorizing and empowering Black Press Ltd. ("**BP Holdco**") and  
31177C B.C. Ltd. ("**3117**"), *nunc pro tunc*, to enter into, an amended and restated  
support agreement to be executed among the Noteholders, Carpenter  
Newsmedia, LLC ("**CNL**"), BP Holdco and 3117 (the "**Amended and Restated  
Transaction Support Agreement**"), and directing BP Holdco and 3117 to comply  
with their obligations thereunder;
  - (c) increasing the maximum principal amount that the Petitioners can borrow under  
the DIP Loan to \$5,500,000 (the "**Increased DIP Limit**");
  - (d) increasing the maximum amount secured by:

- (i) the Administration Charge to \$1,500,000;
  - (ii) the Directors' Charge to \$13,806,000; and
  - (iii) the DIP Lenders' Charge to \$5,500,000 (plus accrued and unpaid interest, fees and expenses); and
- (e) approving a key employee retention program (the "**KERP**") and granting a charge on the Property for the benefit of the key employees referred to in the KERP up to separate maximum amounts of \$61,500 and USD\$70,000 (the "**KERP Charge**").
2. An order substantially in the form attached hereto as **Schedule "D"** (the "**SISP Approval Order**"), among other things:
- (a) authorizing and directing BP Holdco and 3117 to negotiate and finalize a definitive stalking horse transaction agreement (the "**Stalking Horse Transaction Agreement**") with the Noteholders and CNL, or their designated nominee (as applicable, the "**Stalking Horse Purchaser**"), in respect of a transaction as described in and substantially in accordance with the terms of the stalking horse term sheet in the form attached to the Amended and Restated Transaction Support Agreement among BP Holdco, 3117, the Noteholders and CNL (the "**Stalking Horse Term Sheet**")
  - (b) approving the Bid Protections (as defined below) and authorizing the Petitioners to pay the amounts comprising same to the Stalking Horse Purchaser (or as it may direct) in the circumstances and manner described in the Stalking Horse Term Sheet, subject to the execution of the Stalking Horse Transaction Agreement;
  - (c) granting a charge (the "**Bid Protections Charge**") over the Property (as defined below) in favour of the Stalking Horse Purchaser as security for payment of the Bid Protections, with the priority set out therein;
  - (d) approving a sale and investment solicitation process (the "**SISP**") in which the Stalking Horse Transaction Agreement will serve as the stalking horse bid (the "**Stalking Horse Bid**"), and authorizing the Petitioners to implement the SISP pursuant to its terms; and
  - (e) authorizing and directing the Petitioners and KSV Restructuring Inc. in its capacity as the monitor in these proceedings (in such capacity, the "**Monitor**") to perform their respective obligations and do all things reasonably necessary to perform their obligations under the SISP.
3. An order (the "**Sealing Order**") sealing the Confidential Supplement to the First Report of the Monitor to be filed (the "**Confidential Supplement**").
4. Such further and other relief as this Court may deem just.

## Part 2: FACTUAL BASIS

### I. GENERAL

1. Capitalized terms used but not otherwise defined in this Notice of Application shall have the meanings given to them in the 1<sup>st</sup> Affidavit of Christopher Hargreaves made on January 12, 2024 (the "**First Hargreaves Affidavit**") and the Order of this Honourable Court granted January 15, 2023 (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCA**"), as applicable.
2. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise stated.

### II. BACKGROUND

3. Pursuant to the Initial Order, this Court (among other things):
  - (a) granted a stay of proceedings in respect of the Petitioners, the Property, the Non-Petitioner Stay Parties and the Non-Petitioner Stay Parties' Property until January 25, 2024 (the "**Stay Period**");
  - (b) granted the Directors' Charge in the amount of \$10,674,000;
  - (c) granted the Administration Charge in the amount of \$750,000; and
  - (d) approved the DIP Loan provided that borrowings under such facility not exceed the aggregate principal amount of \$500,000 and granted the DIP Lender's Charge in the amount of \$500,000 (plus accrued and unpaid interest, fees and expenses).

### III. EXTENSION OF THE STAY PERIOD

4. The Petitioners seek an extension of the Stay Period to and including March 15, 2024 (the "**Stay Extension**").
5. The Stay Extension will allow the Petitioners to continue to operate the BP Business as a going concern and implement the SISF, with the assistance and under the oversight of the Monitor, with a view to completing a Transaction for the benefit of the Company's stakeholders.
6. The Petitioners, in consultation with KSV Restructuring Inc. (then the proposed Monitor), prepared a cash flow forecast for the period January 8, 2024 to March 17, 2024 (the "**Cash Flow Forecast**"). The Cash Flow Forecast confirms that, if the Increased DIP Limit is approved, the Petitioners will have sufficient liquidity to continue going concern operations and implement the SISF during the period of the Stay Extension.
7. Following the granting of the Initial Order, the Petitioners and the Non-Petitioner Stay Parties have been working in good faith and with due diligence to: (a) stabilize the Company's business and operations; (b) advise their stakeholders of these CCAA proceedings; and (c) respond to creditor and stakeholder inquiries.

8. The proposed Stay Extension is supported by the Monitor, the DIP Lender and the Noteholders.

#### **IV. AMENDED AND RESTATED TRANSACTION SUPPORT AGREEMENT**

9. The Noteholders, CNL, BP Holdco and 3117 entered into a support agreement dated January 12, 2024 among the Noteholders, CNL, BP Holdco and 3117, a copy of which is attached to the First Hargreaves Affidavit as Exhibit O and referred to in the First Hargreaves Affidavit as the "Transaction Support Agreement". The Noteholders, CNL, BP Holdco and 3117 intend to enter into the Amended and Restated Transaction Support Agreement prior to the hearing of this Application.
10. The Amended and Restated Transaction Support Agreement will include minor modifications to the Stalking Horse Term Sheet, which is attached to the Transaction Support Agreement (and an amended version of which will be attached to the Amended and Restated Transaction Support Agreement) as Appendix A, and to the form of SISP Approval Order and SISP attached to the Transaction Support Agreement (and amended versions of which will be attached to the Amended and Restated Transaction Support Agreement) as Appendix B. The changes will include modifications of the ownership structure of the Purchaser as between the Noteholders and CNL and will not have a substantive impact on the overall structure of the Stalking Horse Bid or the consideration provided in connection therewith. A copy of the Amended and Restated Transaction Support Agreement and a blackline to the Transaction Support Agreement will be provided to the Service List and the Court prior to the hearing of this Application.
11. As is the case with the Transaction Support Agreement, which remains in full force and effect, subject to and in accordance with its terms, pursuant to the Amended and Restated Transaction Support Agreement the Noteholders and CNL agree to, among other things: (a) support the relief sought in the Initial Order and the ARIO, including the KERP, the DIP Term Sheet, and each of the charges; (b) negotiate in good faith definitive documents in connection with the Stalking Horse Bid on substantially the same terms as the Stalking Horse Term Sheet and to support the implementation and consummation of the Stalking Horse Transaction Agreement, if it is the successful bid in connection with the SISP; and (c) not take any action that is inconsistent with their obligations under the Amended and Restated Transaction Support Agreement.
12. In connection with the Noteholders' and CNL's support of the process, and consistent with the Transaction Support Agreement, the Company will agree to, among other things: (a) take all reasonable actions necessary to implement the transaction contemplated under the Stalking Horse Transaction Agreement, and satisfy the milestones set out in the Amended and Restated Transaction Support Agreement with respect to closing the transactions contemplated under the Stalking Horse Term Sheet, if the Stalking Horse Bid is the Successful Bid (as defined in the SISP); (b) preserve intact the current business operations of the Company in all material respects, including the Company's relationships with customers, suppliers and key employees; and (c) oppose any objections raised to interfere with the Amended and Restated Transaction Support Agreement. Subject to the terms of the DIP Term Sheet, the Company (and the DIP Lender) also have agreed to pay the reasonable and documented fees and expenses of the advisors to the Noteholders.
13. The Amended and Restated Transaction Support Agreement will (like the Transaction Support Agreement) provide important certainty regarding these CCAA proceedings to the

Petitioners' stakeholders, including the certainty that the Petitioners' business will continue as a going concern. For that reason, the Petitioners submit that the Amended and Restated Transaction Support Agreement is in the best interests of the Company and its stakeholders.

**V. APPROVAL OF KERP AND GRANTING KERP CHARGE**

14. The retention of key employees is of vital importance to the Petitioners during these CCAA proceedings, including in connection with maintaining ongoing business operations and entering into a Transaction.
15. The KERP has been developed in consultation with the Monitor, and will entitle designated key employees in Canada and the US to a specified cash payment on closing of a Transaction, provided that such key employee remains in the employment of the Company through the completion of such Transaction, subject to other customary terms and conditions.
16. The maximum aggregate retention payments payable pursuant to the KERP total \$61,500 and USD\$70,000 respectively. It is contemplated that amounts owing under the KERP would be secured by the KERP Charge in the separate maximum amounts of \$61,500 and USD\$70,000.
17. The Company's key employees who are proposed to be entitled to payments under the KERP have significant knowledge and responsibility with respect to the Petitioners and their operations, and their commitment is key to the Company's restructuring efforts.
18. The KERP is designed to encourage these key employees to continue their employment through to the completion of a Transaction. Absent the KERP, key employees may seek alternative employment and the Company believes it would be detrimental to the BP Business and the overall restructuring process if these employees were to leave and the Company was required to attempt to find replacement employees during this critical time.
19. The KERP is also designed to recognize the significant importance of the key employees to the pursuit and implementation of a Transaction, and the significant amount of additional work and effort required to advance and assist with the Company's efforts in these CCAA proceedings.

**VI. STALKING HORSE TERM SHEET**

20. The Stalking Horse Term Sheet will serve as the basis for the Stalking Horse Bid in the SISP. It is proposed that BP Holdco and 3117 will seek to finalize a definitive Stalking Horse Transaction Agreement with the Stalking Horse Purchaser on substantially the same terms as the Stalking Horse Term Sheet. The SISP Approval Order provides that the Stalking Horse Transaction Agreement shall be made publicly available no later than seven business days prior to the Qualified Bid Deadline.
21. The Stalking Horse Bid is structured as a reverse vesting transaction whereby the Stalking Horse Purchaser will restructure the Company through, among other things, a reverse vesting order (the "RVO") approving the purchase of the Company by the Stalking Horse Purchaser and the vesting out of the liabilities of the Petitioners (other than the remaining

secured obligations of the Noteholders, any obligations not capable of being vested out by the RVO and such other obligations that are acceptable to the Noteholders and CNL).

22. The Stalking Horse Bid is the product of intense negotiations among the Petitioners, Noteholders, CNL with the oversight of the Monitor, and is supported by the Noteholders and CNL pursuant to the terms of the Amended and Restated Transaction Support Agreement.
23. If the Stalking Horse Transaction Agreement is finalized and is not the Successful Bid, the Stalking Horse Purchaser would be entitled to payment of certain bid protections upon closing of the Successful Bid, comprising: (a) the Expense Reimbursement up to the maximum amount of \$250,000 (unless such expenses are otherwise reimbursed pursuant to the terms of the DIP Term Sheet); and (b) the Break Fee equal to \$1,500,000 (collectively, the "**Bid Protections**"). The Bid Protections are proposed to be secured by the Bid Protections Charge which, if granted, will have priority over all other security interests, charges and liens, but will rank subordinate to all other Charges granted pursuant to the Initial Order and the ARIO.
24. The Petitioners will return to Court to seek approval of any Successful Bid (including the Stalking Horse Transaction Agreement) resulting from the SISP (if approved), and are not seeking any relief approving the sale and vesting of any of the Property as part of the Stalking Horse Term Sheet approval at this time.

**VII. SISP**

25. The Company, with the assistance of its advisors, worked throughout the second half of 2023 to identify a strategic transaction that would have avoided the need for a formal restructuring filing. In July 2023, the Company engaged Dirks, Van Essen & April ("**DVA**"), the leading merger and acquisition firm in the US newspaper industry, to assist it in exploring a range of strategic alternatives. With the assistance of DVA, the Company undertook a comprehensive marketing process (the "**Pre-Filing Sale Process**"). The Pre-Filing Sale Process did not result in a viable bid for any portion of the Company or its assets.
26. As a result, in order to pursue a going concern transaction for the benefit of the Company's stakeholders, the Petitioners seek approval of the SISP, which has been developed in consultation with the Monitor, the Stalking Horse Purchaser and the DIP Lender.
27. The proposed SISP authorizes the Petitioners (with the assistance and under the oversight of the Monitor) to solicit binding bids from interested parties for executable transactions involving the business and/or assets of, or the equity interests in, the Company. The proposed SISP will commence no later than the granting of the SISP Approval Order.
28. A summary of the significant dates and processes within the proposed SISP is as follows:

<b>SISP Process</b>	<b>Deadline</b>
SISP Approval Order granted	No later than January 25, 2024

Commence solicitation	No later than January 25, 2024
Qualified Bid Deadline	February 16, 2024 (5:00 p.m. PT)
Deadline for Qualified Bid determination and notification of Auction (if necessary)	February 21, 2024 (5:00 p.m. PT)
Definitive Agreement Deadline	February 26, 2024 (5:00 p.m. PT)
Transaction Order (no Auction)	No later than March 1, 2024, subject to Court availability
Transaction Order (Auction)	No later than March 6, 2024, subject to Court availability
Closing of Successful Bid	No later than March 15, 2024 (5:00 p.m. PT)

29. Typical of a SISP of this nature, interested parties must enter into a non-disclosure agreement in form and substance satisfactory to the Petitioners and submit a binding offer meeting the requirements enumerated in the SISP (a **“Qualified Bid”**). In order to constitute a Qualified Bid, a bid must, provide sufficient cash consideration to satisfy in full: (i) all amounts outstanding to the Noteholders, including any amount outstanding under the DIP Loan, (ii) any obligations in priority to amounts owing under the DIP Term Sheet, including any Charges, (iii) the amount of \$500,000 to fund any professional fees incurred in connection with the wind-up of the Petitioners’ CCAA proceedings and any further proceedings or wind-up costs, and (iv) the amount of \$1,750,000 to satisfy the Bid Protections.

**VIII. INCREASED DIP LIMIT AND INCREASE TO DIP LENDER’S CHARGE**

30. The DIP Loan is in a maximum principal amount of \$5,500,000. The DIP Term Sheet provides for an initial authorized advance of up to the maximum amount of \$500,000 for use during the initial Stay Period, with the remaining amount to be available if such additional borrowing is authorized by the Court at the Comeback Hearing (subject to the terms of the DIP Term Sheet and the Cash Flow Forecast).
31. The Initial Order authorized the Petitioners to borrow under the DIP Term Sheet up to a maximum amount of \$500,000 and granted the DIP Lender’s Charge to secure the obligations of the Petitioners to the DIP Lender under the DIP Term Sheet to a maximum amount of \$500,000 (plus accrued and unpaid interest, fees and expenses).
32. The Petitioners seek to increase the amount they can borrow under the DIP Term Sheet to \$5,500,000 (i.e. the Increased DIP Limit), being the maximum principal amount of the DIP Loan, and to increase the amount of the DIP Lender’s Charge to \$5,500,000 (plus accrued and unpaid interest, fees and expenses) so that it is commensurate with the maximum borrowings under the DIP Loan.

## **IX. INCREASES TO CHARGES**

33. The proposed ARIO provides for the following amendments to the Charges, as well as the addition of the KERP Charge, listed in order of priority:
- (a) Administration Charge: increase to a maximum of \$1,500,000;
  - (b) Directors' Charge: increase to a maximum of \$13,806,000;
  - (c) KERP Charge: granted in the separate maximum amounts of \$61,5000 and USD\$70,000; and
  - (d) DIP Lender's Charge: increase to a maximum of \$5,500,000, plus accrued and unpaid interest, fees and expenses.
34. The proposed increased amounts of the Charges have been calculated with the assistance of the Monitor, and reflect the increased potential exposure to the beneficiaries of those charges from that quantified for the first 10 days of these CCAA proceedings. The Monitor, the Noteholders and the DIP Lender are each supportive of the proposed increased amounts of the Charges.
35. The proposed ARIO contemplates that the Charges (including the KERP Charge) will rank ahead of all other secured creditors, including the mortgagees in respect of the Petitioners' real property.
36. Pursuant to the proposed SISP Approval Order, it is contemplated that the Bid Protections Charge will rank behind the Charges (as enumerated above) but ahead of all other secured creditors, including the mortgagees in respect of the Petitioners' real property.

### **Part 3: LEGAL BASIS**

#### **I. STAY EXTENSION**

1. On an extension other than an initial application, s. 11.02(2) and (3) of the CCAA gives this Court discretion to grant a stay of proceedings for any period that it considers necessary, provided it is satisfied that such an extension is appropriate and that the debtor company has acted and continues to act in good faith and with due diligence. During the initial Stay Period, the Petitioners have acted and continue to act in good faith and with due diligence and are working to advance these CCAA proceedings including through the proposed SISP.
- See also North American Tungsten Corp., Re,*  
2015 BCSC 1376 at para 25
2. The requested Stay Extension is appropriate and necessary to, among other things, enable the Petitioners to, if approved, implement the SISP and complete a Transaction. The Petitioners are seeking an extension of the Stay Period until March 15, 2024, to coincide with the outside date for completion of a Transaction under the SISP.



## II. AMENDED AND RESTATED TRANSACTION SUPPORT AGREEMENT

3. CCAA courts have frequently exercised their discretion under s. 11 of the CCAA to approve restructuring support agreements among debtor companies and their creditors to facilitate a going concern solution.

*Just Energy Group Inc., et al.* (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-0658423-00CL (Endorsement)

*Just Energy Group Inc., et al (Re)*, (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-00658423-00CL (SISP Approval Order)

*U.S. Steel Canada Inc., Re*, 2016 ONSC 7899 at paras 39-41  
(citing *Stelco Inc., Re* (2005), 78 O.R. (3d) 254, 2005 CarswellOnt 6283 at paras 18-19 (CA))

4. In *Canwest Publishing Inc.*, the Ontario Superior Court of Justice approved a support agreement that contemplated, among other things, a solicitation process to test the market and attempt to effect a going concern sale. Some elements considered in the Court's decision were the support of the Monitor, the fact the terms of the agreement were the subject of intense arm's length negotiations, and with the support agreement, there was an enhanced likelihood of the continuation of going concern operations, the preservation of jobs, and the maximization of value for stakeholders.

*Canwest Publishing Inc.*,  
2010 ONSC 222 at paras 27-29 [*Canwest Publishing*]

## III. KERP AND KERP CHARGE

5. Factors generally considered by CCAA courts in approving employee retention plans include the following:

- (a) The approval of the Monitor and the support of the secured creditors. The KERP was developed by the Petitioners in consultation with the Monitor. The Monitor, the Noteholders and CNL support the approval of the KERP and the KERP Charge.

First Hargreaves Affidavit at paras 162 and 158

- (b) Whether the beneficiaries of the plan are likely to consider other employment opportunities if the charge is not approved. Absent the KERP, key employees may seek alternative employment.

First Hargreaves Affidavit at para 164

- (c) Whether the continued employment of the beneficiaries of the KERP is important for the stability of the business and to enhance the effectiveness of the marketing process. The Company believes it would be detrimental to the BP Business and the overall restructuring process if the beneficiaries of the KERP were to leave and the Company was required to attempt to find replacement employees during this critical time. The KERP is designed to recognize the significant importance of the key employees to the pursuit and implementation of a Transaction.

First Hargreaves Affidavit at paras 164 and 165

- (d) Whether a replacement could be found in a timely manner should beneficiaries elect to terminate their employment with the debtor company. Given the proposed cadence of these CCAA proceedings and the proposed SISP, finding employees with comparable skills and knowledge would be difficult.
- (e) The business judgment of the board of directors of the debtor company. The Petitioners' management on behalf of the boards have exercised their business judgment and consulted with the Monitor in formulating the KERP.

*Aralez Pharmaceuticals Inc. (Re)*, 2018 ONSC 6980 (CanLII) at para 29

*Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586 at paras 67-70

*Just Energy Group Inc. et al.*, 2021 ONSC 7630 at paras 7-25

*Walter Energy Canada Holdings Inc. (Re)*, 2016 BCSC 107 at paras 59-61 [*Walter*]

*Target Canada Co., Re*, 2015 ONSC 303 at para 59

#### IV. STALKING HORSE TERM SHEET

6. The Petitioners are of the view that including the Stalking Horse Bid as part of the SISP will benefit the Petitioners' efforts to maximize value for the benefit of all stakeholders by, among other things: (a) setting a floor for the terms of a transaction involving a sale of the BP Business; (b) helping to attract interest from potential purchasers; and (c) providing a critical level of certainty and stability for stakeholders (including customers, suppliers and employers) during the SISP and these CCAA proceedings that the Company will emerge as a going concern.
7. The use of stalking horse bids to set a baseline for the bidding process, including credit bid stalking horses, has been recognized by Canadian courts as a reasonable and useful element of a sales process.

*PCAS Patient Care Automation Services Inc.*,  
2012 ONSC 2840 at paras 17-20,  
citing *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*,  
2012 ONSC 1750 at paras 6-8, 17 [*CCM Master*]

*Just Energy Group Inc., et al (Re)*, (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-00658423-00CL (SISP Approval Order)

8. Courts in CCAA and receivership proceedings have approved term sheets for use as stalking horse bids in connection with a sales process where the definitive transaction agreements were still being finalized.

*Urthecast Corp. et al*, (October 16, 2020),  
BCSC Court File No. S-208894 (Sale Process Order) at para 4 [*Urthecast*]

*Tallinn Capital Energy Corp. and Tallinn Capital Energy Limited Partnership v Elcano Exploration Inc., et al*,  
(December 20, 2021), ABQB (Order) at para 4

*National Bank of Canada v Balanced Energy Oilfield Services Inc. et al*, (April 14, 2022), ABQB (Order (Approval of Sales Solicitation Process, Stalking Horse Term Sheet and Receiver's Conduct and Activities))  
at para 2

*ATB Financial v Jam Hospitality Inc., et al*, (May 9, 2022), ABQB (Order (Approval of Sales Solicitation

Process, Stalking Horse Term Sheet and Receiver's Conduct and Activities)) at para 2

9. Similarly, CCAA courts have recognized bid protections as not only compensation for stalking horse purchasers for the time, resources and risk taken in developing the stalking horse agreement, but also as "the price of stability".

*Green Growth Brands (Re)*, 2020 ONSC 3565 at para 52

*Just Energy Group Inc., et al (Re)*, (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-00658423-00CL (Endorsement)

*Danier Leather Inc., Re*, 2016 ONSC 1044 at para 41 [*Danier*]

*Urthecast* (October 16, 2020), BCSC, No. S-208894  
(Sale Process Order) at para 5

*Urthecast* (October 16, 2020), BCSC, No. S-208894  
(Third Amended and Restated Initial Order) at para 57

10. The quantum of the Bid Protections under the Stalking Horse Term Sheet (approximately 3% of the purchase price) is well within the reasonable range accepted by the courts. The Monitor has confirmed that the proposed Bid Protections are reasonable in the circumstances.

First Hargreaves Affidavit at para 177

*CCM Master* at para 13

*Danier* at para 42

*Just Energy Group Inc., et al (Re)*, (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-00658423-00CL (Endorsement)

11. Charges similar to the Bid Protections Charge have been approved by CCAA courts in a number of cases. In *Quest University Canada*, this Court considered a number of factors in approving a similar charge, including:

- (a) approval of the charge by the debtor's board of directors "having integral knowledge of [the debtor's] options";
- (b) the charge was only expected to be material for a short period of time, and that it would be irrelevant if the stalking horse bid was approved;
- (c) the monitor was of the view that the debtor was acting in good faith and with due diligence; and
- (d) the debtor's major secured creditors and the interim lender were supportive of the relief.

*Quest University Canada (Re)*, 2020 BCSC 1845 at paras 56, 57 and 63

See also *Just Energy Group Inc., et al (Re)*, (August 18, 2022), ONSC (Commercial List),  
Court File No. CV-21-00658423-00CL (SISP Approval Order) at para 10

**V. SISP**

12. It is well recognized that CCAA courts have jurisdiction to approve a sale process in relation to a debtor company's business and assets "to establish the boundaries of the playing field and act as a referee in the process", prior to the development (or even in the absence) of a plan or compromise or arrangement.

*Stelco Inc., Re* (2005), 75 O.R. (3d) 5, 2005 CarswellOnt 1188  
(SC [Commercial List]) at para 44

*Walter* at para 20

*Bron Media Corp. (Re)*, 2023 BCSC 1563 at para 41 [*Bron*]

*Nortel Networks Corp. Re* (2009), 55 CBR (5<sup>th</sup>) 229, 2009 CanLII 39492  
(SC [Commercial List]) at para 48 [*Nortel*]

13. In approving a sales process in CCAA proceedings, the Ontario Superior Court of Justice has considered, among other things, the following factors:

- (a) Is a sale warranted at this time? A sale or investment resulting in the continuation of the BP Business as a going concern represents the best available outcome for stakeholders. There is no other realistic option available to the Company to continue to operate as a going concern given its liquidity challenges.
- (b) Will the sale be of benefit to the whole "economic community"? The SISP will benefit the economic community as a whole as it is designed to solicit the highest and best bid and to continue the BP Business as a going concern to the benefit of the Company's stakeholders including suppliers, employees, advertisers and readers.
- (c) Do any of the debtor's creditors have a bona fide reason to object to a sale? The SISP is designed to solicit the highest and best bid for the benefit of, among others, the Petitioners' stakeholders.
- (d) Is there a better viable alternative? The SISP is the only viable avenue to continue the BP Business as a going concern. It must be undertaken expeditiously to prevent any further uncertainty from potentially eroding the value of the BP Business.

*Nortel* at para 49

14. In addition, this Court is entitled to consider whether the proposed SISP is likely to satisfy the requirements of s. 36 of the CCAA, even though a sale is not yet proposed, including:

- (a) That the process is fair and that the best price will be obtained. The SISP is fair, transparent and objective. In particular, it is designed to facilitate a process to market the BP Business to obtain the best possible price and achieve a going concern solution for the benefit of all stakeholders, without unduly prolonging the process. In developing the timelines and process for the SISP, the Petitioners, in consultation with the Monitor, considered a number of factors, including: (i) the Company was extensively marketed through the Pre-Filing Sale Process in which no actionable bids were submitted; (ii) the pool of potential purchasers for the BP

Business is limited because of its specialized nature; (iii) due to the public and well-known nature of the Company in the locations in which it operates, it was anticipated (and it in fact has been the case) that the SISP would receive substantial media attention within those markets, making it likely any potential bidder would be aware of it; and (iv) the period of time to solicit bids that is supported by the Petitioners' cash flows and its DIP Lender.

First Hargreaves Affidavit at para 184

- (b) Whether the Monitor supports the SISP and the Stalking Horse Bid. The Monitor has expressed support for the SISP and the terms of the proposed SISP Approval Order require that the definitive Stalking Horse Transaction Agreement be substantially on the terms set out in the Stalking Horse Term Sheet and the Monitor's consent for any amendments to the Stalking Horse Term Sheet.

First Hargreaves Affidavit at para 186

- (c) The extent to which creditors were consulted. The Noteholders (which are the Petitioners' primary secured creditor) were consulted during the development of the SISP and, in accordance with the terms of the Amended and Restated Transaction Support Agreement, the SISP is in form and substance acceptable to the Noteholders.

First Hargreaves Affidavit at para 158

## **VI. INCREASED DIP LIMIT AND DIP LENDER'S CHARGE**

15. The Petitioners require access to the full amount of the DIP Loan to provide them with the funding required to continue their business operations during these CCAA proceedings while completing a Transaction for the benefit of the Petitioners and their stakeholders.
16. The Cash Flow forecast prepared by the Petitioners, with the assistance of the Monitor, demonstrates the Petitioners' need for the full amount of the DIP Loan.

First Hargreaves Affidavit at paras 127, 130

17. Pursuant to the DIP Term Sheet, the DIP Lender's obligation to advance the full amount of the DIP Loan is subject to this Court's approval and the DIP Lender's Charge being granted in the same amount and ranking in priority to all other security interests, encumbrances and charges other than the Administration Charge, the Directors' Charge and the KERP Charge.
18. All creditors who are likely to be affected by the proposed DIP Lender's Charge, including the increase thereof, have been served with, among other things, a copy this Notice of Application, the Petition and the First Hargreaves Affidavit.
19. The Petitioners submit that the requested increase to the maximum amount that they can borrow under the DIP Term Sheet to \$5,500,000 and the corresponding increase of the DIP Lender's Charge to the same amount are fair and reasonable and that application of the factors enumerated in s. 11.2(1) and (4) to the facts of this case support the approval of same.

First Hargreaves Affidavit at paras 127, 128

20. The Monitor is supportive of the proposed increases to the maximum amount available under the DIP Term Sheet and the amount of the DIP Lender's Charge.

**VII. INCREASED ADMINISTRATION CHARGE**

21. Section 11.52 of the CCAA authorizes this Court to grant a priority charge over a debtor's assets for professional fees and disbursements on notice to affected creditors. The factors to be considered are well established.

*Canwest Publishing* at para 54

Adopted by this Court in *Walter* at para 42

22. The increase of the Administration Charge to \$1,500,000 is fair and reasonable given the size and complexity of the Petitioners' business, and the complexity of the restructuring proposed in these CCAA proceedings. The amount of this increase has been determined with guidance from the Monitor and is supported by the Monitor and the DIP Lender.

**VIII. INCREASED DIRECTORS' CHARGE**

23. In deciding whether to grant or increase a directors' charge, this Court must be satisfied that: (a) notice has been given to the likely affected secured creditors; (b) the amount is appropriate; (c) the applicant could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (d) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.

CCAA, s. 11.51

*Canwest Global Communications Corp. (Re)* (2009),  
2009 CanLII 55114 at para 48 [*Canwest Global*]

*Jaguar Mining Inc., Re*,  
2014 ONSC 494 at para 45

*Bron* at paras 21-23

24. Notice has been given to the Petitioners' secured creditors. In addition, the Company does not currently have insurance policies in place in respect of the potential liability of the Directors and Officers and has been trying to secure such insurance without success. The proposed increase from \$10,674,000 to \$13,806,000 has been determined in consultation with the Monitor to reflect these potential liabilities. The D&O Indemnity secured by the Directors' Charge does not apply to any obligations incurred as a result of gross negligence or wilful misconduct. The increase is supported by the Monitor and the DIP Lender.

**IX. SEALING ORDER**

25. This Court has discretion to grant a sealing order where:

- (a) Court openness poses a serious risk to a "public interest", which is not restricted solely to the interests of the parties, but applies at the level of a general principle;

- (b) such an order is necessary to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (c) as a matter of proportionality, the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

*Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53

*Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38, 41 – 43

26. The Confidential Supplement contains a confidential summary of the proposed KERP that contains individual names and salary information and the KERP payments for each eligible employee. Protecting the sensitive personal and compensation of information of employees is an important public interest that should be protected. Employees also have a reasonable expectation that their names and salary information will be kept confidential. Finally, as a matter of proportionality, the benefits of sealing the requested information outweigh its negative effects, including because the overall potential cost of the KERP has been disclosed to stakeholders.
27. Courts have previously granted sealing orders in respect of individual compensation arrangements relating to key employee retention plans.

*Ontario Securities Commission v Bridging Finance Inc.*,  
2021 ONSC 4347 at para 23-28

*Just Energy Group Inc., et al.*,  
2021 ONSC 7630 at paras 26-29

#### **Part 4: MATERIAL TO BE RELIED ON**

1. 1<sup>st</sup> Affidavit of Christopher Hargreaves dated January 12, 2024;
2. 1<sup>st</sup> Affidavit of Hayley Roberts dated January 12, 2024;
3. Pre-Filing Report of KSV Restructuring Inc. dated January 12, 2024;
4. First Report of the Monitor to be filed;
5. Confidential Supplement to the First Report of the Monitor to be filed; and
6. Such further and other materials as counsel may advise and this Court may permit.

The applicant estimates that the application will take 1 day.

- This matter is within the jurisdiction of an associate judge.
- This matter is not within the jurisdiction of an associate judge. This matter is scheduled to be heard by Justice Stephens.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
  - (i) you intend to refer to at the hearing of this application, and
  - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
  - (i) a copy of the filed application response;
  - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
  - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: January 18, 2024



Signature of lawyer for the applicant  
Cassels Brock & Blackwell LLP  
(Vicki Tickle)

THIS NOTICE OF APPLICATION was prepared by Vicki Tickle, of the firm of Cassels Brock & Blackwell LLP, Lawyers, whose place of business and address for delivery is 2200 - 885 West Georgia Street, Vancouver BC V6E 3C8, Telephone: 604.691.6100; Fax: 604.691.6120.



**To be completed by the Court only:**

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this notice of application
- with the following variations and additional terms:

---

---

---

Date: \_\_\_\_\_

Signature of  Judge  Master

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

## **SCHEDULE "A"**

### **Petitioners**

#### **A. Canadian Petitioners**

Black Press Ltd.

311773 B.C. Ltd.

Black Press Group Ltd.

0922015 B.C. Ltd.

Central Web Offset Ltd.

#### **B. US Petitioners**

Sound Publishing Holding, Inc.

Sound Publishing Properties, Inc.

Sound Publishing, Inc.

Oahu Publications, Inc.

The Beacon Journal Publishing Company

WWA (BPH) Publications, Inc.

San Francisco Print Media Co.

**SCHEDULE "B"**

**Service List**

(see attached)

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

**AND**

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS  
AMENDED**

**AND**

**IN THE MATTER OF  
BLACK PRESS LTD., 311773 B.C. LTD., et al.**

**PETITIONERS**

**SERVICE LIST**

(as of January 18, 2024)

<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 2200, HSBC Building 885 West Georgia St. Vancouver, British Columbia V6C 3E8</p> <p>Attention: Vicki Tickle, Jared Enns, Ryan Jacobs, Joseph Bellissimo and Jeremy Bornstein</p> <p>Email: <a href="mailto:vtickle@cassels.com">vtickle@cassels.com</a> <a href="mailto:jenns@cassels.com">jenns@cassels.com</a> <a href="mailto:rjacobs@cassels.com">rjacobs@cassels.com</a> <a href="mailto:bellissimo@cassels.com">bellissimo@cassels.com</a> <a href="mailto:bornstein@cassels.com">bornstein@cassels.com</a></p> <p><b><i>Counsel for the Petitioners</i></b></p>	<p><b>THOMPSON HINE LLP</b> 3560 Lenox Road NE, Suite 1600 Atlanta, Georgia 30326-4266</p> <p>Attention: Sean A. Gordon, Austin Alexander Katherine Kohn and Curtis Tuggle</p> <p>Email: <a href="mailto:Sean.Gordon@ThompsonHine.com">Sean.Gordon@ThompsonHine.com</a> <a href="mailto:Austin.Alexander@ThompsonHine.com">Austin.Alexander@ThompsonHine.com</a> <a href="mailto:Katherine.Kohn@ThompsonHine.com">Katherine.Kohn@ThompsonHine.com</a> <a href="mailto:Curtis.Tuggle@ThompsonHine.com">Curtis.Tuggle@ThompsonHine.com</a></p> <p><b><i>US Counsel for the Petitioners</i></b></p>
--	--

<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 2200 – 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Mary I.A. Buttery, Q.C., Marc Wasserman and Dave Rosenblat</p> <p>Email: <a href="mailto:mbuttery@osler.com">mbuttery@osler.com</a> <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a> <a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a></p> <p><b><i>Counsel for the Monitor</i></b></p>	<p><b>KSV RESTRUCTURING INC.</b> 1165, 324 - 8th Avenue SW, Calgary, Alberta, T2P 2Z2 Canada</p> <p>Attention: Noah Goldstein and Jason Knight</p> <p>Email: <a href="mailto:ngoldstein@ksvadvisory.com">ngoldstein@ksvadvisory.com</a> <a href="mailto:jknight@ksvadvisory.com">jknight@ksvadvisory.com</a></p> <p><b><i>The Monitor</i></b></p>
<p><b>BENNETT JONES LLP</b> 3400 One First Canadian Place P.O. Box 130 Toronto, Ontario M5X 1A4 Canada</p> <p>Attention: David E. Gruber, Mark Rasile, Michael Shakra, Raj. S.Sahni and Kristopher Hanc</p> <p>Email: <a href="mailto:gruberd@bennettjones.com">gruberd@bennettjones.com</a>, <a href="mailto:rasilem@bennettjones.com">rasilem@bennettjones.com</a> <a href="mailto:shakram@bennettjones.com">shakram@bennettjones.com</a> <a href="mailto:sahnir@bennettjones.com">sahnir@bennettjones.com</a> <a href="mailto:hanck@bennettjones.com">hanck@bennettjones.com</a></p> <p><b><i>Counsel for Canso Investment Counsel Ltd.</i></b></p>	<p><b>MORRISON FOERSTER</b> 250 West 55<sup>th</sup> Street New York, NY, 10019-9601</p> <p>Attention: Andrew Kissner and Joseph Murphy</p> <p>Email: <a href="mailto:akissner@mofo.com">akissner@mofo.com</a> <a href="mailto:jmurphy@mofo.com">jmurphy@mofo.com</a></p> <p><b><i>US Counsel for Canso Investment Counsel Ltd.</i></b></p>
<p><b>BLAKE, CASSELS &amp; GRAYDON LLP</b> 199 Bay Street, Suite 4000, Commerce Court West, Toronto, ON M5L 1A9</p> <p>Attention: Aryo Shalviri, Peter Rubin and Kevin Wu</p> <p>Email: <a href="mailto:aryo.shalviri@blakes.com">aryo.shalviri@blakes.com</a> <a href="mailto:peter.rubin@blakes.com">peter.rubin@blakes.com</a> <a href="mailto:kevin.wu@blakes.com">kevin.wu@blakes.com</a></p> <p><b><i>Canadian Counsel to Canadian Imperial Bank of Commerce</i></b></p>	<p><b>CANADIAN IMPERIAL BANK OF COMMERCE</b> 199 Bay Street, 4<sup>th</sup> Floor Toronto, ON M5L 1A2</p>

<p><b>CANADA REVENUE AGENCY</b> 9755 King George Boulevard Surrey, BC V3T 5E1 Fax: 1-833-697-2390</p> <p>Email: <a href="mailto:agc_pgc_vancouver@justice.gc.ca">agc_pgc_vancouver@justice.gc.ca</a></p> <p><b>The National Verification and Collections Centre</b></p>	<p><b>HIS MAJESTY THE KING IN THE RIGHT OF CANADA</b> 900 – 840 Howe Street Vancouver, BC V6Z 2S</p> <p>Attention: Deputy Attorney General of Canada</p> <p>Email: <a href="mailto:agc_pgc_vancouver@justice.gc.ca">agc_pgc_vancouver@justice.gc.ca</a></p> <p><b>Counsel to His Majesty the King in right of Canada (Deputy Attorney General of Canada)</b></p>
<p><b>HIS MAJESTY THE KING IN THE RIGHT OF THE PROVINCE OF BRITISH COLUMBIA</b> PO Box 9290 Stn Prov Gov't Victoria, BC V8W 9J7</p> <p>Attention: Deputy Attorney General Ministry of Attorney General</p> <p>Email: <a href="mailto:AGLSBRevTaxInsolvency@gov.bc.ca">AGLSBRevTaxInsolvency@gov.bc.ca</a></p> <p><b>Counsel to His Majesty the King in right of Canada (Deputy Attorney General of British Columbia)</b></p>	<p><b>CARPENTER NEWSMEDIA, LLC</b> 600 Lurleen B Wallace Blvd S Suite 160, Tuscaloosa, AL 35401, United States</p> <p>Attention: Kim Ingram, Donna Benefield, Steve Shelton and Pam Rice</p> <p>Email: <a href="mailto:kingram@hayesingram.com">kingram@hayesingram.com</a> <a href="mailto:dbenefield@hayesingram.com">dbenefield@hayesingram.com</a> <a href="mailto:sas@wrscpa.com">sas@wrscpa.com</a> <a href="mailto:price@wrscpa.com">price@wrscpa.com</a></p>
<p><b>DEANS KNIGHT CAPITAL MANAGEMENT LTD.</b> Suite 1500, 999 West Hastings Street Vancouver, BC V6C 2W2</p> <p>Attention: Dillion Cameron</p> <p>Email: <a href="mailto:dcameron@deansknight.com">dcameron@deansknight.com</a></p>	<p><b>METROLAND</b> 8 Spadina Avenue 10th Floor, Suite 10A Toronto, ON M5V 0S8</p> <p>Attention: President Facsimile: (905) 279-7763</p>
<p><b>TORSTAR CORPORATION</b> 8 Spadina Avenue Toronto, Ontario M5V 0S8</p> <p>Attention: Chief Financial Officer Facsimile: (416) 869-4183</p>	<p><b>COAST CAPITAL SAVINGS FEDERAL CREDIT UNION</b> 800-9900 King George Blvd, Surrey BC V3T 0K7 Canada</p>
<p><b>COMPUTERSHARE TRUST COMPANY OF CANADA</b> 100 University Ave, 11<sup>th</sup> Floor Toronto ON, M5J 2Y1 Canada</p>	<p><b>DE LAGE LANDEN FINANCIAL SERVICE CANADA INC.</b> 3450 Superior Court, Unit 1 Oakville ON L6L 0C4, Canada</p>

<b>CWB NATIONAL LEASING INC.</b> 1525 Buffalo Place Winnipeg MB R3T 1L9, Canada	<b>BANNISTER CADILLAC BUICK GMC LTD.</b> 2727 Highway 97 North Kelowna BC V1X 4J8, Canada
<b>FORD CREDIT CANADA LEASING, DIVISION OF CANADA ROAD LEASING COMPANY</b> PO Box 2400 Edmonton AB T5J 5C7, Canada	<b>VANCOUVER CITY SAVINGS CREDIT UNION</b> 183 Terminal Avenue, 6 <sup>th</sup> Floor Vancouver BC V6A 4G2, Canada
<b>VAULT CREDIT CORPORATION</b> 41 Scarsdale Road, Suite 5 Toronto ON M3B 2R2, Canada	<b>THE BANK OF NOVA SCOTIA</b> 10 Wright Boulevard Stratford ON N5A 7X9, Canada
<b>TDF GROUP INC.</b> 17631 103 Ave NW Edmonton AB T5S 1N8 Canada	<b>MERCEDES-BENZ FINANCIAL</b> 2680 Matheson Blvd. E. STE 500 Mississauga ON L4W 0A5, Canada
<b>MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION</b> 2680 Matheson Blvd. E. STE 500 Mississauga ON L4W 0A5, Canada	<b>JIM PATTISON INDUSTRIES LTD.</b> 4937 Regent Street Burnaby BC V5C 4H4, Canada
<b>KIPP SCOTT MOTORS LTD.</b> 6841 50 <sup>th</sup> Avenue Red Deer AB T4N 4E2, Canada	<b>CANADIAN WESTERN BANK</b> #300, 5222-130TH Avenue SE Calgary AB T2Z 0G4, Canada
<b>FUJIFILM CANADA INC.</b> 600 Suffolk Court Mississauga ON L5R 4G4, Canada	<b>WAJAX LIMITED</b> 11061 269 St. Acheson AB T7X 6E1, Canada
<b>SERVUS CREDIT UNION LTD.</b> 151 Karl Clark Road NW Edmonton AB T6N 1H5, Canada	<b>BC FINANCIAL SERVICES AUTHORITY</b> 600-750 West Pender Street Vancouver BC V6C 2T8, Canada  Fax: (604)660-3365 Email: <a href="mailto:pensions@bcfsa.ca">pensions@bcfsa.ca</a>



<p><b>GCIU – EMPLOYER RETIREMENT FUND</b> 2323 Eastlake Avenue East Seattle WA 98102-3963, United States</p>	<p><b>GRAPHIC ARTS INDUSTRY JOINT PENSIONS TRUST</b> 3040 Williams Dr Ste 640 Fairfax VA 22031, United States</p> <p>Fax: (571) 520-4167 Email: <a href="mailto:jpt@gaiipt.org">jpt@gaiipt.org</a></p>
<p><b>GRAPHIC COMMUNICATIONS CONFERENCE/IBT NATIONAL PENSION FUND</b> 455 Kehoe Blvd., Suite 101 Carol Stream IL 60188, United States</p> <p>Fax: (630) 871-0666 Email: <a href="mailto:info@gccibt-npf.org">info@gccibt-npf.org</a></p>	<p><b>PENSION BENEFIT GUARANTY CORPORATION</b> 445 12<sup>th</sup> Street SW Washington DC 20024-2101, United States</p> <p>Mailing address: PO Box 151750, Alexandria, VA 22315-1750 Fax: 202-229-4047</p>
<p><b>NEWSPAPER GUILD INTERNATIONAL PENSION PLAN</b> 501 Third Street, N.W., 6<sup>th</sup> Floor Washington DC 20001, United States</p> <p>Email: <a href="mailto:sbush@cwa-union.org">sbush@cwa-union.org</a></p>	<p><b>UNIFOR LOCAL 2000</b> #102 -5783 176A Street Cloverdale BC V3S 6S6, Canada</p> <p>Email: <a href="mailto:Unifor2000@unifor2000.ca">Unifor2000@unifor2000.ca</a></p>
<p><b>VICTORIA-VANCOUVER ISLAND NEWSPAPER GUILD LOCAL 30223 OF COMMUNICATIONS WORKERS OF AMERICA</b></p> <p>203 2610 Douglas Victoria BC V8T 4M1</p> <p>Email: <a href="mailto:vving@vving.ca">vving@vving.ca</a></p>	<p><b>MEDIA AND COMMUNICATIONS WORKERS OF ALBERTA LOCAL 30400 OF THE COMMUNICATIONS WORKERS OF AMERICA</b> 501 3<sup>rd</sup> Street NW Washington DC 20001, United States</p> <p>Email: <a href="mailto:Mcwa.local@gmail.com">Mcwa.local@gmail.com</a></p>
<p><b>PACIFIC NORTHWEST NEWSPAPER GUILD</b> PO Box 17893 Seattle, WA 98127, USA</p> <p>Attention: Kaitlin Gillespie Executive officer</p> <p>Phone: 206-669-3562 Email: <a href="mailto:guild37082@gmail.com">guild37082@gmail.com</a></p>	<p><b>PACIFIC MEDIA WORKERS GUILD, LOCAL 39521 CHARTER BY THE NEWSPAER GUILD/COMMUNICATIONS WORKERS OF AMERICA AFL-CIO</b> 433 Natoma Street San Francisco CA 94013, United States</p>

<p><b>INTERNATIONAL LONGSHORE &amp; WAREHOUSE UNION LOCAL 142</b> 451 Atkinson Drive Honolulu, HI 96814, United States</p> <p>Attention: Mr. Karl Lindo Fax: (808) 941-5867</p>	<p><b>HAWAII TEAMSTERS AND ALLIED WORKS LOCAL 996</b> 1817 Hart St, Honolulu HI 96819, United States</p> <p>Email: <a href="mailto:local996@hawaiiunion.com">local996@hawaiiunion.com</a></p>
<p><b>MERIDIAN ONECAP CREDIT CORP.</b> Suite 1500, 4710 Kingsway Burnaby, BC V5H 4M2, Canada</p>	<p><b>LCA BANK CORPORATION</b> 1375 Deer Valley Dr, Suite 218 Park City UT 84060, USA</p>
<p><b>LEAF CAPITAL FUNDING, LLC</b> 2005 Market Street 14<sup>th</sup> Floor Philadelphia, PA 19103, USA</p>	<p><b>VFS US LLC</b> P.O. Box 26131, Greensboro NC 27402 USA</p>
<p><b>FUJIFILM NORTH AMERICA CORPORATION</b> 200 Summit Lake Drive Valhalla NY 10595 USA</p>	<p><b>COASTAL COMMUNITY BANK</b> Everett Branch, 2817 Colby Avenue P.O. Box 12220 Everett, WA 98206</p>
<p><b>PARLEE MCLAWS LLP</b> 1700 Enbridge Centre 10175-101 Street NW Edmonton, Alberta T5J 0H3</p> <p>Attention: Steven A. Rohatyn Rayne Prins</p> <p>Phone: 780.423.8177 Fax: 780.423.2870 Email: <a href="mailto:srohatyn@parlee.com">srohatyn@parlee.com</a> <a href="mailto:rprins@parlee.com">rprins@parlee.com</a></p> <p><b><i>Counsel for Elite Lithographers Ltd.</i></b></p>	

**EMAIL SERVICE LIST  
(as of January 18, 2024)**

vtickle@cassels.com; jenns@cassels.com; rjacobs@cassels.com; jbellissimo@cassels.com;  
jbornstein@cassels.com; mwunder@cassels.com; Katherine.Kohn@ThompsonHine.com;  
Sean.Gordon@ThompsonHine.com; Austin.Alexander@ThompsonHine.com;  
Curtis.Tuggle@ThompsonHine.com; mbuttery@osler.com; mwasserman@osler.com;  
drosenblat@osler.com; ngoldstein@ksvadvisory.com; jknight@ksvadvisory.com;  
gruberd@bennettjones.com; rasilem@bennettjones.com; shakram@bennettjones.com;  
sahnir@bennettjones.com; hanck@bennettjones.com; akissner@mofo.com;  
jmurphy@mofo.com; aryo.shalviri@blakes.com; peter.rubin@blakes.com;  
kevin.wu@blakes.com; agc\_pgc\_vancouver@justice.gc.ca;  
AGLSBRevTaxInsolvency@gov.bc.ca; kingram@hayesingram.com;  
dbenefield@hayesingram.com; price@wrscpa.com;  
sas@wrscpa.com; dcameron@deansknight.com; pensions@bcfsa.ca; jpt@gaijpt.org;  
info@gccibt-npf.org; sbush@cwa-union.org; Unifor2000@unifor2000.ca;  
Mcwa.local@gmail.com; vving@vving.ca; guild37082@gmail.com;  
local996@hawaiiiteamsters.com; srohatyn@parlee.com; rprins@parlee.com;

**SCHEDULE "C"**

**Amended and Restated Initial Order**

(see attached)

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS AMENDED

AND

**IN THE MATTER OF BLACK PRESS LTD., 311773 B.C. LTD.,  
AND THOSE ENTITIES LISTED IN SCHEDULE "A"**

**PETITIONERS**

**ORDER MADE AFTER APPLICATION**  
**(AMENDED AND RESTATED INITIAL ORDER)**

BEFORE THE HONOURABLE )  
JUSTICE STEPHENS ) January 25, 2024

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 25<sup>th</sup> day of January, 2024; AND ON HEARING Vicki Tickle and Jared Enns, counsel for the Petitioners and the non-petitioner affiliates of the Petitioners listed in Schedule "B" hereto (the "**Non-Petitioner Stay Parties**", and collectively with the Petitioners, the "**Black Press Entities**"), and those other counsel listed on Schedule "C" hereto; AND UPON READING the material filed, including the First Affidavit of Christopher Hargreaves made January 12, 2024 (the "**First Hargreaves Affidavit**"), the Pre-Filing Report dated January 12, 2024 of KSV Restructuring Inc. ("**KSV**"), and the First Report of KSV in its capacity as Monitor of the Petitioners (in such capacity, the "**Monitor**") dated January [●], 2024 (the "**First Report**"); AND UPON BEING ADVISED that the secured creditors who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS AND DECLARES THAT:**

1. This Amended and Restated Initial Order amends and restates the Order (the “**Initial Order**”) of this Court made in these proceedings on January 15, 2024 (the “**Order Date**”).

**SERVICE**

2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

**JURISDICTION**

3. The Petitioners are companies to which the CCAA applies.

**PLAN OF ARRANGEMENT**

4. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

**POSSESSION OF PROPERTY AND OPERATIONS**

5. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (excluding the CIBC Cash Collateral (as defined in the First Hargreaves Affidavit), provided that if and when Canadian Imperial Bank of Commerce releases its security interest in such monies then such monies will automatically and without any further action constitute and be deemed to form part of the Property) (the “**Property**”), and continue to carry on their business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such

further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

### **Cash Management System**

6. The Petitioners shall be entitled to continue to utilize the cash management system currently in place as described in the First Hargreaves Affidavit or, with the prior written consent of the Monitor and the Interim Lender, replace it with another substantially similar central cash management system (the "**Cash Management System**"), and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by any of the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan (if any) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. Subject to the terms of the DIP Term Sheet and Definitive Documents (both as hereinafter defined), the Petitioners shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively "**Wages**");
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the reasonable fees and disbursements

of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:

- (i) these proceedings or any other similar proceedings in other jurisdictions in which any of the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
  - (ii) any litigation in which any of the Petitioners are named as a party or are otherwise involved, whether commenced before or after the Order Date;
  - (iii) any related corporate matters; and
- (c) with the written consent of the Monitor, amounts owing for goods and services actually supplied to the Petitioners prior to the Order Date, if in the opinion of the Petitioners the supplier is critical to the Business and ongoing operations of the Petitioners, consistent with existing policies and procedures.

8. Except as otherwise provided herein and subject to the terms of the DIP Term Sheet and the Definitive Documents, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure exceeding \$100,000 shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and
- (c) fees and disbursements of the kind referred to in paragraph 7(b) which may be incurred after the Order Date.

9. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:



- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

10. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease, but excluding, for greater certainty, accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Petitioners or the making of this Order) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioner and the landlord from time to time ("**Rent**"), for the period commencing from and including the Order Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

11. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any of the Petitioners to any of their respective creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the DIP Term Sheet and Definitive Documents, the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$100,000 in any one transaction or \$500,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate; and
- (c) pursue all avenues of refinancing for their Business or Property, in whole or part;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners', the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, are permitted

to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "Third Parties"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **AMENDED AND RESTATED TRANSACTION SUPPORT AGREEMENT**

16. The Amended and Restated Transaction Support Agreement (in the form attached to the First Report) is hereby approved and Black Press Ltd. and 311773 B.C. Ltd. are authorized and empowered to enter into the Amended and Restated Transaction Support Agreement, nunc pro tunc, subject to such minor amendments as may be consented to by the Monitor and each of the parties thereto in accordance with the Amended and Restated Transaction Support Agreement, and is authorized, empowered and directed to take all steps and actions in respect of, and to comply with all of its obligations pursuant to, the Amended and Restated Transaction Support Agreement.

17. Notwithstanding the Stay Period (as hereinafter defined), a counterparty to the Amended and Restated Transaction Support Agreement may exercise any termination right that may become available to such counterparty pursuant to the Amended and Restated Transaction Support Agreement, provided that such termination right must be exercised pursuant to and in accordance with the Amended and Restated Transaction Support Agreement.

## **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

18. Until and including March 15, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of any of the Black Press Entities or the Monitor, or affecting the Business, the Property or the Non-Petitioner Stay Parties’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Non-Petitioner Stay Parties’ Property**”), shall be commenced or continued except with the prior written consent of the Black Press Entities and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Black Press Entities or affecting the Business, the Property or the Non-Petitioner Stay Parties’ Property are hereby stayed and suspended pending further Order of this Court.

19. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Black Press Entities or the Monitor, or affecting the Business, the Property or the Non-Petitioner Stay Parties’ Property, are hereby stayed and suspended except with the prior written consent of the Black Press Entities and the Monitor or leave of this Court.

20. Nothing in this Order, including paragraphs 18 and 19, shall: (i) empower the Black Press Entities to carry on any business which the Black Press Entities are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided, however: (a) that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the applicable Black Press Entities; and (b) that any deemed trust claims or other claims of any government agency in Canada or any province or territory thereof or any foreign governmental agency shall not be perfected or rank as secured claims and shall rank as unsecured claims, including pursuant to section 38 of the CCAA.

## **NO INTERFERENCE WITH RIGHTS**

21. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by any of the Black Press Entities, except with the prior written consent of the applicable Black Press Entitie(s) and the Monitor or leave of this Court.

## **CONTINUATION OF SERVICES**

22. During the Stay Period, all Persons having oral or written agreements with any of the Black Press Entities or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, banking services, payroll services, insurance, transportation, utility, or other services, to the Business or any of the Black Press Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by any of the Black Press Entities, and that the Black Press Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Black Press Entities in accordance with normal payment practices of the Black Press Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable Black Press Entitie(s) and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

23. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Black Press Entities on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

24. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of any of the Black Press Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of any of the Black Press Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of any of the Black Press Entities that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

## **DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE**

25. The Black Press Entities shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the applicable Black Press Entities after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

26. The directors and officers of the Black Press Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$13,806,000, as security for the indemnity provided in paragraph 25 of this Order. The Directors' Charge shall have the priority set out in paragraphs 43 and 45 herein.

27. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Black Press Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers'

insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 25 of this Order.

### **APPOINTMENT OF MONITOR**

28. KSV Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

29. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Petitioners' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the DIP Term Sheet, the Definitive Documents and such other matters as may be relevant to the proceedings herein;
- (c) assist the Petitioners, to the extent required by the Petitioners, in their dissemination, to the Interim Lender (as hereinafter defined) and their counsel, as and when required or permitted under the DIP Term Sheet or the Definitive Documents, of financial and other information as agreed to between the Petitioners and the Interim Lender which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;
- (d) advise the Petitioners in their preparation of the Petitioners' cash flow statements and reporting required by the Interim Lender, which information shall be reviewed with the Monitor and delivered to the Interim Lender and its counsel as and when



required under the DIP Term Sheet and Definitive Documents, or as otherwise agreed to by the Interim Lender;

- (e) advise the Petitioners in their development of the Plan (if any) and any amendments to the Plan;
- (f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) monitor all payments, obligations and transfers as between the Petitioners and their affiliates;
- (h) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (j) assist the Foreign Representative (as defined below) and its legal counsel as may be required to give effect to the terms of this Order; and
- (k) perform such other duties as are required by this Order or by this Court from time to time.

30. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

31. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

32. The Monitor shall provide any creditor of the Petitioners and the Interim Lender with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

33. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

#### **ADMINISTRATION CHARGE**

34. The Monitor, counsel to the Monitor, and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the

Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and, in addition, the Petitioners are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Petitioners, retainers, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

35. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

36. The Monitor, counsel to the Monitor, and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

#### **INTERIM FINANCING**

37. The Petitioners are hereby authorized and empowered to obtain and borrow under a credit facility (the "**DIP Facility**") from Canso Investment Counsel Ltd. as portfolio manager for and on behalf of Canso Strategic Credit Fund (the "**Interim Lender**") in order to finance the continuation of the Business and preservation of the Property, provided that borrowings under such credit facility shall not exceed the aggregate principal amount of \$5,500,000 unless permitted by further Order of this Court.

38. The DIP Facility shall be on the terms and subject to the conditions set forth in the term sheet between the Petitioners and the Interim Lender dated as of January 12, 2024 (the "**DIP Term Sheet**"), filed.

39. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to the DIP Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lender's Charge**") on the Property up to the maximum amount of \$5,500,000 (plus accrued and unpaid interest, fees and expenses). The Interim Lender's Charge shall not secure an obligation that exists before this Order is made. The Interim Lender's Charge shall have the priority set out in paragraphs 43 and 45 hereof.

41. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Term Sheet), the Interim Lender, upon 3 business days notice to the Petitioner and the Monitor, may exercise any and all of its rights and remedies against the Petitioners or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the Interim Lender's Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lender to the Petitioners against the obligations of the Petitioners to the Interim Lender under the DIP Term Sheet, the Definitive Documents or the Interim Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

42. The Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

43. The priorities of the Administration Charge, the KERP Charge (as defined below), the Directors' Charge and the Interim Lender's Charge (collectively, the "Charges"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,500,000);

Second – Directors' Charge (to the maximum amount of \$13,806,000);

Third – KERP Charge (to the separate maximum amounts of \$61,500 and USD\$70,000);  
and

Fourth – Interim Lender's Charge (to the maximum amount of \$5,500,000 plus accrued and unpaid interest, fees and expenses).

44. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

45. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

46. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor, the Interim Lender and the beneficiaries of the Charges.

47. The Charges, the DIP Term Sheet and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by any of the Petitioners of any Agreement to which any of the Petitioners is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

48. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

#### **KERP APPROVAL**

49. The key employee retention plan ("**KERP**") described in the First Hargreaves Affidavit and in the First Report, is hereby approved and the Petitioners are authorized and directed to make payments in accordance with the terms thereof.

50. The Petitioners are authorized to deliver such documents as may be necessary to give effect to the KERP, subject to prior approval of the Monitor and the Interim Lender or as may be ordered by this Court.

51. Each of the KERP Participants (as defined in the First Hargreaves Affidavit) shall be entitled to the benefit of and are hereby granted a charge (the "**KERP Charge**") on the Property, which charge shall not exceed the separate maximum amounts of \$61,500 and USD\$70,000 as security for the obligations of the Petitioners under the KERP. The KERP Charge shall have the priority set out in paragraphs 43 and 45 hereof.

#### **SERVICE AND NOTICE**

52. The Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1,000, 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, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

53. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on

the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

54. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: [www.ksvadvisory.com/experience/case/black-press](http://www.ksvadvisory.com/experience/case/black-press).

55. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on its website at: [www.ksvadvisory.com/experience/case/black-press](http://www.ksvadvisory.com/experience/case/black-press).

56. Notwithstanding paragraphs 53 and 54 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## **GENERAL**

57. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of their powers and duties hereunder.

58. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

59. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where



required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative, the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Petitioners in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

60. Black Press Ltd. is hereby authorized and empowered to act as the foreign representative (the “**Foreign Representative**”) in respect of these proceedings for the purpose of having these proceedings recognized in a foreign jurisdiction and to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Foreign Representative is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Code Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended.

61. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Petitioners determine that such a filing is appropriate.

62. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as they deem advisable within the time limited for Persons to file and serve Responses to the Petition.

63. Leave is hereby granted to hear any application in these proceedings on two (2) clear days’ notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

64. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days’ notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other

notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 43 and 45 hereof with respect to any fees, expenses, liabilities and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

65. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

66. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

67. Leave is hereby granted for counsel to appear at future hearings in this matter remotely by video.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of Vicki Tickle  
Lawyer for the Petitioners

BY THE COURT

---

REGISTRAR

**SCHEDULE "A"**  
**Petitioners**

**A. Canadian Petitioners**

Black Press Ltd.

311773 B.C. Ltd.

Black Press Group Ltd.

0922015 B.C. Ltd.

Central Web Offset Ltd.

**B. US Petitioners**

Sound Publishing Holding, Inc.

Sound Publishing Properties, Inc.

Sound Publishing, Inc.

Oahu Publications, Inc.

The Beacon Journal Publishing Company

WWA (BPH) Publications, Inc.

San Francisco Print Media Co.

**SCHEDULE "B"**  
**Non-Petitioner Stay Parties**

Black Press (Barbados) Ltd.

Whidbey Press (Barbados) Inc.

Black Press Delaware LLC

Black Press Group Oregon LLC

**SCHEDULE "C"**  
**LIST OF COUNSEL**

<b>Name of Counsel</b>	<b>Party Represented</b>

**SCHEDULE "D"**

**SISP Approval Order**

(see attached)

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

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

AND

IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*, S.B.C. 2002, c. 57, AS  
AMENDED

AND

IN THE MATTER OF BLACK PRESS LTD., 311773 B.C. LTD.,  
AND THOSE ENTITIES LISTED IN SCHEDULE "A"

PETITIONERS

**ORDER MADE AFTER APPLICATION**

**(SISP APPROVAL ORDER)**

BEFORE THE HONOURABLE )  
JUSTICE ) January 25, 2024  
)

THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 25th day of January, 2024 (the "**Order Date**"); AND ON HEARING Vicki Tickle and Jared Enns, counsel for the Petitioners and the non-petitioner affiliates of the Petitioners listed in Schedule "B" hereto (the "**Non-Petitioner Stay Parties**" and collectively with the Petitioners, the "**Black Press Entities**"), and those other counsel listed on Schedule "C" hereto; AND UPON READING the material filed, including the First Affidavit of Christopher Hargreaves made January 12, 2024 (the "**First Hargreaves Affidavit**"), the First Report of KSV Restructuring Inc. in its capacity as monitor of the Petitioners (the "**Monitor**") dated January [●], 2024 (the "**First Report**"); AND pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the "**CCAA**"), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

**THIS COURT ORDERS AND DECLARES THAT:**

**SERVICE AND DEFINITIONS**

1. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.
2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process in respect of the business and assets of the Black Press Entities, in the form attached hereto as Schedule "D" (the "SISP"), the Amended and Restated Initial Order of this Court dated January 25, 2024 (the "ARIO"), or the First Hargreaves Affidavit, as applicable.

**SALE AND INVESTMENT SOLICITATION PROCESS**

3. The SISP is hereby approved and the Petitioners and the Monitor are hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Petitioners and the Monitor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction(s) under the SISP.
4. The Petitioners and the Monitor and their respective affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Petitioners or the Monitor, as applicable, in performing their obligations under the SISP, as determined by this Court in a final order that is not subject to appeal or other review.



5. In conducting the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO and any other Order of this Court in the within proceeding.

#### **STALKING HORSE PURCHASE AGREEMENT**

6. The Petitioners are hereby authorized and empowered to enter into a definitive share purchase and subscription agreement with the Noteholders and CNL or one or more entities to be formed by the Noteholders and CNL (as applicable, the "**Stalking Horse Purchaser**"), which shall be substantially on the terms set out in the Stalking Horse Term Sheet attached as Appendix "A" to the Amended and Restated Transaction Support Agreement attached as Appendix ["●"] to the First Report and satisfactory to the Monitor (the "**Stalking Horse Transaction Agreement**"), such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; provided that, nothing herein approves the sale and the vesting of any Property to the Stalking Horse Purchaser (or any of its designees) pursuant to the Stalking Horse Transaction Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent application made to this Court if the transaction set out in the Stalking Horse Transaction Agreement is the Successful Bid pursuant to the SISP.

7. As soon as reasonably practicable following the Petitioners and the Stalking Horse Purchaser executing the Stalking Horse Transaction Agreement, and in any event by no later than seven (7) Business Days prior to the Qualified Bid Deadline under the SISP, the Monitor shall post a copy thereof on its website, and the Petitioners shall: (a) serve a copy thereof on the Service List; and (b) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Petitioners and the Stalking Horse Purchaser, with the consent of the Monitor, agree should be redacted.

## **BID PROTECTIONS**

8. The Bid Protections are hereby approved and, subject to the entry of the Stalking Horse Transaction Agreement, the Petitioners are hereby authorized and directed to pay the Bid Protections to the Stalking Horse Purchaser (or to such other person as it may direct) in the manner and circumstances described in the Stalking Horse Transaction Agreement.

9. The Stalking Horse Purchaser shall be entitled to the benefit of and is hereby granted a charge (the "**Bid Protections Charge**") on the Property, which charge shall not exceed \$1,750,000, as security for payment of the Bid Protections in the manner and circumstances described in the Stalking Horse Transaction Agreement.

10. The filing, registration or perfection of the Bid Protections Charge shall not be required, and that the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.

11. The Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than the Charges.

12. Except for the Charges or as may be approved by this Court on notice to parties in interest, the Petitioners shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Petitioners also obtain the prior written consent of the Monitor and the Stalking Horse Purchaser.

13. The Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Purchaser in respect of the Bid Protections Charge shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the

declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioners, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Stalking Horse Transaction Agreement shall create or be deemed to constitute a breach by any of the Petitioners of any Agreement to which any of the Petitioners is a party; and
- (b) the payments made by the Petitioners pursuant to this Order, the Stalking Horse Transaction Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

14. The Bid Protections Charge created by this Order over leases of real property shall only be a charge in the applicable Petitioner's interest in such real property lease.

15. The Stalking Horse Purchaser, with respect to the Bid Protections Charge only, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the BIA.

## **PIPEDA**

16. Pursuant to section 18(10)(o) of the *Personal Information Protection Act* (British Columbia), and any similar legislation in any other applicable jurisdictions, the Petitioners or the Monitor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants that are party to a non-disclosure agreement with the Petitioners (each, a “**SISP Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the SISP Participant’s evaluation for the purpose of effecting a Transaction, and, if a SISP Participant does not complete a Transaction, shall return all such information to the Petitioners or the Monitor, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Petitioners or the Monitor.

## **GENERAL**

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Foreign Representative and the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

18. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

19. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of Vicki Tickle  
Lawyer for the Petitioners

BY THE COURT

---

REGISTRAR

**SCHEDULE "A"**  
**Petitioners**

**A. Canadian Petitioners**

Black Press Ltd.

311773 B.C. Ltd.

Black Press Group Ltd.

0922015 B.C. Ltd.

Central Web Offset Ltd.

**B. US Petitioners**

Sound Publishing Holding, Inc.

Sound Publishing Properties, Inc.

Sound Publishing, Inc.

Oahu Publications, Inc.

The Beacon Journal Publishing Company

WWA (BPH) Publications, Inc.

San Francisco Print Media Co.

**SCHEDULE "B"**  
**Non-Petitioner Stay Parties**

Black Press (Barbados) Ltd.

Whidbey Press (Barbados) Inc.

Black Press Delaware LLC

Black Press Group Oregon LLC

**SCHEDULE "C"**  
**LIST OF COUNSEL**

<b>Name of Counsel</b>	<b>Party Represented</b>



**SCHEDULE "D"**  
**SISP**

See attached.

# Sale and Investment Solicitation Process

---

1. On January 15, 2024, the Supreme Court of British Columbia, Vancouver Registry (the "**CCAA Court**") issued an Order (the "**Initial Order**") granting certain relief to Black Press Ltd., 311773 B.C. Ltd., Black Press Group Ltd., 0922015 B.C. Ltd., Central Web Offset Ltd., Sound Publishing Holding, Inc., Sound Publishing Properties, Inc., Sound Publishing, Inc., Oahu Publications, Inc., The Beacon Journal Publishing Company, WWA (BPH) Publications, Inc., San Francisco Print Media Co. (collectively, the "**Petitioners**" and together with the Non-Petitioner Stay Parties (the "**Black Press Entities**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**" and the Petitioners proceedings thereunder, the "**CCAA Proceedings**").
2. Pursuant to the Initial Order, KSV Restructuring Inc. was appointed as monitor (in such capacity, the "**Monitor**") of the Petitioners in the CCAA Proceedings.
3. Pursuant to proceedings commenced in the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") under Chapter 15, Title 11, of the United States Code, the Petitioners obtained, among other things, recognition of the CCAA Proceedings.
4. On January 25, 2024, the CCAA Court granted:
  - (i) an Order amending and restating the Initial Order (the "**ARIO**"), and
  - (ii) an Order (the "**SISP Approval Order**") that, among other things, authorized:
    - (a) the Petitioners to implement a sale and investment solicitation process in respect of the Black Press Entities (the "**SISP**") in accordance with the terms hereof; (b) the Black Press Entities to negotiate and finalize a definitive Stalking Horse Transaction Agreement (the "**Stalking Horse Bid**") with the Stalking Horse Purchaser; (c) approved the Bid Protections subject to entry of the Stalking Horse Transaction Agreement; and (d) granted the Bid Protections Charge.
5. Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the ARIO or the SISP Approval Order, as applicable. Copies of the ARIO and the SISP Approval Order can be found at [www.ksvadvisory.com/experience/case/black-press](http://www.ksvadvisory.com/experience/case/black-press) (the "**Monitor's Website**").
6. This SISP sets out the manner in which: (a) binding bids for executable transactions involving the business and/or assets of, or the equity interests in, the Black Press Entities will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) CCAA Court approval of any Successful Bid will be sought.
7. The SISP shall be conducted by the Petitioners with the assistance and under the oversight of the Monitor and the Monitor shall be entitled to receive all information in relation to the SISP.
8. Parties who wish to have their bids considered must participate in the SISP.
9. The Black Press Entities and the Monitor, in accordance with section 10 below, shall:

- a) disseminate marketing materials and a process letter to potentially interested parties identified by the Black Press Entities and the Monitor;
  - b) solicit interest from parties with a view to such interested parties entering into non-disclosure agreements (each an “**NDA**”) (parties shall only obtain access to the virtual data room and be permitted to participate in the SISP if they execute an NDA, in form and substance satisfactory to the Black Press Entities; provided that those parties that have already executed a NDA with the Black Press Entities shall not be required to execute a further agreement unless such agreement has expired or will expire during the SISP);
  - c) provide applicable parties who have entered into an NDA with the Black Press Entities access to a virtual data room containing, among other things, diligence information; and
  - d) request that such parties submit a binding offer meeting at least the requirements set forth in Section 11 below, as determined by the Black Press Entities and the Monitor (each a “**Qualified Bid**”), by the Qualified Bid Deadline (as defined below).
10. The SISP shall be conducted subject to the terms hereof and the following key milestones, which milestones may be extended by the Black Press Entities, with the consent of the Monitor and the Stalking Horse Purchaser:<sup>1</sup>
- a) the CCAA Court issues the SISP Approval Order by no later than January 25, 2024;
  - b) the Black Press Entities and the Monitor commence the solicitation process by no later than January 25, 2024, it being understood that the Black Press Entities and/or the Monitor shall be at liberty to contact, provide marketing materials and commence discussions with interested parties prior to such date as they consider appropriate;
  - c) deadline to submit a Qualified Bid – 5:00 p.m. Pacific Time on February 16, 2024 (the “**Qualified Bid Deadline**”);

---

<sup>1</sup> To the extent any dates fall on a non-business day in British Columbia, they shall be deemed to be the first business day thereafter.

- d) deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – by no later than 5:00 p.m. Pacific Time on February 21, 2024;
- e) the Black Press Entities and the Monitor to hold an Auction (if applicable) and select the successful bid(s) (the “**Successful Bid**”) – by no later than 10:00 a.m. Pacific Time on February 26, 2024 (the “**Definitive Agreement Deadline**”);
- f) Transaction Order (as defined below) hearing:
  - o (if there is no Auction) – by no later than March 1, 2024 subject to CCAA Court availability; or
  - o (if there is an Auction) – by no later than March 6, 2024, subject to CCAA Court availability; and
- g) closing of the Successful Bid as soon thereafter as possible and, in any event, by no later than 5:00 p.m. Pacific Time on March 15, 2024 (the “**Outside Date**”).

11. In order to constitute a Qualified Bid, a bid must comply with the following:

- a) it provides for aggregate consideration, payable in cash in full on closing in an amount equal to or greater than (i) all outstanding obligations under the Senior Secured Notes (as defined in the First Hargreaves Affidavit), (ii) all outstanding obligations under the DIP Term Sheet, (iii) any obligations in priority to amounts owing under the DIP Term Sheet, including any Charges, (iv) the amount of \$500,000 to fund any professional fees incurred in connection with the wind-up of the Petitioners' CCAA proceedings and any further proceedings or wind-up costs; and (v) the amount of \$1,750,000 to satisfy the Bid Protections (the “**Consideration Value**”), and provides a detailed sources schedule that identifies, with specificity, the composition of the Consideration Value and any assumptions that could reduce the net consideration payable including details of any material liabilities that are being assumed or being excluded;
- b) it contemplates closing of the proposed transaction by not later than the Outside Date;
- c) it contains:
  - i. duly executed binding definitive transaction document(s);
  - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of each of its equityholder(s);
  - iii. a redline to the Stalking Horse Transaction Agreement posted in the virtual data room;
  - iv. evidence of authorization and approval from the bidder's board of directors (or equivalent governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);

- v. disclosure of any past or current connections or agreements with the Black Press Entities or any of their affiliates, any known, potential, prospective bidder, or any current or former officer, manager, director, member or known current or former equity security holder of any of the Black Press Entities or any of their affiliates;
  - vi. such other information reasonably requested by the Black Press Entities or the Monitor;
  - vii. indicates whether any Transaction Order (as defined below) approving the bid will require recognition from the US Bankruptcy Court;
- d) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the next-highest or otherwise best Qualified Bid as compared to the Successful Bid (such bid, the "**Back-Up Bid**") it shall only remain irrevocable until selection of the Successful Bid;
- e) it provides that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of: (i) closing of the Successful Bid; or (ii) closing of the Back-Up Bid;
- f) it provides written evidence of a bidder's ability to fully fund and consummate the transaction (and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the Successful Bid;
- g) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h) it is not conditional upon:
- i. approval from the bidder's board of directors (or equivalent governing body) or equityholder(s);
  - ii. the outcome of any unperformed due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- i) it includes acknowledgments and representations that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid; (ii) is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Black Press Entities, the Monitor and their respective employees, officers, directors, agents, advisors and other representatives, regarding the proposed transactions, this SISF, or any information (or the

completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents; (iii) is making its bid on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Black Press Entities, the Monitor or any of their respective employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed transactions documents; (iv) is bound by this SISP and the SISP Approval Order; and (v) is subject to the exclusive jurisdiction of the CCAA Court with respect to any disputes or other controversies arising under or in connection with the SISP or its bid;

- j) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary to obtain such approvals);
  - k) it includes full details of the bidder's intended treatment of the Petitioners' employees, customers, contracts, collective bargaining agreements, pension and benefit obligations and vendors under the proposed bid;
  - l) it is accompanied by a cash deposit (the "**Deposit**") paid by wire transfer of immediately available funds in an amount equal to at least 10% of the Consideration Value, which Deposit shall be retained by the Monitor in an interest-bearing trust account in accordance with the terms hereof;
  - m) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
  - n) it is received by the Black Press Entities, with a copy the Monitor, by the Qualified Bid Deadline at the email addresses specified on Schedule "A" hereto.
12. The Black Press Entities, with the consent of the Monitor, may in their sole discretion waive compliance with any one or more of the requirements specified in Section 11 above and deem a non-compliant bid to be a Qualified Bid, provided that requirements 11(a), 11(b) and 11(l) may not be waived without the consent of the Stalking Horse Bidder.
13. Notwithstanding the requirements specified in Section 11 above, the transaction contemplated by the Stalking Horse Transaction Agreement (the "**Stalking Horse Bid**"), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Bid.
14. If one or more Qualified Bids (other than the Stalking Horse Bid) has been received by the Black Press Entities on or before the Qualified Bid Deadline, the Black Press Entities shall proceed with an auction process to determine the successful bid(s) (the "**Auction**"), which Auction shall be administered in accordance with **Schedule "B"** hereto. The successful bid(s) selected pursuant to the Auction shall constitute the "**Successful Bid(s)**". Forthwith upon determining to proceed with an Auction, the Black Press Entities shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Bid) of which Qualified Bid is the highest or otherwise best bid (as determined by the Black Press Entities, in consultation with the Monitor) along with a copy of such bid.

15. If by the Qualified Bid Deadline, no Qualified Bid (other than the Stalking Horse Bid) has been received by the Black Press Entities, then the Stalking Horse Bid shall be deemed the Successful Bid and shall be consummated in accordance with and subject to the terms of the Stalking Horse Transaction Agreement.
16. Following selection of a Successful Bid, if any, the Black Press Entities, with the assistance of its advisors, and in consultation with the Monitor, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the milestones set out in Section 10. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Black Press Entities in consultation with the Monitor, the Petitioners shall apply to the CCAA Court for an order or orders approving such Successful Bid and/or the mechanics to authorize the Petitioners to complete the transactions contemplated thereby, as applicable, and authorizing the Petitioners to: (a) enter into any and all necessary agreements and related documentation with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the transaction(s) contemplated in such Successful Bid (each, a "**Transaction Order**"). If the Successful Bid is not consummated in accordance with its terms, the Black Press Entities shall be authorized, but not required, to elect that the Back-Up Bid (if any) is the Successful Bid.
17. The highest Qualified Bid may not necessarily be accepted by the Black Press Entities. The Black Press Entities, with the written consent of the Monitor, reserve the right not to accept any Qualified Bid or to otherwise terminate the SISP. The Black Press Entities, with the written consent of the Monitor, reserve the right to deal with one or more Qualified Bidders to the exclusion of others, to accept a Qualified Bid for different parts of the Black Press Entities business and assets or to accept multiple Qualified Bids and enter into definitive agreements in respect of all such bids, provide that the aggregate of such Qualified Bids satisfies the requirements of Section 11(a) and (b).
18. If a Successful Bid is selected and a Transaction Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to a Transaction Order or such earlier date as may be determined by the Black Press Entities, in consultation with the Monitor; provided, the Deposit in respect of the Back-Up Bid shall not be returned to the applicable bidder until the closing of the Successful Bid.
19. The Black Press Entities shall be permitted, in their discretion, to provide general updates and information in respect of the SISP to legal counsel to any creditor (each a "**Creditor**") on a confidential basis, upon: (a) irrevocable confirmation in writing from such counsel that the applicable Creditor will not submit any bid in the SISP; and (b) counsel to such Creditor entering into confidentiality arrangements with the Black Press Entities, in form and substance satisfactory to the Black Press Entities and the Monitor.
20. The Interim Lender shall only be entitled to the consultation rights specified herein in its favour and confidential updates and information from the Black Press Entities and the

Monitor in respect of the SISP, including copies of any Qualified Bids, upon the Interim Lender (in its capacity as Stalking Horse Bidder) irrevocably confirming in writing to the Petitioners and the Monitor that it will not submit any bid in the SISP except for the Stalking Horse Agreement and will not participate in the Auction.

21. Any amendments to this SISP may only be made by the Black Press Entities with the written consent of the Monitor and the Interim Lender or by further order of the court.



**SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS**

To the counsel for the Black Press Entities:

[vtickle@cassels.com](mailto:vtickle@cassels.com); [jenns@cassels.com](mailto:jenns@cassels.com); [rjacobs@cassels.com](mailto:rjacobs@cassels.com); [jbellissimo@cassels.com](mailto:jbellissimo@cassels.com);  
[jbornstein@cassels.com](mailto:jbornstein@cassels.com)

and with a copy to the Monitor:

[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com); [jknight@ksvadvisory.com](mailto:jknight@ksvadvisory.com); [ebrenner@ksvadvisory.com](mailto:ebrenner@ksvadvisory.com)

## **SCHEDULE "B": AUCTION PROCEDURES**

1. **Auction.** If the Black Press Entities receive at least one Qualified Bid (other than the Stalking Horse Bid), the Black Press Entities will conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including, for greater certainty, the Stalking Horse Bid (collectively, the "**Qualified Parties**" and each a "**Qualified Party**"), shall be eligible to participate in the Auction. No later than 5:00 p.m. Pacific Time on the day prior to the Auction, each Qualified Party must inform the Black Press Entities and the Monitor in writing whether it intends to participate in the Auction. The Black Press Entities will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party (including the Stalking Horse Purchaser) provides such expression of intent, the highest or otherwise best Qualified Bid as determined by the Black Press Entities, in consultation with the Monitor, shall be designated as the Successful Bid (as defined below).

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only the Black Press Entities, the Qualified Parties and the Monitor, and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any Overbids (as defined below) at the Auction;
- b. **No Collusion.** Each Qualified Party participating at the Auction shall be required to confirm on the record at the Auction that: (a) it has not engaged in any collusion with respect to the Auction and the bid process; and (b) its bid is a good-faith *bona fide* offer, it is irrevocable and it intends to consummate the proposed transaction if selected as the Successful Party (as defined below);
- c. **Minimum Overbid and Back-Up Bid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the Black Press Entities, in consultation with the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Qualified Party subsequent to the Black Press Entities' announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of \$100,000, and all such Overbids shall be irrevocable until closing of the Successful Bid; provided, that if such Overbid is not selected as the Successful Bid or as the Back-Up Bid (if any) it shall only remain irrevocable until selection of the Successful Bid;
- d. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each

subsequent Qualified Bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Black Press Entities, in their discretion, may establish separate video conference rooms to permit interim discussions among the Black Press Entities, the Monitor and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;

- e. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the opportunity to submit an Overbid with full knowledge and confirmation of the then-existing highest or otherwise best bid and no Qualified Party submits an Overbid; and
- f. **No Post-Auction Bids.** No bids will be considered for any purpose after the Successful Bid has been designated, and therefore the Auction has concluded.

#### **Selection of Successful Bid**

4. **Selection.** During the Auction, the Black Press Entities, in consultation with the Monitor, will: (a) review each subsequent Qualified Bid, considering the factors set out in Section 11 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in (i) above, (iii) the likelihood of the Qualified Party's ability to close a transaction by not later than the Outside Date (including factors such as: the transaction structure and execution risk; conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, (v) the net benefit to the Black Press Entities and their stakeholders and (vi) any other factors the directors or officers of the Black Press Entities may, consistent with their fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the Black Press Entities in their sole discretion, subject to the milestones set forth in Section 10 of the SISP.