

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 (the “**CCAA**”)

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

November 3, 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, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited (the “**Applicants**”), submits:

PART I – OVERVIEW

1. This brief is filed by the Monitor in support of its motion seeking:
 - (a) an Approval and Vesting Order (the “**AVO**”) to, among other things, approve a transaction (the “**Brunswick Property Transaction**”) between BLCL, as represented by the Monitor, and Ashley MacLeod and Danae Harvalias (the “**Brunswick Property Purchasers**”), for the property located at 2138 Brunswick Street, Halifax, Nova Scotia (the “**Brunswick Property**”) pursuant to an agreement of purchase and sale dated October 15, 2025 (the “**Brunswick Property APS**”);
 - (b) an Ancillary Order (the “**Ancillary Order**”) to, among other things:
 - (i) seal the confidential appendix (the “**Confidential Appendix**”) to the report of the Monitor dated November 3, 2025 (the “**Sixth Report**”);
 - (ii) authorize the Monitor to make distributions to Royal Bank of Canada (“**RBC**”) up to the amount of its indebtedness from the proceeds of the Brunswick Property Transaction (the “**Proposed Distribution**”);
 - (iii) approve the Sixth Report and the Monitor’s activities described therein.

PART II – FACTS

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

3. The Applicants were granted protection under the CCAA on December 13, 2024 and KSV was appointed as Monitor of the Applicants.¹

4. During the CCAA proceeding, the Monitor has conducted a sale and investment solicitation process and concluded the sale of substantially all the operating assets of the Applicants. The sales of the operating assets were approved on July 17, 2025.²

5. On July 17, 2025, in association with the approval of the sale transactions, the Court approve an ancillary order (the “**July 17th Ancillary Order**”) which, among other things, expanded the Monitor’s powers to: (a) execute the Lynch Transaction and Coast Transaction; (b) approve the Operating Companies’ receipts and disbursements; and (c) perform such other activities as may be required to realize on the Applicants’ remaining assets, including the remaining real property assets of Blue Lobster Capital Limited (the “**BLCL Real Properties**”).³

6. The sale transactions for the operating assets closed on August 8, 2025.⁴

7. On September 16, 2025, the Court issued an Order (the “**Settlement Approval Order**”) on consent of the Applicants, the Monitor, and RBC that set out, among other things, the process by which Mr. Rice would be entitled to market and sell the BLCL Real Properties and specified

¹ Sixth Report at 1.1-1.2.

² Sixth Report at 1.7.

³ Sixth Report at 1.7.

⁴ Sixth Report at 1.9.

that the Monitor would assume control of the sale process for the BLCL Real Properties if Mr. Rice did not secure a transaction by September 16, 2025.⁵

8. As of September 16, 2025, Mr. Rice had listed only the Brunswick Property for sale. As no transaction was finalized by that date, the Monitor assumed control of the sale process and shortly thereafter listed all of the other BLCL Real Properties for sale.⁶

9. On October 15, 2025, the Monitor accepted a binding offer for the sale of the Brunswick Property. While the Transaction was conditional, all conditions were waived by the deadline contemplated by the Brunswick Property APS.⁷

10. The Monitor seeks approval of the sale of the Brunswick Property to, among other things, realize proceeds of sale to pay down the Applicants' remaining indebtedness to RBC, which outstanding secured indebtedness amounts to approximately \$1.02 million.⁸

Brunswick Property Transaction

11. The Brunswick Property is a single-family residential property located in Halifax, Nova Scotia, and was formerly Mr. Rice's primary residence.⁹

12. Mr. Rice retained Bryant Realty to act as the listing agent (the "**Listing Agent**") for the Brunswick Property. On September 2, 2025, the Listing Agent listed the Brunswick Property at a price of \$1,599,000 on MLS. The Monitor continued the listing arrangement with the Listing Agent when it assumed control of the sale process for the BLCL Real Properties.¹⁰

⁵ Sixth Report at 1.10.

⁶ Sixth Report at 4.2.

⁷ Sixth Report at 4.3.

⁸ Sixth Report at 3.1.

⁹ Sixth Report at 4.1.1.

¹⁰ Sixth Report at 4.1.2.

13. On October 11, 2025, the Monitor finalized a transaction for the sale of the Brunswick Property.¹¹ The principal terms of the Brunswick Property APS are summarized below and are more fully set out in the Brunswick Property APS:¹²

Term	Details
Purchasers	Ashley MacLeod and Danae Harvalias
Property	BLCL's right, title and interest in the Brunswick Property
Deposit	\$25,000
Outside Closing Date	December 1, 2025
Representation and Warranties	Consistent with the terms of a standard insolvency transaction (i.e. on an "as is, where is" basis, with limited representations and warranties).
Conditions	The Purchasers waived their conditions on October 27, 2025. The only remaining condition to closing is Court approval.

PART III – ISSUES

14. The issues to be determined are whether this Court should:

- (a) approve the sale of the Brunswick Property;
- (b) approve the Proposed Distribution; and
- (c) approve the Sixth Report and the Monitor's activities described therein.

¹¹ Sixth Report at 4.1.4.

¹² Sixth Report at 4.1.1.1

PART IV – SUBMISSIONS

A. The Court Should Approve the Brunswick Property Transaction

15. This Court has jurisdiction under section 36 of the CCAA to approve the sale of a debtor company's assets outside the ordinary course of business.¹³

16. Subsection 36(3) sets out the following non-exhaustive factors for the Court to consider when determining whether to authorize a sale of assets by a debtor company in a CCAA proceeding:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

¹³ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ["**CCAA**"], [s 36](#).

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.¹⁴

17. The Court is to consider the transaction as a whole and decide whether the proposed sale is appropriate, fair, and reasonable.¹⁵

18. The subsection 36(3) factors largely overlap with the following principles established in *Royal Bank of Canada v Soundair Corp* (the “**Soundair Principles**”), which require the Court to consider:

- (a) whether the Court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;
- (b) the interest of all parties;
- (c) the efficacy and integrity of the process by which the offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.¹⁶

19. In assessing these factors, courts defer to the business judgment of the Monitor as the Monitor’s expertise and role as court officer allow its recommendations to carry substantial weight in the approval process.¹⁷

¹⁴ *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 [“**CCAA**”], [s 36\(3\)](#); *Re Nelson Education Limited*, 2015 ONSC 5557 [“**Nelson**”] at [para 38](#); *Re Bloom Lake*, 2015 QCCS 1920 at [paras 25-26](#); *Re Target Canada Co*, 2015 ONSC 1487 [“**Target**”] at [para 16](#).

¹⁵ *Re Veris Gold Corp*, 2015 BCSC 1204 at [para 23](#); **see also** *Re Quest University Canada (Re)*, 2020 BCSC 1883 at [paras 176-177](#).

¹⁶ *Re CanWest Publishing Inc*, 2010 ONSC 2870 at [para 13](#); *Royal Bank of Canada v Soundair Corp*, 1991 ONCA 2727 at [para 16](#); **see also** *Target*, *supra* at [paras 14-17](#).

¹⁷ *AbitibiBowater inc (Arrangement relatif à)*, [2010 QCCS 1742](#) at [paras 70-71](#).

20. The Monitor recommends this Court's approval of the proposed Brunswick Property Transaction, as the criteria in subsection 36(3) and the *Soundair* Principles are met:

- (a) **Sale process was reasonable and in accordance with the Settlement Approval Order.** The key parties in this proceeding, the Applicants, Monitor, RBC, and Mr. Rice, agreed to the process by which the BLCL Real Property would be listed and sold, as part of a settlement of potential disputes over sale of the operating assets. Specifically, the parties agreed that Mr. Rice would have an opportunity to market and sell the BLCL Real Property up to September 16, 2025, and that the Monitor would assume the sale process thereafter.¹⁸ The BLCL Real Properties were listed on MLS and were widely marketed. The Listing Agent for the Brunswick Property, a local realtor with experience selling residential properties in Halifax, was selected by Mr. Rice and was acceptable to the Monitor.¹⁹ The process leading to the sale of the Brunswick Property was fair and transparent, and balanced the interests of the parties.²⁰
- (b) **The offer represents the best price that could be obtained for the Brunswick Property.** The Brunswick Property Transaction represents the best offer that was received for the Brunswick Property after the market was broadly canvassed to secure the highest possible price in the circumstances. The Brunswick Property Transaction is unconditional except for Court approval. The Listing Agent used traditional methods to advertise the opportunity, including exterior signage, open houses and listing it on MLS.²¹ The listing price was initially selected by Mr. Rice,

¹⁸ Sixth Report at 1.10 and 4.1.2

¹⁹ Sixth Report at 4.1.2.

²⁰ Sixth Report at 1.10 and 4.1.2

²¹ Sixth Report at 4.1.2.1

and when no offers were obtained, the Monitor determined on the advice of the Listing Agent that the listing price should be decreased to garner more interest.²² The purchase price represents the market price for the Brunswick Property in the circumstances.²³ The Monitor does not believe that further time spent marketing the Brunswick Property would result in a superior transaction. Continued marketing would result in increased carrying costs without any certainty that a higher value could be achieved in a reasonable amount of time.²⁴ The Applicants' senior secured creditor, RBC, has consented to the Brunswick Property Transaction.²⁵

- (c) **There is no prejudice to any creditor as a consequence of the Brunswick Property Transaction.** In *Nelson*, the Court indicated that the monitor's "blessing" of a sale process is an important factor to consider.²⁶ The Monitor is of the view that the sale of the Brunswick Property serves to maximize realizations and upon distribution of the sale proceeds will serve to reduce the interest that is continuing to accrue on the RBC's outstanding loan.²⁷ As of the date hereof, the Monitor is not aware of any objection to the Brunswick Property Transaction.

21. Accordingly, the Monitor respectfully submits that this Court should approve the Brunswick Property Transaction.

(i) **The Court Should Seal the Confidential Appendix**

²² Sixth Report at 4.1.3.

²³ Sixth Report at 4.1.2.1.

²⁴ Sixth Report at 4.1.2.1.

²⁵ Sixth Report at 4.1.2.1.

²⁶ *Nelson*, *supra* at [para 38](#).

²⁷ Sixth Report at 4.1.2(1).

22. The Monitor has filed a Confidential Appendix with its Sixth Report that includes only the purchase price. The Monitor is proposing to seal the Confidential Appendix until the earlier of the closing of the sale transaction or further Order of the Court.²⁸

23. Purchase price information is often sealed in CCAA proceedings to protect against prejudice to creditors in the event transactions fail to close. In determining whether to grant a sealing order, the Court is required to consider whether: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effect.²⁹

24. The requirements set forth in *Sierra Club*, as modified by *Sherman Estate*,³⁰ are satisfied, as:

- (a) the purchase price, if made public, may affect the Applicants' ability to maximize value if the Brunswick Property Transaction fails to close and another realization process becomes necessary;³¹
- (b) the order sought is necessary to mitigate this risk. No reasonable alternative measures exist that would adequately protect this confidential information;³²
- (c) the scope of the sealing provision is appropriately limited to the purchase price and remains subject to further Order of this Court; and

²⁸ Sixth Report at 5.1 and 5.2.

²⁹ *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at [para 53](#).

³⁰ *Sherman Estate v Donovan*, 2021 SCC 25 at [para 38](#).

³¹ Sixth Report at 5.1.

³² Sixth Report at 5.1.

(d) the benefits of granting the order outweigh any potential negative effects.³³

25. Accordingly, the Monitor believes the proposed sealing order is appropriate in the circumstances and recommends that the Confidential Appendix to the Sixth Report be sealed.

B. The Proposed Distribution Should be Approved

26. The Monitor seeks authorization to distribute proceeds from the Brunswick Property Transaction to RBC up to the amount of its secured indebtedness, being approximately \$1.02 million.³⁴ Fees and costs continue to accrue so long as those amounts remain outstanding.³⁵

27. Section 11 of the CCAA grants the Court broad discretionary powers to make any order that it considers appropriate in the circumstances.³⁶ This includes the power to authorize interim distributions.³⁷ In determining whether to authorize an interim distribution, Courts have considered the validity and enforceability of the security, savings resulting from the making of a distribution, and liquidity after the distribution.³⁸

28. The Monitor has received a security opinion from independent counsel confirming that RBC's security is valid and enforceable.³⁹ The Monitor is not aware of any other secured claims in priority to RBC that will not be paid on closing or for which the Monitor will hold sufficient cash.⁴⁰ The Proposed Distribution will result in interest and costs savings for the benefit of the Applicants' remaining creditors and stakeholders.

³³ Sixth Report at 5.2.

³⁴ Sixth Report at 3.1.

³⁵ Sixth Report at 3.1(1).

³⁶ CCAA, [s 11](#).

³⁷ *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6461 [*"Abitibi"*] at [para 71](#).

³⁸ *Abitibi*, *ibid* at [para 75](#).

³⁹ Sixth Report at 3.1(1).

⁴⁰ Sixth Report at 3.2(3).

29. The Monitor anticipates that a further allocation may be necessary prior to the conclusion of the CCAA proceeding. The Monitor has commenced a claims process to determine claims and anticipates that a further allocation of restructuring costs and final distribution will be required.

C. Approval of the Sixth Report and Monitor's Activities

30. The Monitor seeks approval of the Sixth Report and the activities of the Monitor referred to therein.⁴¹ As stated by Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) in *Laurentian*, there are good 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.⁴²

⁴¹ Sixth Report at 6.1.

⁴² *Re Target Canada Co*, 2015 ONSC 7574 at [para 22](#).

31. The Monitor has acted in good faith pursuant to the Monitor's duties and powers set out in the CCAA and the Orders made in this CCAA proceeding. The sale of the Brunswick Property is a result of the marketing and sale process for the BLCL Real Properties that was agreed between the parties. The resulting transaction and the Monitor's activities leading to the transaction are in the best interests of the Applicants' stakeholders.⁴³

PART IV – RELIEF REQUESTED

32. For the reasons set out above, the Monitor requests the Court grant the Brunswick Property AVO and the Ancillary Order.⁴⁴

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of November 2025.



RECONSTRUCT LLP

⁴³ Sixth Report at 6.1.

⁴⁴ Sixth Report at 7.1.

LIST OF AUTHORITIES

1. *Re Nelson Education Limited*, [2015 ONSC 5557](#)
2. *Re Bloom Lake*, [2015 QCCS 1920](#)
3. *Target Canada Co (Re)*, [2015 ONSC 1487](#)
4. *Re Veris Gold Corp*, [2015 BCSC 1204](#)
5. *Re Quest University Canada (Re)*, [2020 BCSC 1883](#)
6. *Re Canwest Publishing Inc*, [2010 ONSC 2870](#)
7. *Royal Bank of Canada v Soundair Corp*, [1991 CanLII 2727](#)
8. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
9. *Sherman Estate v Donovan*, [2021 SCC 25](#)
10. *AbitibiBowater inc (Arrangement relatif à)*, [2009 QCCS 6461](#)
11. *Re Target Canada Co*, [2015 ONSC 7574](#)