

2024

Hfx No. 538745

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF the *Companies Creditors Arrangement Act*, R.S.C., 1985,
c. C- 36, as amended

AND IN THE MATTER OF an application by Blue Lobster Capital Limited,
3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova
Scotia Limited (collectively, the “**Applicants**”)

BRIEF OF LAW OF THE MONITOR

October 16, 2025

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TO: The Service List

To the Honourable Justice Jamieson, KSV Restructuring Inc. ("**KSV**"), in its capacity as court-appointed monitor (the "**Monitor**") of Blue Lobster Capital Limited ("**BLCL**"), 3284906 Nova Scotia Limited ("**Spirit Co**"), 3343533 Nova Scotia Limited ("**Lost Bell**") and 4318682 Nova Scotia Limited ("**Annapolis Cider**", together with Spirit Co and Lost Bell, the "**Operating Companies**" and with BLCL, the "**Applicants**"), submits:

PART I – OVERVIEW

1. This brief is filed by the Monitor in support of its motion seeking:
 - (a) an Order (the "**Claims Procedure Order**") to: (i) approve a proposed claims procedure (the "**Claims Procedure**") to solicit, identify, quantify and, if appropriate, resolve claims (the "**Claims**") against the Applicants and their directors and officers (the "**Directors/Officers**"); and (ii) authorize the Monitor to carry out the Claims Procedure in accordance with the Claims Procedure Order; and
 - (b) an Order (the "**Ancillary Relief Order**") to: (i) extend the stay of proceedings to and including January 31, 2026; and (ii) approve the Fifth Report of the Monitor dated October 15, 2025 (the "**Fifth Report**") and the Monitor's activities described therein.
2. The Monitor brings this motion with a view to taking steps toward the eventual wind-down of these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C- 36, as amended (the "**CCAA**") now that two asset sale transactions for the Operating Companies have closed and whereby substantially all of the operating assets of the Applicants have been sold.
3. While certain of the Applicants' real property assets remain to be sold, the Monitor seeks in the meantime to conduct a claims process to allow the Monitor to determine claims against the Applicants for the purposes of administering distributions. The ancillary relief, including the

extension of the stay of proceedings, will allow the Monitor to take the steps necessary to facilitate the completion of the CCAA proceedings.

PART II – FACTS

4. The facts relevant to this motion are more fully set out in the Fifth Report. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Fifth Report.

5. The Applicants are private companies incorporated under the laws of Nova Scotia.¹

6. Prior to completing the Transactions, the primary business of the Applicants was the manufacturing and sale of alcoholic beverages, which were sold to liquor boards in Ontario, Nova Scotia and Prince Edward Island, as well as to restaurants and directly to consumers.²

7. Pursuant to the Initial Order granted by the Supreme Court of Nova Scotia (the “**Court**”) on December 13, 2024, the Applicants were granted protection under the CCAA and KSV was appointed as Monitor of the Applicants. The Initial Order was amended by the Amended and Restated Initial Order granted by the Court on December 20, 2024, which, among other things, extended the stay of proceedings.³

8. On January 21, 2025, the Court granted the Charging Order, which approved the DIP Facility and granted the DIP Lender’s Charge in favour of the Royal Bank of Canada, the Operating Companies’ senior lender.⁴

¹ Fifth Report of the Monitor dated October 15, 2025 [“**Fifth Report**”] at 2.1.

² Fifth Report at 2.2.

³ Fifth Report at 1.1 and 1.2.

⁴ Fifth Report at 1.3.

9. On March 7, 2025, the Court granted the SISP Approval Order, which (a) approved the SISP to be carried out by the Monitor; and (b) extended the stay of proceedings to and including June 30, 2025.⁵ The stay of proceedings was subsequently further extended to July 7, 2025.⁶

10. On July 7, 2025, the Court heard the Sale Approval Motion and granted an Order dated July 11, 2025, which extended the stay of proceedings to and including July 31, 2025.⁷

11. On July 17, 2025, the Court granted:

- (a) the Lynch AVO, which (i) approved the Lynch Transaction pursuant to the Lynch APA, and (ii) vested the Purchased Assets (as defined in the Lynch APA) in Lynch free and clear of encumbrances;
- (b) the Coast AVO, which (i) approved the Coast Transaction (together with the Lynch Transaction, the **"Transactions"**) pursuant to the Coast APA, and (ii) vested the Purchased Assets (as defined in the Coast APA) to Coast, free and clear of encumbrances; and
- (c) an ancillary Order (**"July 17th Ancillary Order"**) extending the stay of proceedings to and including October 31, 2025, and expanding the Monitor's powers to: (i) execute the Transactions, (ii) approve the Operating Companies' receipts and disbursements, and (iii) perform such other activities as may be required to realize on the Operating Companies' remaining assets, including the BLCL Real Properties.⁸

12. The Transactions closed on August 8, 2025.⁹

⁵ Fifth Report at 1.4.

⁶ Fifth Report at 1.5.

⁷ Fifth Report at 1.6.

⁸ Fifth Report at 1.7.

⁹ Fifth Report at 1.10.

A. Claims Procedure

13. The proposed Claims Procedure is intended to solicit and determine all Prefiling Claims, D&O Claims, Restructuring Period Claims and/or Termination Claims against the Applicants or the Directors/Officers.

14. The proposed Claims Procedure requires the Monitor to, among other things:

- (a) publish the Notice to Creditors once in *The Globe and Mail* (National Edition) and once in the Halifax Herald as soon as practicable after the granting of the Claims Procedure Order;
- (b) post the Notice to Creditors, the Proof of Claim Document Package, and the Claims Procedure Order on its Case Website within two Business Days of granting of the Claims Procedure Order;
- (c) disseminate an Employee Claim Package to Terminated Employees that includes a Termination Claim Statement, a Notice of Dispute form, and such other materials as the Monitor considers appropriate; and
- (d) send a Proof of Claim Document Package to each Known Creditor of the Applicants within 10 Business Days following the granting of the Claims Procedure Order.¹⁰

15. Any Creditor that intends to file a Prefiling Claim or D&O Claim relating to the Prefiling Period is required to deliver to the Monitor a Proof of Claim or a D&O Proof of Claim, as applicable, prior to 4:00 p.m. AT on the date that is 35 calendar days from the granting of the proposed Claims Procedure Order (the “**Claims Bar Date**”).¹¹

¹⁰ Fifth Report at 3.1.

¹¹ Fifth Report at 3.2.1.

16. Any Creditor that intends to file a Restructuring Period Claim or a D&O Claim relating to the Restructuring Period shall file a Proof of Claim or a D&O Proof of Claim, as applicable, prior to 4:00 p.m. AT on the day that is the later of: (a) the Claims Bar Date, and (b) thirty-five (35) calendar days after the Monitor sends a Proof of Claim Document Package with respect to a Restructuring Period Claim (the “**Restructuring Period Claims Bar Date**”).¹²

17. Any Creditor that does not file a Proof of Claim prior to the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, shall not be entitled to receive any distributions in respect of such Claim, shall have its claim forever extinguished, and shall be barred from making or enforcing such Claim.¹³

(i) Claims Process for Terminated Employees

18. The Claims Procedure provides for a “negative notice” process for Terminated Employees of the Applicants with severance and termination claims, whereby the Monitor will calculate Termination Claims and provide a Termination Claim Statement to each Terminated Employee.

19. Specifically, the Monitor, in consultation with the Applicants, will calculate the Termination Claims by deeming each Terminated Employee’s notice period to be the greater of the Terminated Employee’s entitlement (a) under applicable employment standards legislation, (b) any contractual arrangement in effect between any of the Applicants and the Terminated Employee, and (c) common law severance, calculated based on a Terminated Employee’s position, years of service and age, among other factors.¹⁴

¹² Fifth Report at 3.2.2.

¹³ Fifth Report at 3.2.3.

¹⁴ Fifth Report at 3.3.1.

20. The Monitor will send an Employee Claim Package, which will include a Termination Claim Statement, to each Terminated Employee within 10 Business Days following the granting of the Claims Procedure Order.¹⁵

21. Any Terminated Employee who disputes the Termination Claim set forth in the Termination Claim Statement or wishes to assert an additional Claim in relation to the Applicants other than the Termination Claim, must deliver a Notice of Dispute to the Monitor so that it is received by the Monitor by no later than 4:00 p.m. AT on the day that is the later of (a) the Claims Bar Date, and (b) thirty-five (35) calendar days after the date on which the Monitor sends an Employee Claims Package (the "**Terminated Employee Claims Bar Date**").¹⁶

22. Any Terminated Employee that does not deliver a Notice of Dispute in respect of a Termination Claim Statement, or an Amended Termination Claim Statement, if applicable, on or before the relevant Terminated Employee Claims Bar Date shall be deemed to have accepted the Monitor's determination of the Termination Claim as set out in the Termination Claim Statement and shall be forever barred from disputing the amount of the Termination Claim.¹⁷

(ii) Determination of Claims

23. On or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable, the Monitor shall review all Proofs of Claim and D&O Proofs of Claim received and shall accept, revise or reject each Claim set out therein.¹⁸

¹⁵ Fifth Report at 3.3.2.

¹⁶ Fifth Report at 3.3.4.

¹⁷ Fifth Report at 3.3.5.

¹⁸ Fifth Report at 3.4.1.

24. In the case of a D&O Claim set out in a D&O Proof of Claim, the Monitor shall accept, revise or reject such D&O Claim, provided the Monitor shall not accept or revise any portion of the D&O Claim absent consent of the applicable Directors/Officers or further Order of the Court.¹⁹

25. If the Monitor intends to revise or reject a Proof of Claim or D&O Proof of Claim filed in accordance with the Claims Procedure Order, the Monitor shall send a Notice of Revision or Disallowance ("**NORD**") of the Claim to the Creditor.²⁰

26. Any Creditor who disputes the NORD shall deliver a Notice of Dispute of Revision or Disallowance to the Monitor by 4:00 p.m. AT on the day which is twenty-one (21) calendar days after the date on which the Creditor is deemed to have received the NORD. Should the Creditor fail to deliver a Notice of Dispute of Revision or Disallowance by that date, the Creditor shall be deemed to accept the nature and amount of its Claim as such Claim is set out in the NORD.²¹

27. Upon receipt of a Notice of Dispute of Revision or Disallowance, the Monitor shall: (a) attempt to resolve such dispute and settle the Disputed Claim with the Creditor, or (b) refer the dispute to a Claims Officer in these CCAA proceedings to determine the classification, amount and/or nature of the Disputed Claim.²²

28. Upon receipt of a Notice of Dispute of Revision or Disallowance in respect of a D&O Claim, the Monitor, with the Director, shall: (a) attempt to resolve such dispute and settle the Disputed Claim with the Creditor, or (b) refer the dispute to a Claims Officer in these CCAA proceedings to determine the classification, amount and/or nature of the Disputed Claim.²³

¹⁹ Fifth Report at 3.4.1.

²⁰ Fifth Report at 3.4.2.

²¹ Fifth Report at 3.4.3.

²² Fifth Report at 3.4.4.

²³ Fifth Report at 3.4.5.

(iii) Claims Officer

29. The Claims Procedure Order contemplates the appointment of (a) Jeffrey Larry, a partner at the law firm of Paliare Roland Rosenberg Rothstein LLP, or (b) such other Persons as may be appointed by the Court from time to time on application of the Monitor, as Claims Officer to deal with disputed claims.²⁴

30. Any determination made by the Claims Officer may be appealed by the Monitor, the Creditor, the Applicants, and/or the applicable Directors and Officers in respect of any D&O Claims, within 10 days of such party being deemed to have received a notice of the Claims Officer's determination of the classification, amount and/or nature of the Disputed Claim, failing which the Claims Officer's determination shall be final and binding on the applicable parties and there shall be no further right of appeal, review or recourse to the Court. Any determination by the Court of a Disputed Claim is subject to each party's rights of appeal.²⁵

PART III – ISSUES

31. The issues to be considered on this motion are whether the Court should grant the Claims Procedure Order and the Ancillary Relief Order.

²⁴ Fifth Report at 3.4.6.

²⁵ Fifth Report at 3.4.7.

PART IV – SUBMISSIONS

A. Claims Procedure Order should be Granted²⁶

(i) Framework and Considerations for Approval of Claims Processes

32. Section 11 of the CCAA gives the Court authority to make any order it considers appropriate in the circumstances, which includes the ability to approve a process to solicit and determine claims against a debtor company and/or its directors and officers.²⁷

33. The Court’s routine practice of approving claims processes, including those providing for a “negative claims process” (as is the case here for Terminated Employees),²⁸ in CCAA proceedings is “well accepted”.²⁹

34. Claims processes and claims bar dates allow a debtor company to “determine the universe of claims” against it and/or its directors and officers,³⁰ even where there is no plan contemplated.³¹ Claims processes should be “flexible and expeditious”³²

35. Claims processes typically include the following features:

- (a) a method to communicate to potential creditors that there is a process by which they must prove their claims and the date by which they must do so;

²⁶ Capitalized terms used in this section and not otherwise defined have the meanings given to them in the proposed Claims Procedure Order.

²⁷ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 [“**CCAA**”] at [s. 11](#).

²⁸ See, for example, *Re Toys “R” Us (Canada) Ltd*, 2018 ONSC 609 [“**Toys “R” Us**”] at [paras 11-14](#); see also *Re Just Energy Entities*, (September 15, 2021), Ont SCJ (Commercial List), Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#)).

²⁹ *Re ScoZinc Ltd*, 2009 NSSC 136 [“**ScoZinc**”] at [para 25](#); see also *Toys “R” Us* at [para 8](#); see also *Re US Steel Canada Inc*, 2017 ONSC 1967 at [paras 5-6](#).

³⁰ *Timminco Limited (Re)*, 2014 ONSC 3393 [“**Timminco**”] at [para 43](#).

³¹ See, for example, *Re Aralez Pharmaceuticals*, (October 10, 2018), Ont SCJ (Commercial List), Court File No. CV18-603054-00CL ([Claims Procedure Order](#)); see also *Re Timminco*, (June 15, 2012), Ont SCJ (Commercial List), Court File No. CV-12-9539-00CL ([Claims Procedure Order](#)).

³² *ScoZinc*, *supra* at [para 23](#).

- (b) an opportunity for the debtor company or its representative to review and, if appropriate, contest claims made by creditors;
- (c) an adjudication mechanism for claims that cannot be agreed upon or settled through negotiation;
- (d) a “claims bar date” by which claims must be submitted; and
- (e) the barring of late claims to ensure that the Court-appointed monitor and the debtor company can make accurate and informed determinations for voting and distribution purposes.³³

(ii) The Claims Process is Fair, Reasonable and Appropriate

36. It is appropriate for the Court to exercise its discretion to approve the Claims Procedure and grant the proposed Claims Procedure Order given that:

- (a) the proposed notices, dispute resolution provisions and timelines set out in the Claims Procedure Order are consistent with those commonly approved by Canadian courts in insolvency proceedings;
- (b) the Claims Procedure provides reasonable time and procedures for the identification of Claims;
- (c) the Claims Bar Date, being approximately 35 calendar days following the return of this motion, is sufficient for creditors to file a Proof of Claim and D&O Proof of Claim (as applicable) with the Monitor;
- (d) the basis on which the Claims Procedure proposes to address Creditors will allow the Monitor to calculate Creditors’ Claims in a consistent manner based on the Applicants’ books and records, which should minimize the number of Disputed

³³ *Toys “R” Us*, *supra* at [para 8](#); *Timminco*, *supra* at para 43; *ScoZinc*, *supra* at [para 23](#).

Claims, thereby streamlining the Claims Procedure and reducing professional costs;

- (e) the basis on which the Claims Procedure proposes to address Employee Claims, being the highest amount owing under applicable employment standards legislation, contractual arrangements or estimated common law entitlement, is fair and reasonable, treats Employee Claims consistently and should assist to minimize the number of Disputed Claims by Employees; and
- (f) retaining a Claims Officer provides an efficient mechanism to determine Disputed Claims, if any.³⁴

37. The Claims Procedure Order satisfies the overarching purpose of claims processes in CCAA proceedings generally, which is “to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost-efficient manner.”³⁵

38. The Monitor recommends that this Court approve the Claims Procedure Order, as it is fair, reasonable and appropriate in the circumstances.

B. The Court Should Approve the Ancillary Relief Order

(i) Stay Extension Should be Granted

39. Pursuant to section 11.02(2) of the CCAA, the Court has the jurisdiction to extend the stay of proceedings following the issuance of an initial order.³⁶ An extension may only be granted where the Court is satisfied that: (a) circumstances exist that make the order appropriate; and (b) the debtor has acted, and continues to act, in good faith and with due diligence.³⁷

³⁴ Fifth Report at 3.6.

³⁵ *Canwest Global Communications Corp*, 2011 ONSC 2215 at [para 40](#).

³⁶ CCAA, [s 11.02\(2\)](#).

³⁷ CCAA, [s 11.02\(3\)](#).

40. The stay of proceedings currently expires on October 31, 2025.

41. The Monitor recommends that the stay be extended to January 31, 2026, for the following reasons:

- (a) it will enable the Monitor to advance the proposed Claims Procedure and take such additional measures toward the conclusion of the CCAA proceedings;
- (b) it will provide the Monitor with additional time to realize on the Applicants' remaining assets, including the BLCL Real Properties;
- (c) the Monitor believes that the extension is in the best interest of the Applicants' stakeholders and that no stakeholder will be prejudiced by extending the stay of proceedings;
- (d) the Extended Cash Flow Forecast demonstrates that there is sufficient cash on hand to fund these proceedings;
- (e) neither the Applicants nor the Monitor is aware of any party opposed to an extension of the stay of proceedings.³⁸

42. Accordingly, the Monitor believes the requested extension of the stay period to and including January 31, 2026 is necessary and appropriate in the circumstances.

(ii) Fifth Report and Monitor's Activities Should be Approved

43. The Ancillary Order seeks to approve the Fifth Report and the activities of the Monitor referred to therein.

44. A request to approve a monitor's report "is not unusual".³⁹ As stated by Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) in *Laurentian*, there are good

³⁸ Fifth Report at 6.1.

³⁹ *Re Target Canada Co*, 2015 ONSC 7574 [*"Target"*] at [para 2](#).

policy and practical reasons for court approval of a Monitor's report and activities, including that court approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the Monitor.⁴⁰

45. In this case, the Fifth Report and the activities described therein should be approved because the activities were necessary and undertaken in good faith pursuant to the Monitor's duties and powers set out in the CCAA and the orders in this CCAA proceeding. All activities were undertaken in the best interests of the Applicants' stakeholders.

46. The Ancillary Order incorporates the limitation adopted in *Target* by expressly providing that the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize the approval of its reports and activities.⁴¹

⁴⁰ *Target*, *supra* at [para 22](#).

⁴¹ *Target*, *supra* at [para 7](#).

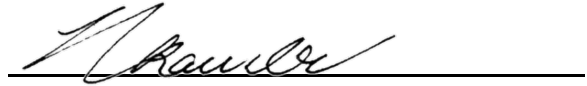
47. The form of the proposed Ancillary Relief Order with respect to approval of the Fifth Report and the Monitor's activities described therein, is consistent with the language used in *Target* and subsequent proceedings.⁴²

48. For these reasons, the Monitor believes it is appropriate for this Court to approve the Fifth Report and the activities of the Monitor referred to therein.

PART IV – RELIEF REQUESTED

49. For the reasons set out above, the Monitor respectfully requests the Court grant the Claims Procedure Order and the Ancillary Relief Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16th day of October 2025.



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⁴² *Target*, *supra* at [paras 7](#) and [26](#).

LIST OF AUTHORITIES

1. *Re Toys “R” Us (Canada) Ltd*, [2018 ONSC 609](#)
2. *Re Just Energy Entities*, (September 15, 2021), Ont SCJ (Commercial List), Court File No. CV-21-00658423-00CL ([Claims Procedure Order](#))
3. *Re ScoZinc Ltd*, [2009 NSSC 136](#)
4. *Re US Steel Canada Inc*, [2017 ONSC 1967](#)
5. *Timminco Limited (Re)*, [2014 ONSC 3393](#)
6. *Re Aralez Pharmaceuticals*, (October 10, 2018), Ont SCJ (Commercial List), Court File No. CV18-603054-00CL ([Claims Procedure Order](#))
7. *Re Timminco*, (June 15, 2012), Ont SCJ (Commercial List), Court File No. CV-12-9539-00CL ([Claims Procedure Order](#))
8. *Laurentian University of Sudbury*, [2021 ONSC 3885](#)
9. *Canwest Global Communications Corp*, [2011 ONSC 2215](#)
10. *Re Target Canada Co*, [2015 ONSC 7574](#)