Court File No. CV-25-00748871-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLAIRE'S STORES CANADA CORP**.**

APPLICANT

FACTUM OF THE APPLICANT
(Motion for Approval and Vesting Order)

September 15, 2025

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PART I - NATURE OF THE MOTION

1. On August 6, 2025 (the "**Filing Date**"), Claire's Stores Canada Corp. (the "**Applicant**") was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**," and the within proceedings the "**CCAA Proceedings**"), pursuant to an initial order of this Court (the "**Initial Order**"). The Applicant is the sole Canadian operating subsidiary of Claire's Stores, Inc. ("**Claire's Stores**"), which is the US operating subsidiary of Claire's Holdings LLC (**Claire's Holdings**", and collectively with Claire's Stores and its affiliates, including the Applicant, the "**Company**").

2. Pursuant to the terms of the Initial Order, the Applicant was authorized to pursue, if appropriate and warranted, all avenues of refinancing, restructuring, sale, or reorganization of its business or assets. At the Comeback Hearing held on August 15, 2025 (the "**Comeback Hearing**"), the Court further granted the Liquidation Sale Approval Order, which, among other things, approved a consulting agreement (the "**Consulting Agreement**") between the Applicant and the Consultant (as defined below), for the purpose of conducting a sale (the "**Sale**") of the Applicant's merchandise and inventory (together, the "**Merchandise**") and owned furnishings, trade fixtures, and equipment ("**FF&E**") located at those stores participating in the Sale. Under the Consulting Agreement, the Applicant retained the right to add or remove any of its retail stores from the list of Liquidating Stores (as defined below), including in connection with a going-concern transaction.

3. Since the Comeback Hearing, the Applicant has been working diligently to implement the Sale. At the same time, the Company, with the assistance of the Investment Banker (as defined below) continued the marketing process that was commenced prior to the Filing Date and

continued post-petition. These efforts were successful and have resulted in an asset purchase agreement (the "**Purchase Agreement**," and the transactions contemplated therein the "**Sale Transaction**") between Claire's Holdings, the Applicant (in such capacity, the "**Canadian Vendor**"), and certain other subsidiaries of Claire's Holdings (collectively, the "**Vendors**"), and AWS Claire's, LLC (the "**Purchaser**"), a buyer group headed by Ames Watson LLC ("**Ames Watson**"). Pursuant to the Purchase Agreement, as amended by an amendment agreement dated and made effective as of September 8, 2025, and as modified by the Canada Letter Agreement (as defined below), the Purchaser will acquire at least 795 (and potentially up to 950) of the Vendors' North American stores along with their inventory, including up to 77 of the Applicant's Canadian stores. Ames Watson is a private investment firm with experience in the retail sector, including *Lids Sports Group*, *South Moon Under*, *Champion* and *Mitchell & Ness*.

4. In order to implement the Sale Transaction, the Applicant seeks the "**Approval and Vesting Order**," which will, among other things: (i) approve the Purchase Agreement; (ii) transfer to Claire's Essentials Canada Corp., an affiliate of the Purchaser (the "**Canadian Purchaser**") certain assets of the Canadian Vendor; and (iii) assign the Canadian Assumed Leases (as defined below) to the Canadian Purchaser, pursuant to s. 11.3 of the CCAA.

5. The Sale Transaction is in the best interest of the Applicant's creditors and stakeholders and should be approved by the Court. The Sale Transaction will enable most of the Applicant's Canadian business to continue, thereby preserving a significant number of retail stores across Canada and resulting in a significant number of the Applicant's employees being offered continuing employment. Further, based on a liquidation analysis completed by the Restructuring Advisor, the Sale Transaction provides for superior recoveries to unsecured creditors of the Applicant as compared to a full liquidation of the Applicant's assets, including by reducing the

Applicant's anticipated creditor pool through the payment of applicable cure costs to the Applicant's landlords.

PART II - SUMMARY OF FACTS

6. The facts are more fully set out in the Affidavit of Suzanne Stoddard.[1]

A. Update on the CCAA Proceedings and the Chapter 11 Cases

(a) The CCAA Proceedings

7. On August 6, 2025, this Court granted the Initial Order, which, among other things: (i) appointed KSV Restructuring Inc. as monitor in the CCAA Proceedings (the "**Monitor**"); (ii) granted a stay of proceedings until August 15, 2025; (iii) authorized the Applicant to pay certain pre-filing amounts; and (iv) granted the Administration Charge and the Directors' Charge.[2]

8. As part of the Initial Order, the Applicant was granted the authority to pursue, if appropriate and warranted and with the consent of the Monitor, all avenues of refinancing, restructuring, sale, or reorganization of its business or assets. This included any potential transactions that emerged in the near-term in the context of the then current marketing process being run by Claire's Holdings and overseen by Houlihan Lokey (the "**Investment Banker**"). This authorization was designed to allow the Applicant and the Monitor to test the market in order to ascertain whether there were any transactions that would generate more value for creditors and stakeholders than the Sale.[3]

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1 Affidavit of Suzanne Stoddard, sworn September 10, 2025 [Third Stoddard Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Third Stoddard Affidavit. Dollar amounts are given in Canadian dollars unless otherwise specified.

2 Third Stoddard Affidavit at paras. 5-6.

3 Third Stoddard Affidavit at paras. 20-21.

9. At the Comeback Hearing, the Court granted an Amended and Restated Initial Order, which, among other things, extended the stay of proceedings until November 14, 2025, and increased the maximum amounts secured by the Administration Charge and the Directors' Charge.[4]

10. At the Comeback Hearing, the Court also granted the Liquidation Sale Approval Order, which, among other things: (i) approved the Consulting Agreement between the Applicant and a contractual joint venture comprised of Hilco Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC and SB360 Capital Partners, LLC (the "**Consultant**"), pursuant to which the Consultant is currently acting as exclusive consultant for the purpose of conducting the Sale; (ii) approved the proposed sale guidelines (the "**Sale Guidelines**") for the orderly realization of the Merchandise and FF&E at the Liquidating Stores; and (iii) authorized the Applicant, with the assistance of the Consultant, to undertake the Sale in accordance with the terms of the Liquidation Sale Approval Order, the Consulting Agreement and the Sale Guidelines.[5]

11. At the time the Liquidation Sale Approval Order was granted, the Applicant had intended to conduct the Sale at all the Applicant's retail stores, excluding those stores where a termination notice was received by the Applicant prior to the Filing Date (unless a reinstatement agreement is subsequently executed with the applicable Landlord), and, accordingly, all such stores were listed at Exhibit "A" to the Consulting Agreement (the "**Liquidating Stores**"). However, the Applicant retained the right, under the terms of the Consulting Agreement, to amend the list of Liquidating Stores, including in order to facilitate any potential going-concern transactions. On August 16,

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4 Third Stoddard Affidavit at para. 8.

5 Third Stoddard Affidavit at para. 9.

2025, the Applicant amended the list of Liquidating Stores by delivering a Notice to the Consultant.[6]

(b) The Chapter 11 Cases

12. On August 6, 2025, Claire's Holdings and the other Chapter 11 Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code with the U.S. Bankruptcy Court (the "**Chapter 11 Cases**"). On August 7 and 8, 2025, the U.S. Bankruptcy Court granted certain interim and/or final orders in respect of the relief sought by the Chapter 11 Debtors.[7]

13. On August 20, 2025, following the execution of the Purchase Agreement, the Chapter 11 Debtors filed materials in the Chapter 11 Cases in support of an order authorizing sale of certain going-concern assets pursuant to the Purchase Agreement (the "**Going-Concern Motion**"). On September 9, 2025, the U.S. Bankruptcy Court heard and approved the Going-Concern Motion.[8]

(c) Activities Since the Comeback Hearing

14. Since the Comeback Hearing, the Applicant, in close consultation and with the assistance of the Monitor and the Restructuring Advisor, has been working in good faith and with due diligence to, among other things: (i) undertake the Sale; (ii) maintain daily operations; (iii) engage with the Applicant's primary stakeholders, including employees and landlords; and (iv) pursue

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6 Third Stoddard Affidavit at paras. 10-11.

7 Third Stoddard Affidavit at paras. 14-15.

8 Third Stoddard Affidavit at paras. 16, 19.

potential going-concern transactions, in accordance with the authority granted under the terms of the Initial Order. [9]

15. In addition, the Company, with the assistance of the Investment Banker, continued to pursue a going-concern transaction in respect of the Company's North American business, including the Applicant's business in Canada, which culminated in negotiating and entering into the Purchase Agreement, as amended, and the Canada Letter Agreement.[10]

B. The Sale Transaction

(a) The Marketing Process

16. On June 2, 2025, the Company commenced a marketing process, overseen by the Investment Banker, which was designed to identify one or more value-maximizing going-concern transactions for the Company's business. As part of this pre-petition sale process, prospective buyers had the ability to submit standalone bids for some or all of the Applicant's assets.[11]

17. These efforts and outreaches continued through and after the commencement of the CCAA Proceedings and the Chapter 11 Cases. In total, the Company contacted 165 prospective buyers and solicited their interest in a potential acquisition of some or all of the Company's North American assets, including the Applicant's Canadian assets. Of the parties contacted, 69 executed non-disclosure agreements (each, an "**NDA**"), and were given access to virtual data rooms containing financial models and other financial, operational, and legal diligence materials. Of the

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[9] See Third Stoddard Affidavit at para. 12 for a detailed description of activities of the Applicant following the Comeback Hearing.

[10] Third Stoddard Affidavit at para. 13.

[11] Third Stoddard Affidavit at para. 22.

parties that signed NDAs, five submitted non-binding letters of intent ("**LOIs**"), two of which contemplated the Company existing as a going concern.[12]

18. In addition to the marketing process overseen by the Investment Banker, the Monitor also received a small number of outreaches from third parties following the commencement of the CCAA Proceedings, none of which resulted in standalone LOIs or firm offers in respect of the Canadian business.[13] The Monitor did not consider any of these interested parties to represent a viable alternative to a liquidation or the proposed Sale Transaction.[14]

(b) The Purchase Agreement

19. Following negotiations between the Company and counterparties who submitted the LOIs, only the Purchaser's bid proved actionable as a going-concern and as a superior alternative to a full portfolio wind down. Accordingly, on August 18, 2025, the Purchase Agreement was entered into between the Vendors and the Purchaser.[15]

20. Under the terms of the Purchase Agreement,[16] the Purchaser will provide consideration consisting of: (i) US $104 million in cash; (ii) a payment of Aggregate Partial September Rent; (iii) a US $36 million Seller Note in favour of the Vendors; and (iv) the assumption of the Assumed Liabilities (collectively, the "**Purchase Price**").[17] In exchange, the Purchaser will acquire, free of all Encumbrances other than Permitted Encumbrances, the "**Acquired Assets**," which include,

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12 Third Stoddard Affidavit at para. 23.

13 Third Stoddard Affidavit at para. 25.

14 Second Report of the Monitor dated September 15, 2025, at para. 3.5 [Second Report].

15 Third Stoddard Affidavit at paras. 2(a)(i), 26-27.

16 See Third Stoddard Affidavit at para. 34 for a detailed summary of the terms of the Purchase Agreement.

17 The Assumed Liabilities include all liabilities payable in connection with the assignment of any acquired contracts and leases, including any cure costs and employee-related liabilities: Third Stoddard Affidavit at paras. 28, 34(h).

among other things: (i) inventory and supplies of the Vendors, including all inventory and supplies of the Vendors located in any Acquired Leased Real Property or Go-Forward Store in North America; (ii) all Intellectual Property owned by the Vendors; and (iii) certain of the Vendors' retail real property leases (the "**Acquired Leases**," and together with certain assigned executory contracts, the "**Assigned Contracts**").[18]

21. The Purchase Agreement provides the Vendors (including the Applicant) with a "fiduciary out" which may be triggered if, in the Vendor's business judgment, a superior alternative arises prior to the hearing of the Going-Concern Motion and this sale approval motion.[19] The Purchase Agreement is subject to a number of customary conditions precedent, including the Approval and Vesting Order being granted by the Court.[20]

(c) The Canada Letter Agreement

22. Following the execution of the Purchase Agreement, on September 10, 2025, the Canadian Vendor, Claire's Holdings, the Canadian Purchaser and the Monitor (with respect to certain specified provisions), entered into a letter agreement in respect of the Canadian aspects of the Sale Transaction and the Purchase Agreement (the "**Canada Letter Agreement**").[21]

23. The portion of the Purchase Price allocated and payable to the Applicant in respect of the Acquired Assets will be determined by the methodology set out in Schedule "A" of the Canada Letter Agreement. In the Second Monitor's Report, the Monitor has summarized the illustrative

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[18] Third Stoddard Affidavit at para. 34(a)(vi), (xiii), (xiv).

[19] Third Stoddard Affidavit at para. 30.

[20] Third Stoddard Affidavit at para. 35.

[21] Third Stoddard Affidavit at paras. 31, 36. See Third Stoddard Affidavit, at para. 37, for a detailed summary of the terms of the Canada Letter Agreement.

Canadian purchase price allocation methodology. Based on a net cash purchase price for purchased inventory of $45.1 million, the purchase price for Canada is estimated to be US $2.3 million, less US $1.3 million representing a contribution by the Applicant to Claire's Holdings (the "**Canada Purchase Price**") in respect of: (i) shared service costs from August 6, 2025 to the Closing Date, pursuant to an existing management services agreement; and (ii) a proportionate share of post-filing professional costs incurred by the US Debtors.[22] In connection with discussions between the Applicant, the Monitor and the US Debtors relating to the Canada Purchase Price, Claire's Stores, as an intercompany creditor of the Applicant, has further agreed that it will not participate in the first US $1 million of distributions from the Applicant to unsecured creditors in any claims process conducted by the Applicant.[23]

24. In exchange, the Canadian Purchaser will acquire the Acquired Assets sold by the Applicant (the "**Canadian Acquired Assets**"), subject to any Assumed Liabilities and Permitted Encumbrances pertaining to the Canadian Acquired Assets.[24] The Canadian Acquired Assets include leases to which the Canadian Vendor is a party (each, a "**Canadian Lease**,") subject to the assignment of such leases being approved by the Court (in the case of such assignment, a "**Canadian Assumed Lease**").

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22 Second Report at para. 4.2.5.

23 Second Report at para. 4.2.6. By way of example, if US $3 million were available for distribution by the Applicant to its unsecured creditors, the first US $1 million would be distributed to unsecured creditors pro rata, excluding the total value of Claire's Stores' intercompany claim, and the remaining US $2 million would be distributed to all unsecured creditors pro rata, including the total value of Claire's Stores' intercompany claim.

24 Third Stoddard Affidavit at paras. 2(a)(ii), 37.

PART III - THE ISSUES AND THE LAW

25. This Factum addresses the following issues:

(a) the Sale Transaction should be Approved; and

(b) the Assignment of the Canadian Assumed Leases should be Approved.

A. The Sale Transaction should be Approved

(a) The Court has jurisdiction to approve the Sale Transaction

26. It is well recognized that a CCAA court has jurisdiction to approve a sale of all or substantially all of a CCAA debtor's business and assets. Section 36 of the CCAA sets out the legal test for obtaining court approval, and requires the court to consider, among other things: (i) whether the sale process was reasonable in the circumstances; (ii) whether the Monitor approved of the sale process and filed a report supporting the sale; (iii) the extent to which creditors were consulted; (iv) the effect of the sale on creditors and stakeholders; and (v) whether the purchase price is fair and reasonable.[25]

27. The factors outlined in s. 36(3) overlap to a large extent with the factors that were applied in approving sale transactions prior to the enactment of s. 36, and these factors remain relevant in determining whether a sale should be approved.[26] Under the prior *Soundair* test, it was necessary for the court to consider: (i) whether sufficient efforts had been made to obtain the best price and that the debtor had not acted improvidently; (ii) whether the interests of all parties had been

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[25] CCAA, s. 36(3).

[26] *Target Canada Co. (Re)*, 2015 ONSC 2066 at para l5.

considered; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in working out the process.[27]

28. The factors listed in s. 36(3) are not intended to be exhaustive, nor to be a formulaic checklist that must be followed in every case.[28] A formal, court-approved sale process is not required to meet the s. 36(3) criteria;[29] rather, the court is required to look at the transaction as a whole, and decide whether the sale is appropriate, fair, and reasonable in the circumstances.[30]

29. The Applicant submits that both s. 36(3) factors and the *Soundair* criteria are satisfied in the circumstances, and that the Purchase Agreement should be approved.

(b) The process leading to the Purchase Agreement was fair and reasonable

30. Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.[31] In determining whether to approve a proposed transaction, the court will not lightly second-guess or interfere with the commercial and business judgment of an applicant, especially where that

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27 *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, 2010 ONSC 2870 at para. 13, citing *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 (C.A.) at para. 16 [*Soundair*].

28 *Target Canada Co. (Re)*, 2015 ONSC 2066, at para 15.

29 See e.g., *Target Canada Co. (Re),* 2015 ONSC 1487, where a transaction arising from an unsolicited bid for assets currently being marketed pursuant to court-approved sale process was approved. See also *OEL Projects Ltd (Re)*, 2020 ABQB 365 at para. 29, in respect of a sale conducted under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, in which the court held that no particular sale process was required, and that the court should be willing to approve sales in the absence of a court-approved sale process where the circumstances warrant doing so [*OEL Projects*].

30 *Quest University Canada (Re)*, 2020 BCSC 1883 at para. 177.

31 See *White Birch Paper Holding Co. (Re),* 2010 QCCS 4915, at para. 49: "The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA."

business judgment is supported by the advice and consent of the monitor.[32] Although it is common to sell assets under the CCAA by means of competitive bidding process, nothing in s. 36 mandates that such a process be conducted for every asset sold by a debtor company, and courts have acknowledged that other processes may be more appropriate in particular circumstances.[33]

31. The process leading to the Purchase Agreement was fair and reasonable in the circumstances. While the Purchase Agreement is not the result of a formal Court-approved sale process, it is the result of a process undertaken in accordance with the authorization granted pursuant to the Initial Order, which was designed to allow the Applicant and the Monitor to test the market for potential going-concern transactions.[34] In accordance with this authority, the prepetition sale and marketing process being conducted by the Company, with the assistance of the Investment Banker, continued, during which 165 prospective buyers were contacted and numerous interested parties executed NDAs and accessed the virtual data room in order to review financial and operational information. Following this process, the Purchaser was the only party to submit an executable offer which would permit the Company to continue as a going concern.[35]

32. By entering into the Sale Transaction, the Applicant therefore realized the precise benefit which the grant of authority contained in the Initial Order was designed to achieve. The marketing process conducted by the Company was thorough and fair and conducted with transparency and

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[32] *AbitibiBowater (Re)*, 2010 QCCS 1742 at paras. 70-72.

[33] See *Soundair*, at para. 44, citing *Salima Investments Ltd. v. Bank of Montreal*, 1985 ABCA 191, in which the court acknowledged that sale by tender is not necessarily the best way to sell a business as an ongoing concern, and that when another provident method is used, the court should not refuse to confirm the sale. See also *Comark Holdings Inc. et al (Re),* (February 4, 2025), Ont. S.C.J. [Commercial List], Court File No. CV-25-00734339-00CL (Endorsement of Justice Cavanaugh) at para. 7 [*Comark*].

[34] Third Stoddard Affidavit at para. 21. Similar grants of authority have been held to justify approving a sale in the absence of a formal court-approved sale process: see *Comark*, at para. 7.

[35] Third Stoddard Affidavit at para. 26.

good faith, and with a scope of outreach which was at least comparable to, if not greater than, the processes undertaken by comparable debtors.[36]

33. The Monitor supports the process leading to the Sale Transaction, which it views as a thorough canvassing of the market by the Investment Banker. The Monitor does not believe any further marketing efforts for the Applicant's business are warranted in the circumstances, nor does the Applicant have the required liquidity to complete a further marketing process.[37] Similarly, the Investment Banker supports the Sale Transaction as a sound exercise of the Company's business judgment, which was negotiated at arms-length and in good faith by all parties.[38]

(c) The Purchase Price is fair and reasonable

34. In order to establish that a purchase price is fair and reasonable, the debtor must show that sufficient efforts have been made to obtain the best price, and the debtor has not acted improvidently, based on the information available at the time the offer was accepted.[39] Significant deference is given to the debtor's business judgment, absent clear evidence that the purchase price of the transaction is unreasonably low.[40]

35. In this case, the Sale Transaction is the only executable going-concern transaction which has been identified as a superior alternative to a full portfolio wind down.[41] The Canada Purchase

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36 Third Stoddard Affidavit at para. 24.

37 Second Report at para. 4.5.1(a).

38 Declaration of D. Salemi, dated August 20, 2025, at para. 20, attached as Exhibit "D" of the Third Stoddard Affidavit, at p. 153.

39 See for example *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247 at paras. 50-55 [*Terrace Bay*].

40 *Soundair* at paras. 21 and 30-31; see also *Sanjel Corporation (Re),* 2016 ABQB 257 at para. 56 and *Terrace Bay* at paras. 45 and 51-52.

41 Third Stoddard Affidavit at para. 26.

Price is reasonable in the circumstances; in particular, the allocation of US $1.3 million in post-petition services and costs to the Applicant is a fair representation of the value which the Applicant received in respect of these services and costs. Without the efforts of these professionals – including the Investment Banker and counsel to the US Debtors – the Sale Transaction could not have occurred, and the Applicant would be facing a full liquidation, resulting in lower recoveries for the Applicant's creditors, along with the attendant closure of the Applicant's retail stores and termination of the Applicant's employees.

36. The Monitor supports the proposed Sale Transaction, including the Canada Purchase Price.[42] The Monitor views the allocation of fees and costs to the Applicant to be reasonable in the circumstances.[43]

(d) The Sale Transaction will benefit creditors and stakeholders

37. In addition to the Canada Purchase Price, the Sale Transaction provides significant benefits to creditors and to stakeholders generally:

(a) **Preservation of Operations and Employment**: The Sale Transaction ensures that a significant portion of the Applicant's operations will be preserved as a going-concern business (though with reduced footprint), thereby preserving employment for certain of the Applicant's employees and providing continued business to certain of the Applicant's vendors and landlords.[44]

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42 Second Report at para. 4.5.1(g).

43 Second Report at para. 4.2.5.

44 Third Stoddard Affidavit at para. 44(a), (c); Second Report at para. 4.5.1(c).

(b) **Creditor Recoveries**: The Sale Transaction promises superior recoveries to unsecured creditors compared to a full liquidation of the Applicant's assets.[45] Further, the subordination of Claire's Stores' claims against the Applicant will provide significant benefits to the Applicant's unsecured creditors, as it will ensure that the first US $1 million distributed by the Applicant in any claims process will be distributed pro-rata among the Applicant's unsecured creditors, excluding Claire's Stores. The Monitor anticipates that this subordination will provide a meaningful benefit to the Applicant's arms' length unsecured creditors.[46]

(c) **Narrowing Creditor Pool**: In addition to maximizing creditors recoveries, the Sale Transaction will reduce the Applicant's anticipated creditor pool by ensuring that Cure Costs will be paid to the applicable landlords in respect of any assigned leases.[47]

(d) **Assumption of Gift Card Liabilities**: The Sale Transaction will result in the assumption of the Applicant's outstanding and redeemable gift cards within the one-year period following closing, which have an estimated value of $540,000.[48]

38. As a result of the Sale Transaction, only limited matters relating to the Applicant will remain to be dealt with during the administration and wind-down of the CCAA Proceedings.[49]

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45 Second Report at paras. 4.4.3; 4.5.1(e).

46 Second Report at para. 4.2.6.

47 Third Stoddard Affidavit at paras. 29, 44(b).

48 Second Report at para. 4.5.1(c).

49 Third Stoddard Affidavit at para. 44(d).

(e) The Monitor was involved and supports the requested relief

39. The Monitor provided meaningful assistance to the Applicant throughout the process and is supportive of the Applicant entering into the Sale Transaction.[50]

(f) All other statutory requirements have been fulfilled

40. Finally, all of the other statutory requirements for obtaining relief under s. 36 of the CCAA have been satisfied: (i) all parties who have registered security interests in the Purchased Assets and who might be affected by the relief requested on this application have been notified in accordance with s. 36(2); (ii) as the Applicant and the Purchaser are not related parties, the criteria found in s. 36(4) do not apply; and (iii) the requirements found in s. 36(7), which concern amounts owing by a debtor company to its employees and former employees for certain unpaid wages, are not at issue.

B. The Canadian Assumed Leases Should be Assigned Pursuant to Section 11.3

41. A critical and necessary part of the proposed Sale Transaction is the assumption by the Canadian Purchaser of the rights and obligations of the Leases in respect of the Canadian Acquired Stores. Section 11.3 of the CCAA gives the Court the jurisdiction and the discretion to make an order assigning the rights and obligations of a debtor company under an agreement to a third party.

42. The requirements set out in s. 11.3 have been fulfilled:

(a) **No Exception Applies**: Pursuant to s. 11.3(2), no assignment can be granted in respect of: (i) obligations that are not assignable by reason of their nature; (ii) an

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[50] Second Report at para. 4.5.1.

agreement entered into on or after the filing date; (iii) an eligible financial contract; or (iv) a collective agreement. None of these exceptions apply.

(b) **Assignment is Appropriate**: Pursuant to s. 11.3(3), the Court must consider, among other things: (i) whether the Monitor approves of the proposed assignments; (ii) whether the persons to whom the rights and obligations will be assigned will be able to perform such obligations; and (iii) whether it would be appropriate to assign the rights and obligations to that person. Each of these considerations is fulfilled. The Monitor was involved in the development of the lease assignment process contemplated in the Approval and Vesting Order and the Monitor believes that the proposed assignment procedure is fair and reasonable in the circumstances.[51] Further, the Canadian Purchaser is an affiliate of the Purchaser, which is a buyer group led by Ames Watson, which has extensive experience in the retail industry, including *Lids Sports Group*, *South Moon Under*, *Champion* and *Mitchell and Ness*. Ames Watson has provided a letter confirming that: (i) Ames Watson and its affiliate companies generate over $2 billion in revenue per year; (ii) the Purchaser will be capitalized with cash in an amount sufficient to pay the US $104 million base purchase price; and (iii) the Purchaser will set up an asset backed loan facility to support the normal course working capital liquidity needs of the business, post closing.[52] The Purchaser has further confirmed that it has sufficient funds to perform the Assumed Liabilities, including the Canadian Assumed Liabilities.[53]

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51 Second Report at para. 4.3.2.

52 Third Stoddard Affidavit at para. 28; Financial Wherewithal Letter, dated August 25, 2025, attached as Exhibit "E" of the Third Stoddard Affidavit, at p. 156.

53 Third Stoddard Affidavit at para. 33.

Finally, the requested assignments are an integral and necessary part of the Sale Transaction, and the proposed process will provide for a fair and expeditious process for the assignment of Assumed Leases.[54]

(c) **Monetary Defaults Cured:** Pursuant to s. 11.3(4), the Court must be satisfied that all monetary defaults in relation to the agreement – other than those arising by reason only of the company's insolvency, the commencement of proceedings under the CCAA or the company's failure to perform a non-monetary obligation – will be remedied on or before a day fixed by the Court. The proposed process satisfies this requirement. Only those leases associated with retail stores listed on Schedule "A" of the proposed Approval and Vesting Order are capable of being assigned (each, an "**Eligible Canadian Lease**"), and an Eligible Canadian Lease will only be assigned (and thereby become an Assumed Canadian Lease) if it is included in Schedule "1" of the Monitor's Certificate, which in turn requires that the issue of Cure Costs has been effectively addressed.[55] If disputes relating to the Cure Costs have not been resolved prior to the Closing Date, then: (i) the Canadian Vendor may elect to not assign the applicable lease; (ii) the Canadian Purchaser may elect to designate the applicable lease as an Excluded Contract (without any adjustment to the Purchase Price); or (iii) the Canadian Purchaser or an affiliate may deposit

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54 Third Stoddard Affidavit at para. 42.

55 Third Stoddard Affidavit at para. 40(a)-(b). For an Eligible Canadian Lease to be added to Schedule "1", one of the following must occur: (i) Cure Costs in respect of the Eligible Canadian Lease have been agreed with the applicable landlord and paid by the Purchaser; (ii) the Cure Cost Reserve Amount has been deposited with the Monitor; or (iii) there is otherwise an agreement with the applicable landlord. The "**Cure Cost Reserve Amount**" represents the incremental amount claimed by the counterparty to the applicable lease.

the Cure Cost Reserve Amount with the Monitor, pending resolution of the dispute or further order of the Court.[56]

43. The proposed assignments are an integral part of the Sale Transaction and, for the reasons set out above, should be approved by the Court.

PART IV - NATURE OF THE ORDER SOUGHT

44. The Applicant therefore requests an Approval and Vesting Order substantially in the form of the draft Order attached as Tab 3 to the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of September, 2025.

OSLER, HOSKIN & HARCOURT, LLP per Andrew Rintoul
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Applicant

TO: THE ATTACHED SERVICE LIST

[56] Third Stoddard Affidavit at para. 40(c).

SCHEDULE "A": LIST OF AUTHORITIES

1. *AbitibiBowater (Re)*, 2010 QCCS 1742
2. *Canwest Publishing Inc./Publications Canwest Inc. (Re)*, 2010 ONSC 2870
3. *Comark Holdings Inc. et al (Re),* (February 4, 2025), Ont. S.C.J. [Commercial List], Court File No. CV-25-00734339-00CL (Endorsement of Justice Cavanaugh)
4. *OEL Projects Ltd (Re)*, 2020 ABQB 365
5. *Royal Bank v. Soundair Corp.*, [1991] O.J. No. 1137 (C.A.)
6. *Salima Investments Ltd. v. Bank of Montreal*, 1985 ABCA 191
7. *Sanjel Corporation (Re),* 2016 ABQB 257
8. *Target Canada Co. (Re),* 2015 ONSC 1487
9. *Target Canada Co. (Re)*, 2015 ONSC 2066
10. *Terrace Bay Pulp Inc. (Re),* 2012 ONSC 4247
11. *Quest University Canada (Re)*, 2020 BCSC 1883
12. *White Birch Paper Holding Co. (Re),* 2010 QCCS 4915

I certify that I am satisfied as to the authenticity of every authority.

Date September 15, 2025

Signature
Andrew Rintoul

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

COMPANIES' CREDITORS ARRANGEMENT ACT

R.S.C., 1985, c. C-36, as amended

Assignment of agreements

11.3 **(1)** On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

[…]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(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

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

Additional factors — related persons

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

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

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

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLAIRE'S STORES CANADA CORP.

Applicant

Court File No: CV-25-00748871-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE APPLICANT
(Motion for Approval and Vesting Order)

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