

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**”)

MEMORANDUM OF THE MONITOR

June 24, 2025

RECONSTRUCT LLP
80 Richmond Street West
Suite 1700
Toronto, ON M5H 2A4

Sharon Kour LSO No. 583228D
skour@reconllp.com
Tel: 416.613.8283

Jessica Wuthmann LSO No. 72442W
jwuthmann@reconllp.com
Tel: 416.613.8288

Fax: 416.613.8290

Counsel for KSV Restructuring Inc., in
its capacity as Court-Appointed
Monitor of the Applicants

TO: The Service List

To the Honourable Justice Jamieson, KSV Restructuring Inc. ("**KSV**"), in its capacity as court-appointed monitor (the "**Monitor**"), submits:

PART I – OVERVIEW

1. The Monitor brings this motion to, among other things, seek approval of two sale Transactions (as defined below) that resulted from the Monitor's conduct of the sale and investment solicitation process ("**SISP**") that was approved by this Court. The Applicants, and specifically their principal, Alex Rice, oppose the approval of the Transactions. The Monitor understands the Applicants intend to repay or assume all creditors obligations and then terminate this proceeding under the *Companies' Creditors Arrangement Act* ("**CCAA**").

2. The challenge with the Applicants' position is

- (a) the SISP that the Applicants brought forward to this Court for approval has been completed by the Monitor in accordance with the terms of this Court's order dated March 7, 2025 (the "**SISP Order**");
- (b) the Transactions maximize recoveries to the Operating Businesses' (as defined in the Fourth Report) creditors. They will result in the full satisfaction of amounts owing to Royal Bank of Canada ("**RBC**"), the Applicants' secured lender, by the Operating Businesses and greater recoveries for the unsecured creditors of the Operating Businesses than any other available transaction;
- (c) BLCL's creditors, including RBC, will be fully repaid in due course from the sale of the BLCL Real Properties. The value of the BLCL Real Properties is more than sufficient to repay the RBC debt and the small amount of other creditors of BLCL;

- (d) Mr. Rice participated in the SISP by submitting at the Bid Deadline (as defined below) an outline of a plan of compromise and arrangement (the “**Rice Plan**”), that was conditional on financing and a transaction for the Applicants’ winery business (known as Lost Bell (as defined below)) and was inferior in value to the Transactions. The Monitor advised Mr. Rice that it was not prepared to recommend that the Court approve the Rice Plan;
- (e) Mr. Rice submitted his most recent proposal (the “**Rice Proposal**”) on June 23, 2025, well after each of the Transactions had been accepted; and
- (f) the Monitor understands the Applicants have been working on refinancing their businesses more than a year prior to the commencement of the CCAA in November 2024.

3. The Monitor conducted the SISP in accordance with the SISP Order. The Monitor cannot support any transaction submitted following acceptance of offers as that would circumvent the SISP. In the Monitor’s view, permitting late-breaking opposition to a sale transaction by a shareholder under these circumstances would be unprecedented, and would impact the integrity of this, and any future CCAA sale process. Acceptance of Mr. Rice’s late-breaking offer would also lead to an inferior result for creditors.

4. Accordingly, the Monitor brings this motion seeking the following relief:

- (a) an Approval and Vesting order (the “**Lynch AVO**”), which, among other things,
 - (i) approves a proposed transaction (the “**Lynch Transaction**”) between 3284906 Nova Scotia Limited (“**Spirit Co**”), and 4318682 Nova Scotia

Limited ("**Annapolis Cider**" and together with Spirit Co, the "**SCAC Vendors**"), as represented by the Monitor, and Shannon Theresa Lynch, on behalf of a nominee corporation to be incorporated (the "**Lynch Purchaser**") for the business and assets of Spirit Co and Annapolis Cider pursuant to an asset purchase agreement dated May 31, 2025 between the SCAC Vendors, as represented by the Monitor, and the Lynch Purchaser (the "**Lynch APA**");

- (ii) vests the Purchased Assets (as defined in the Lynch APA) in the Lynch Purchaser, or as it may direct, free and clear of encumbrances, upon execution and delivery of a certificate by the Monitor confirming completion of the Lynch Transaction;

(b) an Approval and Vesting order (the "**Coast AVO**"), which, among other things,

- (i) approves a proposed transaction (the "**Coast Transaction**" and together with the Lynch Transaction, the "**Transactions**") between 3343533 Nova Scotia Limited ("**Lost Bell**"), as represented by the Monitor, and Coast to Coast Marketing Ltd, and James Roue Beverage Company Ltd. (together, "**Coast**", and together with the Lynch Purchaser, the "**Purchasers**") for the business and assets of Lost Bell pursuant to an asset purchase agreement dated May 9, 2025, between Lost Bell, as represented by the Monitor, and Coast (the "**Coast APA**"); and

- (ii) vests the Purchased Assets (as defined in the Coast APA) in Coast free and clear of encumbrances, upon execution and delivery of a certificate by the Monitor confirming completion of the Coast Transaction; and
- (b) an Ancillary Order (“**Ancillary Order**”), which, among other things:
 - (i) seals the Confidential Appendices (as defined below) to the Fourth Report of the Monitor (the “**Fourth Report**”) and the Supplement to the Fourth Report (the “**Supplemental Report**”);
 - (ii) authorizes the Monitor to make distributions to RBC up to the amount of its indebtedness on a per-entity basis from the proceeds of the Transactions;
 - (iii) directs Blue Lobster Capital Limited to ensure vacant possession of the BLCL Real Properties (as defined in the Fourth Report) and directing and authorizing the Monitor to immediately list the BLCL Real Properties for sale;
 - (iv) orders Mr. Rice to vacate the real property located at 2138 Brunswick Street, Halifax (the “**Brunswick Property**”) within 30 days of the date of the Ancillary Order to allow the BLCL Real Properties to be listed for sale on a vacant basis;
 - (v) expands the Monitor’s powers and authorizes and directs the Monitor to execute the Lynch APA, the Coast APA and all closing documents related thereto as vendor on behalf of the SCAC Vendors and Lost Bell,

respectively, to disclaim contracts not assumed by the Purchasers, to take all steps necessary to close the Transactions, and to exercise any other powers reflected in the Ancillary Order;

(vi) extends the stay period to October 31, 2025; and

(vii) approves the Fourth Report, the Supplemental Report, and the Monitor's activities described in those reports.

5. The Monitor's motion is supported by RBC.

6. 4681814 Nova Scotia Limited ("**468 NSL**"), an unsuccessful bidder in the SISP, has written to the Court stating its objection to the Transactions alleging that its offer was higher than the selected Transactions and that it would repay creditors in full. 468 NSL alleges that the SISP does not satisfy the principles set out in *Royal Bank of Canada v. Soundair Corporation*, [\[1991\] OJ No 1137](#) (ONCA) ("**Soundair**") and section 36 of the CCAA. The Monitor's position is that as a matter of fact, 468 NSL's offer was not better than the Transactions and did not repay creditors in full and this Court ought to approve the Transactions. 468 NSL has subsequently withdrawn its objection to the Transactions in light of the objection filed by Mr. Rice.

PART II – FACTS

A. Background of the Proceeding and Applicants

7. On November 19, 2024, RBC filed a motion for the appointment of a receiver pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act* and Section 43(9) of the *Judicature Act*. In response, the Applicants filed an application for protection under the CCAA.

8. As a result of negotiations between RBC and the Applicants, the CCAA application proceeded without objection, on the basis, among other things, that the Applicants comply with certain covenants with RBC, including that the Applicants would prepare for a sale process to be launched no later than March 15, 2025 if no offers for refinancing were received by the end of February. The terms on which RBC agreed to adjourn its receivership request are as set out in the letter of Sara Scott of Stewart McKelvey, RBC's counsel, to the Court dated December 11, 2024.

9. The application for CCAA relief proceeded on December 13, 2024 and the Court granted the Applicants protection under the CCAA. KSV was appointed as the Monitor.¹ The Court has also approved a debtor-in-possession financing facility from RBC in the amount of \$300,000 (the "**DIP Facility**") and a corresponding charge in favour of RBC.² The Applicants have not drawn on the DIP Facility.

10. The primary business of Spirit Co, Lost Bell and Annapolis Cider (collectively, the "**Operating Businesses**") is the manufacturing and sale of alcoholic beverages, including spirits, wine and cider. The Applicants sell their beverages to liquor boards in Ontario, Nova Scotia and Prince Edward Island, as well as to restaurants and directly to consumers.³

11. BLCL is primarily a real estate investment company which owns the BLCL Real Properties.⁴

B. The SISP

12. RBC agreed to adjourn its receivership motion on the basis that the SISP would be

¹ Fourth Report of the Monitor dated June 17, 2025 ("**Fourth Report**"), section 1, para 1.

² Fourth Report, section 1, paras 2-4.

³ Fourth Report, section 2, para 2.

⁴ Fourth Report, section 2, para 3.

conducted if financing were not settled before the end of February 2025.

13. In particular, the term sheet for the DIP Facility required the Applicants to conduct a sale process (the SISP) if the Applicants were unable to execute an agreement with a lender or other third party in form and substance acceptable to RBC by February 21, 2025 that provided for the repayment in full of all the obligations owing to RBC.⁵

14. The Applicants failed to execute any agreement with a lender or third party by February 21, 2025. Accordingly, the Applicants, with the assistance of the Monitor, developed the SISP and sought Court approval of it.⁶ On March 7, 2025, the Court granted the SISP Order, which, among other things, approved the SISP to be carried out by the Monitor.⁷

15. The SISP was a single-phase sale process commencing on March 14, 2025 which provided interested parties until May 9, 2025 (the “**Bid Deadline**”), approximately eight weeks, to conduct due diligence and submit offers.

16. To protect the integrity of the sale process, the SISP was clear that if the Applicants and/or its management participated in the SISP as potential bidders, they would not receive disclosure about any other potential bidders, negotiations or offers carried on in the SISP.⁸

17. The Monitor was aware that Mr. Rice intended to make an offer in the SISP and therefore treated him as a bidder for the purposes of the SISP.⁹ The Monitor has not shared any details of the SISP with Mr. Rice (or any insider), other than the identity of the successful bidders subsequent to the date that the Transactions were accepted by the Monitor.

⁵ Appendix “B” to the Fourth Report, Third Report of the Monitor dated February 28, 2025 (“**Third Report**”), section 3, para 1. Fourth Report, section 4, para 1.

⁶ Third Report, section 3, para 2. Fourth Report, section 4, para 2.

⁷ Fourth Report, section 1, para 4.

⁸ Third Report, section 3.1, para 9.

⁹ Fourth Report, section 4.1, para 4.

C. Conduct of the SISP

18. The Monitor conducted the SISP in accordance with the SISP Order. Specifically, prior to the commencement of the SISP, the Monitor:

- (a) prepared (i) a marketing brochure summarizing the SISP opportunity (the “**Teaser**”) and inviting recipients of the Teaser to participate in the SISP; and (ii) a form of non-disclosure agreement (a “**NDA**”); and
- (b) with the assistance of the Applicants, prepared a virtual data room (the “**VDR**”).¹⁰

19. On March 14, 2025, the Monitor commenced the marketing process by distributing the Teaser by email to 156 potential purchasers. The list included parties identified by the Applicants, parties who contacted the Monitor or the Applicants since the commencement of the CCAA proceeding, local and national beverage companies, and other strategic and financial parties.¹¹

20. The Monitor also advertised the SISP in a prominent alcoholic beverage industry platform known as *The Drink Business*. In particular, an advertising banner (the “**Ad Banner**”) was published on *The Drink Business* website, running from March 19 until April 30, 2025. The Ad Banner linked to the Monitor’s case website where prospective purchasers could access the Teaser and NDA.¹²

21. As a result of the Monitor’s marketing efforts, 32 interested parties executed an NDA and were given access to the VDR to perform due diligence. The VDR contained information regarding the Applicants’ businesses, including historical and pro-forma financial records,

¹⁰ Fourth Report, section 4.1, para 1.

¹¹ Fourth Report, section 4.1, para 1(c).

¹² Fourth Report, section 4.1, para 1(d).

anonymized employee information, key contracts, permits and licenses, marketing and customer data, real property information, intellectual property details, fixed asset lists and other pertinent information. The VDR also included a template asset purchase agreement, which was prepared by the Monitor.¹³

22. The Monitor, with the assistance of the management of the Applicants, facilitated due diligence by interested parties that executed an NDA. These efforts included (i) providing access to due diligence materials through the VDR; (ii) arranging calls and meetings with representatives of the Applicants to provide additional background on the Applicants' businesses; (iii) responding to supplementary diligence requests; (iv) coordinating meetings with management; and (v) facilitating tours of the Operating Businesses.¹⁴

23. On the Bid Deadline of May 9, 2025, the Monitor received 12 Qualified Bids (as defined in the SISP Order), some of which were for specific assets, while several bids were for all of the Applicants' Operating Businesses and others were for all of the Applicants' assets, including the BLCL Real Properties.¹⁵

24. The Monitor reviewed the offers and consulted with RBC, as required by the SISP Order. As specified in the SISP, and as noted above, the Monitor carried out the SISP independent of the Applicants' management given that two members of management, Mr. Rice and Evan MacEachern, intended to make offers in the SISP.¹⁶

25. After its review of the bids, the Monitor invited five bidders that submitted Qualified Bids to submit revised offers by no later than May 16, 2025 at 12 pm EST (the "**Revised Bid**

¹³ Fourth Report, section 4.1, para 1(b) and section 4.1, para 1.

¹⁴ Fourth Report, section 4.1, para 1(e).

¹⁵ Fourth Report, section 4.2, para 2.

¹⁶ Fourth Report, section 4.2, para 3, and section 4.1, paras 3-5.

Deadline").¹⁷

26. Following the Revised Bid Deadline, the Monitor continued negotiations with the leading bidders to, among other things:

- (a) clarify the terms of their offers;
- (b) review the allocation of the purchase price among the Applicants' businesses and assets; and
- (c) consider the projected recoveries to stakeholders on a per-entity basis, based on the purchase price allocations.¹⁸

27. Upon review of the Qualified Bids, the Monitor exercised its reasonable business judgment to conclude that the Lynch Transaction and the Coast Transaction were the best available transactions for the Operating Businesses and provided for the highest potential recovery for creditors of the Operating Businesses and lowest closing risk.¹⁹ Both Transactions were submitted on an unconditional basis, other than Court approval.²⁰

28. While the Monitor did receive an offer from 468 NSL, the offer from 468 NSL was not one of the offers referenced in paragraph 26 above.

29. The Transactions are expected to maximize recoveries for the creditors of the Operating Businesses, including unsecured creditors. The Monitor will, in due course, seek the Court's authority to conduct a process to determine claims against the Operating Businesses and to

¹⁷ Fourth Report, section 4.2, para 3.

¹⁸ Fourth Report, section 4.2, para 4.

¹⁹ Fourth Report, section 4.2, para 6.

²⁰ Fourth Report, sections 5.1 and 6.1.

make distributions to creditors.²¹

D. The Lynch Transaction

30. The key terms of the Lynch Transaction, as specified in the Lynch APA, are as follows:²²

- (a) **Vendor:** the SCAC Vendors, as represented by the Monitor.
- (b) **Purchaser:** Ms. Lynch, on behalf of a nominee corporation to be incorporated.
- (c) **Purchase Price and Deposit:** the Monitor recommends that the purchase price and the amount of the deposit should be sealed. The deposit contemplated in the Lynch APA has been paid in full.
- (d) **Purchased Assets:** substantially all of the right, title and interest in the property, assets and undertaking of Spirit Co. and Annapolis Cider.
- (e) **Assumed Liabilities:** include: (i) the Acquired Contracts, as set out in Schedule 1.1 of the Lynch APA, including, without limitation, any and all Cure Costs; (ii) the Acquired Personal Property Leases, as set out in Schedule 1.2 of the Lynch APA, including, without limitation, any and all Cure Costs; (iii) the Acquired Real Property Leases, as set out in Schedule 1.5 of the Lynch APA, including, without limitation, any and all Cure Costs; and (iv) the Transferred Employees, in respect of the period commencing at the Closing Time.
- (f) **Excluded Liabilities:** any Liabilities of the Applicants other than the Assumed Liabilities.

²¹ Fourth Report, section 10.

²² Fourth Report, section 5.1. Capitalized terms in this paragraph have the meaning provided in the Lynch APA.

- (g) **Representations 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).
- (h) **Outside Date:** August 31, 2025 or such later date as the parties may agree in writing.
- (i) **Material Conditions:** the conditions include, but are not limited to, the following:
 - (i) the Lynch AVO shall have been obtained and shall not have been stayed, varied or set aside; (ii) there shall be no litigation or proceedings pending against any of the Parties or involving any of the Purchased Assets for the purpose of enjoining, preventing or restraining the completion of the Lynch Transaction or otherwise claiming that such completion is improper; and (iii) there shall have been obtained from all appropriate federal, provincial, municipal or other governmental or administrative bodies, such approvals, consents or licenses as are required to permit the change in ownership of the Assets and the carrying on of the Spirit Co and Annapolis Cider businesses by the Purchaser without interruption.

E. The Coast Transaction

31. The key terms of the Coast Transaction, as specified in the Coast APA, are as follows:²³

- (a) **Vendor:** Lost Bell, as represented by the Monitor.
- (b) **Purchaser:** Coast to Coast Marketing Ltd., and James Roue Beverage Company Ltd., a joint venture.

²³ Fourth Report, section 6.1. Capitalized terms in this paragraph have the meaning provided in the Coast APA.

- (c) **Purchase Price and Deposit:** the Monitor recommends that the purchase price and the amount of the deposit be sealed. The deposit contemplated in the Coast APA has been paid in full.
- (d) **Purchased Assets:** substantially all of the right, title and interest in the property, assets and undertaking in Lost Bell.
- (e) **Assumed Liabilities:** include: (i) the Acquired Contracts, as set out in Schedule 1.1 of the Coast APA, including, without limitation, any and all Cure Costs; (ii) the Acquired Personal Property Leases, as set out in Schedule 1.2 of the Coast APA, including, without limitation, any and all Cure Costs; (iii) the Acquired Real Property Leases, as set out in Schedule 1.5 of the Coast APA, including, without limitation, any and all Cure Costs; and (iv) the Transferred Employees in respect of the period commencing at the Closing Time.
- (f) **Excluded Liabilities:** any Liabilities of the Applicants other than the Assumed Liabilities.
- (g) **Representations 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).
- (h) **Outside Date:** August 31, 2025 or such later date as the parties may agree in writing.
- (i) **Material Conditions:** the conditions include, but are not limited to, the following:
 - (i) the Coast AVO shall have been obtained and shall not have been stayed,

varied or set aside; and (ii) there shall be no litigation or proceedings pending against any of the Parties or involving any of the Purchased Assets for the purpose of enjoining, preventing or restraining the completion of the Coast Transaction or otherwise claiming that such completion is improper.

F. BLCL Real Properties

32. The SISP provided for a specific process to list and sell the BLCL Real Properties through local realtors. However, in consultation with RBC, the Monitor deferred listing the BLCL Real Properties to allow a canvassing for offers for the *en bloc* business and assets of the Applicants, including the BLCL Real Properties.²⁴

33. Although the BLCL Real Properties were available for bidders to bid upon in the SISP, no stand-alone offers were received for the BLCL Real Properties. The only offers received for the BLCL Real Properties were submitted as part of joint bids for the Operating Businesses and were (i) inferior to the Transactions, and (ii) allocated value to the BLCL Real Properties that was less than the estimated net realizable value of the BLCL Real Properties if sold on stand-alone basis, based on information provided to the Monitor by several local realtors.²⁵

34. As discussed below in paragraphs 39 and 40, following the Bid Deadline, and in the context of potential opposition from Mr. Rice to any transaction, the Monitor discussed with the Applicants' counsel delaying the listing of the real property to allow Mr. Rice the opportunity to refinance the BLCL Real Properties, if he wished, Mr. Rice has not agreed to such arrangement and the Monitor is now required to list the BLCL Real Properties for sale pursuant to the SISP. The sale of the BLCL Real Properties is the only way that RBC will be repaid on the amounts

²⁴ Third Report, section 3.5. Fourth Report, section 11.

²⁵ Fourth Report, section 11.

outstanding on its mortgages.

35. RBC consented to the Transactions on the basis that the BLCL Real Properties would be listed for forthwith following Court approval of the Transactions.

36. In order to maximize value of and facilitate the sale of the BLCL Real Properties, the Monitor is also seeking vacant possession of the BLCL Real Properties. The request for vacant possession includes the Brunswick Property, where Mr. Rice presently resides. Mr. Rice is not paying any rent to occupy the premises, and the Monitor is unaware of any executed lease.²⁶

G. Cash Flow Forecast

37. The Applicants, with the assistance of the Monitor, have prepared a revised cash flow forecast for the period ending November 1, 2025 ("**Cash Flow Forecast**"). The Cash Flow Forecast assumes the Transactions are approved by the Court. The Cash Flow Forecast demonstrates that the Applicants are expected to have sufficient cash flow to operate during the stay extension period.²⁷ If the Transactions are not approved, a revised Cash Flow Forecast will need to be prepared.

H. Opposition of the Applicants

38. Mr. Rice participated in the SISP. He submitted the Rice Plan, which was an outline of an anticipated plan of compromise and arrangement. The Monitor, in consultation with RBC, reviewed the Rice Plan in the context of the offers received in the SISP and determined that the Rice Plan was not viable because, among other things, (i) it provided for lower recoveries to creditors than several of the other bids submitted in the SISP, (ii) it contained key conditions including a conditional sale transaction for Lost Bell with a 30-day due diligence condition, as

²⁶ Fourth Report, section 11.

²⁷ Fourth Report, section 12.

well as financing conditions for up to \$4 million in financing, which was not yet committed, and (iii) RBC was not supportive of the Rice Plan under the circumstances where there were offers in the SISF that were more certain and provided better recoveries.²⁸

39. When the Monitor did not accept the Rice Plan, counsel to BLCL advised the Monitor that Mr. Rice would object to the approval of any transaction and seek approval of the Rice Plan.²⁹

40. To resolve Mr. Rice's potential objection, the Monitor engaged with RBC's and BLCL's counsel to attempt to settle terms of a potential resolution. The Monitor, with RBC's consent, drafted the terms of a memorandum of understanding (the "**MOU**"). However, Mr. Rice did not execute the MOU.³⁰

41. Mr. Rice has submitted a further proposal, being the Rice Proposal, asserting that an escrow agent is holding sufficient cash to pay in full all creditors, and is seeking an Order terminating the CCAA proceeding as a condition of the release of funds.³¹ The escrow agent has confirmed that the funds will be released upon granting of the discharge order, however no further details have been provided about financing, including whether there are any other terms governing the application of funds.³²

42. The Monitor has reviewed the Rice Proposal and has determined that the amount of proceeds held does not result in better recovery to creditors than the proposed transactions.³³ In any event, the Monitor is of the view that the Rice Proposal was submitted outside the SISF and

²⁸ Fourth Report, section 11, para 5.

²⁹ Fourth Report, section 11, para 5

³⁰ Fourth Report, section 11, paras 6-7.

³¹ Affidavit of Kevin Alexander Rice sworn June 23, 2025.

³² Affidavit of Gavin MacDonald sworn June 23, 2025, para 6.

³³ Supplement to the Fourth Report of the Monitor, section 4.

should not be approved by the Court, particularly where Mr. Rice submitted an offer in the SISP and had every opportunity to participate in it.

PART III – SUBMISSIONS

A. The Court Should Approve the Lynch Transaction and the Coast Transaction.

43. Pursuant to section 36 of the CCAA, a debtor company may sell its assets outside of the ordinary course of business if authorized to do so by the Court.³⁴ The Court is to consider the following factors in determining whether to authorize a sale of assets, as set out in section 36(3) of the CCAA:

- (a) whether the process leading to the proposed sale 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 creditor than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair,

³⁴ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA"), [s. 36\(1\)](#).

taking into account their market value.³⁵

44. The factors enumerated in Section 36(3) of the CCAA are consistent with the common law test established by the Court of Appeal for Ontario in *Soundair*, which sets out the criteria the Court should consider when approving the sale of assets in an insolvency proceeding. The *Soundair* principles include: (i) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently; (ii) the interests of all parties; (iii) the efficacy and integrity of the process by which offers have been obtained; and (iv) whether there has been unfairness in the working out of the process.³⁶

45. 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. The Monitor submits that courts have only intervened where there is clear evidence that the Monitor failed to act properly, and a subsequent, higher bid is not valid reason to set aside a sale process short of any evidence of unfairness.³⁷

(ii) The Opposition of the Applicants and the 468 NSL

46. The Applicants oppose the approval of the Transactions on the basis that they have sufficient funds to repay "*uncontested claims*" in full and terminate the CCAA proceeding. Before it withdrew its objection, 468 NSL opposed approval of the Transactions on the basis that the Transactions do not allegedly satisfy section 36 of the CCAA or the *Soundair* principles.

47. As a preliminary matter, the jurisprudence is clear that an unsuccessful bidder, or "bitter

³⁵ CCAA, [s 36\(3\)](#).

³⁶ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), [para 16](#). See *In the Matter of the Companies' Creditors Arrangement Act of Cannapiece*, 2023 ONSC 841, [para 54](#); *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354, [para 32](#); *Canwest Global Communications Corp.*, 2010 ONSC 2870, [para 13](#); *Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 89, [para 26](#).

³⁷ *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, [paras 70-71](#).

bidder”, generally does not have legal standing to challenge a motion to approve a sale because the bitter bidder has no legal or proprietary right and is therefore not affected by the order.³⁸ In limited circumstances, a prospective purchaser may become entitled to participate in a sale approval motion if it can show that it acquired a legal right or interest from the circumstances of a particular sale process and that the nature of the right or interest is such that it could be adversely affected by the approval order. A commercial interest is not sufficient.³⁹

48. The Ontario Court of Appeal has explained the policy reason underpinning the reason that bitter bidders are not granted standing:

There is a sound policy reason for restricting, to the extent possible, the involvement of prospective purchasers in sale approval motions. There is often a measure of urgency to complete court-approved sales. This case is a good example. When unsuccessful purchasers become involved, there is a potential for greater delay and additional uncertainty. This potential may, in some situations, create commercial leverage in the hands of a disappointed would be purchaser which could be counterproductive to the best interests of those for whose benefit the sale is intended.⁴⁰

49. Although 468 NSL has withdrawn its objection, the jurisprudence is clear that 468 NSL has no legal or other grounds to oppose the Transactions as it has no legal standing.

50. Similarly, the Applicants have no standing to oppose the Transactions on the basis that their offer, in this case the Rice Plan, was better than the Transactions.

51. The Applicants frame their opposition as simply exercising the right of a debtor to pay its creditors at any time in the CCAA proceeding, and to terminate the proceeding. The Monitor’s view is that the integrity of the process – both the CCAA process and the SISF – require

³⁸ *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, [paras 82-85](#). *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, [para 34](#) citing *Consumers Packaging Inc. (Re)*, 2001 CanLII 6708 (ON CA), [para 7](#).

³⁹ *Skyepharma PLC v. Hyal Pharmaceutical Corporation*, 2000 CanLII 5650 (ON CA), [para 29](#).

⁴⁰ *AbitibiBowater inc. (Arrangement relatif à)*, 2010 QCCS 1742, [para 84](#) citing *Skyepharma PLC v. Hyal Pharmaceutical Corporation*, 2000 CanLII 5650 (ON CA), [para 30](#). See also *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, 2020 SKCA 41, [paras 52-58](#).

adherence to the process and that, under the circumstances, allowing the debtor to terminate a SISP and CCAA proceeding because the shareholders are unhappy with their commercial outcome would render moot this process and harm the integrity of this and future processes.

52. The unfortunate reality is that at this point in the proceeding, after completion of the SISP and acceptance of offers, it is too late in the process for the Applicants to seek to shut down the SISP and the CCAA proceeding to avoid a sale. The Applicants commenced the CCAA proceeding to avail themselves of extraordinary protections that impact the rights of creditors and other parties in a manner that few other statutes permit. The *quid pro quo* in that process is that the debtor submits itself to the supervision of the court through its court-appointed officer, the monitor, and abides by the processes that are approved by the court to administer the restructuring proceeding.

53. A debtor cannot both avail itself of protections under the CCAA, but also seek to terminate the process when it is unhappy with the result of the SISP.

54. The Monitor does not support the Applicants' motion. The Monitor submits that the Court must consider the effect of the Applicants' motion on the Court-approved SISP, in which bidders have participated in good faith and spent resources on due diligence and negotiations, and that the Monitor has conducted in accordance with the SISP Order.⁴¹

55. Courts most often deal with unhappy debtors in the context of receivership sale processes. The reasoning applied by courts in those cases applies also to CCAA proceedings, as the considerations around the integrity of the sale process, including the test for approval of sales under *Soundair*, are the same. In both cases, a court-approved sale process is conducted

⁴¹ *Royal Bank of Canada v 1434399 Ontario Inc.*, 2025 ONSC 3516, [paras 30-32](#), citing *Cameron Stephens Mortgage Capital Ltd. v Spotlight on Lawrence Inc.*, 2025 ONCA 374, [para 11](#); *Rose-Isli Corp. et al. v. Smith et al.*, 2023 ONCA 548, [para 9](#); *Peakhill Capital Inc. v. 1000093910 Ontario Inc.*, 2024 ONCA 584, at [para 16](#).

and the court-approved process followed to achieve a transaction. In this case more than in other CCAA proceedings, the parallel is even clearer given that these CCAA proceedings were not opposed by RBC on the condition that the SISF would be conducted, and sale process was conducted by the Monitor rather than the Company.

56. The Ontario Superior Court dealt with objections similar to those raised here in *Rose-Isli Corp. et al.*, where a debtor sought to redeem its property after the conclusion of a sale process that resulted in a cash transaction. Justice Kimmel of the Ontario Superior Court (Commercial List) held that the balancing of interests in that case came down largely to the balancing of the integrity of the sale process against the debtor's interests.⁴² Justice Kimmel cited *Soundair* for the proposition that "the process is very important. It should be carefully protected so that the ability of court-appointed receivers to negotiate the best price possible is strengthened and supported."⁴³ Justice Kimmel's reasons have been upheld by the Ontario Court of Appeal.⁴⁴

57. *Rose-Isli Corp. et al* is consistent with a firmly established line of cases where courts have refused to let a late-breaking proposal interfere with the integrity of the court-approved sale process; where that sale process has been carried out in a manner consistent with the *Soundair* principles and a transaction has resulted from that process that is fully negotiated and ready to close.⁴⁵

58. The Ontario Court of Appeal has provided guidance that it is only in the narrow instance where an offer provides "exceptional value" in comparison to the proposed transaction and the debtor attends court with the appropriate cash in hand to support the proposal that the Court

⁴² *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832, at [para 109](#), upheld 2023 ONCA 548.

⁴³ *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, 2023 ONSC 832 at [para 109](#), upheld 2023 ONCA 548.

⁴⁴ *Rose-Isli Corp. et al. v. Smith et al.*, 2023 ONCA 548, [para 9](#).

⁴⁵ *Royal Bank of Canada v 1434399 Ontario Inc.*, 2025 ONSC 3516, [paras 25-29](#). *Cameron Stephens Mortgage Capital Ltd. v Spotlight on Lawrence Inc.*, 2025 ONCA 374, [para 11](#). *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, [para 25](#). *Rose-Isli Corp. et al. v. Smith et al.*, 2023 ONCA 548, [para 9](#).

would even consider the late-breaking offer.⁴⁶

59. The Ontario Superior Court articulated the court's overarching concerns in *B&M Handelman Investments Limited v. Mass Properties Inc.*, where the debtor attempted to exercise its right to redeem at the motion to approve a sale transaction:

... A mockery would be made of the practice and procedures relating to receivership sales if redemption were permitted at this stage of the proceedings. A receiver would spend time and money securing an agreement of purchase and sale that was, as is common place, subject to Court approval, and the benefit of all stakeholders, only for there to be a redemption by a mortgagee at the last minute. This could act as a potential chill on securing the best offer and be to the overall detriment of stakeholders.⁴⁷

60. The reasoning of the Court in *B&M Handelman* was relied upon by Justice Kimmel in her decision in *Rose-Isli Corp. et al*, and has been adopted by the Ontario Court of Appeal.⁴⁸

61. Although the Applicants have not framed their motion as a redemption request, the Monitor submits that the same principles should apply here as in *B&M Handelman*. The Monitor conducted a thorough, transparent, and fair sale process that was approved by the Court. The Applicants failed to secure refinancing to pay out RBC for months by the end of February 2025, and even by the Bid Deadline in the SISP. The Monitor is concerned that a last-minute manoeuvre by the Applicants after the SISP has concluded – with results not to their liking – and after bidders have participated in the process on the basis that the best offer would be selected for Court approval, would act as a potential chill in all future sale processes. Additionally, given that the Transactions will maximize value for the creditors of the Operating Businesses, it is clear that the value of the Rice Plan is not, relative to the Transactions, “exceptional” in value.

⁴⁶ *Royal Bank of Canada v 1434399 Ontario Inc.*, 2025 ONSC 3516, [para. 32](#), citing *Cameron Stephens Mortgage Capital Ltd. v Spotlight on Lawrence Inc.*, [2025 ONCA 374](#).

⁴⁷ 2009 CanLII 37930, 55 C.B.R. (5th) 271, [para 22](#).

⁴⁸ *Rose-Isli Corp. v. Smith*, 2023 ONCA 548, at [para 10](#).

62. The Applicants rely upon two key cases to support their argument that it is preferable for the Court to terminate the CCAA proceeding rather than approve the Transactions: *Toys “R” Us (Canada) Ltd.* (“**Toys “R” Us**”) and *JTI-MacDonald*.⁴⁹ The Monitor submits that these cases are distinguishable as neither case dealt with a proposal to terminate the CCAA process after the completion of court-approved sale process.

63. In *Toys “R” Us*, the company’s Canadian business was solvent throughout the CCAA proceeding and did not have the same challenges as the American business. The Canadian business was marketed as part of a sale and investment solicitation process, resulting in a share purchase transaction for the Canadian entities. As the Canadian entities were never insolvent, the purchaser opted to terminate the CCAA proceedings without prejudice to any stakeholders rather than to seek a vesting order. The purpose of terminating the CCAA proceeding in *Toys “R” Us* was expressly to permit the closing of a transaction out of a SISP. The Applicants here wish to bypass the SISP instead.

64. *JTI-MacDonald*, was one of a number of CCAA filings made by various tobacco companies exclusively to deal with litigation claims against them. The stated purpose of those proceedings was to seek a global resolution of litigation claims. JTI and other major tobacco companies filed plans of compromise and arrangement that were accepted by their creditors and approved by the Ontario Court. The tobacco proceedings did not involve a court-approved sale and investment solicitation process. *JTI-MacDonald* does not stand for the proposition that a debtor may terminate a CCAA proceeding to avoid a transaction being approved after a SISP is conducted.⁵⁰

⁴⁹ *Toys “R” Us (Canada) Ltd.*, 2018 ONSC 2744, [paras 9 to 11](#); *Re JTI-MacDonald Corp.*, [2010 ONSC 4212](#).

⁵⁰ *Re JTI-Macdonald Corp.*, 2010 ONSC 4212, at [para 18](#).

(iii) Approval of the Lynch Transaction and Coast Transaction

65. The Monitor respectfully submits that the Lynch Transaction and Coast Transaction satisfy the requisite criteria under section 36(3) of the CCAA and that the SISP was conducted consistent with the *Soundair* principles. The Monitor recommends the Lynch Transaction and Coast Transaction be approved for, among other things, the following reasons:⁵¹

- (a) the SISP undertaken by the Monitor was carried out in accordance with the SISP Order. The Monitor extensively canvassed interest from local and national beverage companies, and other strategic and financial parties. The SISP involved contacting 156 potential parties, advertising the opportunity on a prominent industry website, engaging with 32 parties that signed an NDA, and considering 12 Qualified Bids. The Monitor is of the view that additional time spent marketing the Operating Businesses will not result in a superior transaction given the significant bidder participation in the SISP. Further, with respect to Lost Bell, the company is not currently operating on a cash flow positive basis and any further marketing period will result in further carrying costs for the winery and operations which may not be recovered through a further marketing of Lost Bell's business;
- (b) the Applicants, led by Mr. Rice, participated in the SISP by submitting the Rice Plan;
- (c) the process set out in the SISP provided for fair, transparent and thorough marketing of the Applicants' businesses and assets;

⁵¹ Fourth Report of the Monitor, sections 5.2 and 6.2.

- (d) the SISP was consented to by the Applicants and approved by the Court on notice to the service list;
- (e) the Lynch Transaction provides for Spirit Co. and Annapolis Cider to continue as going-concern businesses and preserves employment for substantially all of their employees. Similarly, the Coast Transaction provides for Lost Bell to continue as a going-concern and preserves employment for its employees;
- (f) the Lynch Transaction and Coast Transaction provide the highest available realization for creditors of the Operating Businesses;
- (g) the terms of the Lynch APA and Coast APA are commercially reasonable;
- (h) the Purchasers have provided deposits and the Transactions are unconditional except for Court approval; and
- (i) RBC, the Applicants' senior secured stakeholder, has advised the Monitor that it consents to the approval by the Court of the Lynch Transaction and the Coast Transaction.

B. The Court Should Approve the Enhanced Powers of the Monitor.

66. The CCAA provides the Court with broad discretion in respect of the Monitor's functions. In particular, paragraph 23(1)(k) of the CCAA provides that the Monitor can "carry out any other functions in relation to the [debtor] company that the court may direct".⁵² Section 11 of the CCAA also gives this Court the broad discretion to make any order that is necessary and appropriate in the circumstances.⁵³ There are many examples of CCAA courts granting

⁵² CCAA, [s. 23\(1\)\(k\)](#).

⁵³ CCAA, [s. 11](#).

expanded powers to the monitor where such relief is warranted.⁵⁴

67. As outlined in the Monitor's Fourth Report, it is appropriate and necessary to enhance the Monitor's authority under the ARIO to enable it to execute closing documents and take all steps required to facilitate the orderly completion of the Transactions and the CCAA proceeding. Specifically, following closing, the Monitor should be empowered to:⁵⁵

- (a) approve the Applicants' receipts and disbursements;
- (b) take steps to cause the Applicants to disclaim agreements pursuant to the CCAA;
- (c) take such steps and perform such other activities as may be required to realize on the Applicants' remaining assets, including the BLCL Real Properties;
- (d) pay the Applicants' invoices received after closing of the Transactions that relate to the period after commencement of the CCAA proceeding and prior to closing of the Transactions;
- (e) file tax returns for the Applicants, if necessary;
- (f) terminate the employment of employees of the Applicants that are not retained by the Purchasers;
- (g) transfer deposits received by the Applicants after the closing of the Transactions in accordance with the terms of the Coast APA and Lynch APA; and

⁵⁴ *Saltwire Network Inc. et al.* (Ancillary Relief Order) (18 October 2024), Hfx No. 531463 (SC NS) at para 12; *Joriki Topco Inc. et al.* (Endorsement of Justice Osborne) (March 27, 2025), CV-25-00735458-00CL (ONSC) at para 5; *Contract Pharmaceuticals Limited et al.* (Ancillary Relief Order) (17 April 2024), CV-23-00711401-00CL (ONSC) at para. 5.; *MAV Beauty Brands Inc et al.*, (Order (Stay Extension, Expanded Monitor Powers and Related Relief)) (19 December 2023), CV-23-00709610-00CL (ONSC) at para. 4;

⁵⁵ Fourth Report of the Monitor, section 13, para 1.

- (h) undertake any actions required to realize on the Applicants' remaining assets, including the BLCL Real Properties, and otherwise advance the completion of the Transactions and the wind-down of these proceedings.

68. The Monitor submits that the expansion of the Monitor's powers in this manner is both appropriate and efficient where the senior officers of the Applicants may be conflicted. In particular, the expanded powers will avoid the added cost and disruption of terminating the CCAA proceedings and appointing a receiver for the purpose of completing the Transactions and selling the remaining Applicants' remaining assets.⁵⁶

C. Vacant Possession of the BLCL Real Properties

69. The Applicants have not consented to the arrangement negotiated by the Monitor to further delay the listing of the BLCL Real Properties for sale pursuant to the SISP. Absent a refinancing, a sale of the real property is the only way in which RBC will be repaid on the mortgage indebtedness secured against those real properties. Accordingly, the Monitor's view is that the BLCL Real Properties must be listed for sale on a vacant basis. The Monitor is seeking an order that the Applicants deliver vacant possession of the BLCL Real Properties within 30 days, and an order requiring persons residing in those properties to vacate them. The Monitor is not aware of any leases in respect of those properties, nor rents paid by any persons residing there.

70. The Monitor notes that under the circumstances where Mr. Rice appears to be opposed to the Transactions, attempts could be made to frustrate the Monitor's attempts to prepare the properties for sale and to list them for sale if he or any other person were to remain resident there. The Monitor requires vacant possession to avoid such occurrence and to facilitate the

⁵⁶ Fourth Report of the Monitor, section 13, para 2.

marketing of the properties on an expedient basis.

71. The Court has general and broad jurisdiction under Section 11 of the CCAA to make “any order that it considers appropriate in the circumstances.”⁵⁷ The Monitor’s understanding is that there is no executed lease, and no rents paid by Mr. Rice to BLCL, including during these CCAA proceedings. Further, Mr. Rice is not an arm’s length party from BLCL. However, even if provincial landlord-tenant regulations were to apply, the Supreme Court of Canada has confirmed that the doctrine of paramountcy will apply to the extent any provincial law may operate in an inconsistent manner with the CCAA, resulting in an operational conflict or frustrating the purpose of the CCAA.⁵⁸ In these circumstances, the purpose of the CCAA, which includes both reorganization and a “liquidating CCAA”, is paramount over any provincial statute that may be operationally inconsistent.

D. The Court Should Approve the Proposed Extension of the Stay Period.

72. 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.⁵⁹ 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.⁶⁰

73. The stay of proceedings is currently set to expire on June 30, 2025. The Monitor recommends that the stay be extended to October 31, 2025, for the following reasons:⁶¹

(a) the Applicants are acting in good faith and with due diligence, and the Monitor’s

⁵⁷ CCAA, s. 11.

⁵⁸ *Murray-Hall v Québec (Attorney General)*, 2023 SCC 10 at [para 84](#).

⁵⁹ CCAA, [s 11.02\(2\)](#).

⁶⁰ CCAA, [s 11.02\(3\)](#).

⁶¹ Fourth Report of the Monitor, section 16.

powers are proposed to be expanded to complete these proceedings and the Transactions;

- (b) the extension will allow the Monitor, with Court approval, to close both the Lynch Transaction and the Coast Transaction, and to continue the SISP with respect to the BLCL Real Properties;
- (c) the Monitor needs further time to initiate a claims process for the Operating Businesses' unsecured creditors and begin preparing for distributions to those creditors;
- (d) RBC does not oppose the requested stay extension;
- (e) the Cash Flow Forecast demonstrates the Applicants have sufficient liquidity during the extended stay period;
- (f) in the Monitor's view, the proposed extension is in the best interests of the Applicants' stakeholders and will not result in any material prejudice to any party; and
- (g) as of the date of the Fourth Report, the Monitor is unaware of any party opposing the requested extension of the stay.

E. The Court Should Authorize the Monitor to Make the Distributions to RBC.

74. The Monitor seeks authorization to distribute the proceeds from the Transactions up to the full amount owing to it by the Operating Businesses.

75. The relief sought by the Monitor is authorized under section 11 of the CCAA. Section 11

grants the Court broad discretionary powers to make any order that it considers appropriate in the circumstances, subject to the restrictions set out in the CCAA.⁶² This includes the power to authorize interim distributions.⁶³

76. The Monitor has retained Lawson Creamer (“**Lawson**”) to provide a security opinion concerning the validity and enforceability of the security interests granted by the Operating Businesses in favour RBC.⁶⁴ Lawson’s opinion confirms the validity and enforceability of RBC’s security, subject to the standard assumptions and qualifications therein.⁶⁵

77. Based on the foregoing, the Monitor recommends that it be authorized to make one or more distributions to RBC in satisfaction of the amounts owing to it by the Operating Businesses.⁶⁶

F. The Court Should Seal the Confidential Appendices.

78. The Monitor seeks the sealing of certain commercially sensitive terms of the Transactions, specifically the Offer Summary, the purchase price and deposit amounts in each of the Lynch APA and Coast APA, and the Offer Comparison (collectively, the “**Confidential Appendices**”). The Monitor requests that the Confidential Appendices be sealed until the earlier of: (a) 30 days following the closing of the later of the Lynch Transaction and Coast Transaction; and (b) further order of the Court.

79. The Court has jurisdiction to grant a sealing order pursuant to subsection 137(2) of the

⁶² CCAA, [s 11](#).

⁶³ *AbitibiBowater, (Re)*, 2009 QCCS 6461, [paras 71-75](#); *Nortel Networks Corporation et al (Re)*, 2014 ONSC 4777, [paras 53-58](#). See for e.g. [Great Northern Timber Incorporated et al. \(Distribution Order\) \(17 April 2025\) Hfx No 540593 \(SC NS\), para 4](#).

⁶⁴ Fourth Report of the Monitor, section 3.3.

⁶⁵ Supplemental to the Fourt Report of the Monitor, section 6.

⁶⁶ Fourth Report of the Monitor, sections 3.3 and 8.

CJA,⁶⁷ in accordance with the principles established by the Supreme Court of Canada in *Sherman Estate*. Those are: (a) whether court openness poses a serious risk to the important public interest; (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.⁶⁸

80. Courts have applied the *Sherman Estate* test in the insolvency context to grant sealing orders over confidential or commercially sensible documents to protect the interests of the debtor and its stakeholders.⁶⁹ The sealing order sought by the Monitor is appropriate in the circumstances and meets the *Sherman Estate* test. If the Confidential Appendices were to be disclosed, future bidders would have access to pricing and transaction terms, which could materially prejudice future sale processes and reduce potential recoveries.

81. Notice to the media has been provided as prescribed.

G. The Court Should Approve the Monitor’s Fourth Report and the Activities Described Therein.

82. The Ancillary Order seeks to approve the Fourth Report of the Monitor filed in this CCAA proceeding and the activities of the Monitor referred to therein.

83. The request to approve the reports of a court-officer is “not unusual”.⁷⁰ 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

⁶⁷ CJA, [s. 137\(2\)](#).

⁶⁸ *Sherman Estate v Donovan*, 2021 SCC 25, [para. 38](#).

⁶⁹ See *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 [Morawetz C.J.], [paras. 23-27](#); *Danier Leather Inc. (Re)*, 2016 ONSC 1044 [Penny J.], [para. 84](#).

⁷⁰ See for example *In the Matter of 3306133 Nova Scotia Limited et al.*, Hfx. No. 531463, Order of Justice Keith dated March 24, 2025; *IMV Inc. et al*, Hfx No. 523334, Order of Justice Bodurtha dated November 23, 2023; *Distribution and Termination Order* dated January 28, 2025, *In the Matter of Big Erics and Terra Nova Old Port Foods*, para 5.

including that court approval:

- (a) allows the court officer to move forward with next steps in the proceeding;
- (b) brings the court officer's activities before the court;
- (c) allows an opportunity for concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protections for the court-officer 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 court-officer.⁷¹

84. In this case, the Fourth 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.

85. 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.

⁷¹*Target Canada Co (Re)*, 2015 ONSC 7574, [para 12](#); *Laurentian University of Sudbury*, 2022 ONSC 2927, [paras 13-14](#).

PART IV – RELIEF REQUESTED

86. For the reasons set out above, the Monitor respectfully requests the Court grant the Lynch AVO, the Coast AVO and the Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of June, 2024.

/s/ RECON

RECONSTRUCT LLP