SUPREME COURT OF NOVA SCOTIA
Citation: *Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 79

Date: 20240313
Docket: No. 531463
Registry: Halifax

IN THE MATTER OF:	The *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended
AND IN THE MATTER OF:	A Plan or Arrangement of SaltWire Network Inc., The Halifax Herald Limited, Headline Promotional Products Limited, Titan Security & Investigation Inc., Brace Capital Limited and Brace Holdings Limited

DECISION

Judge:	The Honourable Justice John A. Keith
Heard:	March 12 and 13, 2024 in Halifax, Nova Scotia
Oral Decision:	March 13, 2024
Written Decision:	March 19, 2024
Counsel:	Joshua J. Santimaw and Jennifer Stam, for the Applicants Maurice Chiasson, KC and Sara L. Scott, for the Defendants

BY THE COURT:

INTRODUCTION AND ISSUE

[1] There are two applications before the Court:

1. An application by the following affiliated debtor companies for protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "**CCAA**"):

    a. SaltWire Network Inc.;

    b. The Halifax Herald Limited;

    c. Brace Holdings Limited;

    d. Brace Capital Limited;

    e. Titan Security & Investigation Inc.; and

    f. Headline Promotional Products Limited.

    For ease of reference and unless otherwise noted, I refer to these entities collectively as "**SaltWire**".

2. A competing application by SaltWire's senior secured creditors who also seek to protect SaltWire under the *CCAA*. They are:

    a. Fiera Private Debt Fund III LP and

    b. Fiera Private Date Fund V LP

    Each fund is a limited partnership represented by their general partner, Fiera Private Debt GP Inc.. Again, for simplicity and ease of reference, I refer to these senior secured creditors collectively as "**Fiera**".

[2] The dispute between SaltWire and Fiera is not whether to grant an initial order under the *CCAA*. SaltWire and Fiera agree that SaltWire needs protection under the *CCAA*. The present controversy revolves around which monitor will be appointed under section 11.7 of the *CCAA* to monitor the business and financial affairs of the debtor company and its affiliates. There is a related issue regarding interim financing; however, the selection of a monitor is the focal point of this decision.

[3] Fiera asks that the Court approve KSV Restructuring Inc. ("**KSV**") as the monitor under its application. SaltWire asks that the Court approve Grant Thornton Limited as the monitor ("**Grant Thornton"**) under its competing application.

[4] The parties requested that I provide reasons following my decision at the initial hearing on March 13, 2024. These are those reasons.

[5] There are three preliminary points that bear emphasis:

1. The parties characterize this initial hearing as a choice between SaltWire's "debtor-led" application under the *CCAA* and Fiera's "creditor-led" application under the *CCAA*. There is some limited truth to this statement in the very literal sense that SaltWire and Fiera each prefer to proceed under the auspices of their own application – not as a respondent in the other's competing application. However, in a more important sense and for clarity, this decision neither considers nor makes any determinations as to the distinction between a "creditor-led" versus "debtor-led" application under the *CCAA*, if any. As indicated, the focal point of the dispute at this stage is almost entirely the identity of the monitor. No person should interpret this decision as revealing some hidden meaning which would prefer any particular interest or foreshadows any particular final outcome. The monitor does not serve any particular interest or person and does not take direction from whatever person may have requested their appointment. The monitor is an officer of the Court obliged to act in a manner which is fair and impartial. The monitor's duties and powers are specifically described at sections 23 – 25 of the *CCAA*. Section 25 of the *CCAA* expressly confirms the monitor's duty to "act honestly and in good faith and comply with the Code of Ethics referred to in section 13.5 of the *Bankruptcy and Insolvency Act*."

2. This is the initial hearing. It marks the beginning (not end) of a *CCAA* process. The Court is neither writing SaltWire's obituary nor announcing its emergence from insolvency proceedings. Setting aside the dispute as to the monitor's identity, the primary goals of this initial hearing include providing a brief reprieve from the extreme financial turbulence bearing down on SaltWire and provide a reasonable measure of stabilizing support to determine if SaltWire can pull out of its downward spiral and steer towards a future where the businesses survive, and its creditors' legitimate demands are met. Of course, there are also other groups whose economic or social interests may be affected by these proceedings including SaltWire's employees as well as their pension funds. And, perhaps more amorphously but not insignificantly, the public at large which use or depend upon local media for news.

3. As a final preliminary point, these proceedings were launched on an emergency basis. That is not at all uncommon. Debtor companies buckling under acute financial pressure are often required to act on an urgent, rushed basis. What is highly unusual is that the Court is rarely faced with two competing applications at the initial hearing where both the debtor company and a major creditor file separate applications under the *CCAA*. Counsel identified only one case where a debtor company and creditor agreed as to the necessity of *CCAA* proceedings but clashed over who should lead those proceedings: *Arrangement relatif à Groupe Sélection inc.,* 2022 QCCS 4281, urgent application for leave to appeal denied 2022 QCCA 1596 ("***Groupe Sélection***"*).*[1] There are differences between *Groupe Sélection* and this case. The decision *Groupe Sélection* occurred within a single application and was issued following a more robust, four-day hearing – after the debtor companies obtained an initial order. By contrast, the dispute in the case at bar erupted in the context of two separate applications (one by the debtor company and the other by the senior secured lender); both of which were brought on an emergency basis; and were heard urgently over the course of about 2 ½ hours. That said, as will be seen, *Groupe Sélection* also contains helpful commentary that is applicable in this case.

STATUTORY PRECONDITIONS

[6] There is no doubt (and no party disputes) that the following statutory preconditions for relief under the *CCAA* exist:

1. SaltWire is insolvent and unable to meet their obligations as they come due (definition of "debtor company" under section 2 of the *CCAA*);
2. The total claims against SaltWire (including all the affiliated companies) exceed $5 million (section 3(1)) of the *CCAA*). Breaking down the debts as between the separate corporate entities which comprise the SaltWire affiliated entities:
    a. As of December 31, 2023, the amount owing by The Halifax Herald Limited to Fiera is $8,239,634.92, plus accrued interest and costs. It acknowledges breaching (and being in default of) the loan agreement with Fiera in respect of this debt;

[1] Counsel for Fiera provided unofficial English translations of these decisions for the purposes of this motion. No concerns or objections were raised regarding the accuracy of the translation.

b. As of December 31, 2023, the amount owing by SaltWire Network Inc. to Fiera was $24,507,715.32, plus accrued interest and costs. It acknowledges breaching (and being in default of) the loan agreements in respect of this debt;

c. As of February 23, 2024, SaltWire Network Inc. owed CRA $2,589,018.28;

d. As of February 23, 2024, The Halifax Herald Limited owed CRA $4,993,145.09;

e. The Halifax Herald Retirement Plan has 404 members as of December 31, 2022. Over the course of 2018 and 2019, The Halifax Herald Limited was required to make certain payments totaling $2,656,656.00 into this pension plan. It did not do so. The monies were diverted to operations. The Halifax Herald Limited justified this decision on the basis of new solvency valuation which would have reduced their obligations to make payments into the Plan. However, these new solvency valuations did not actually come into law until April 1, 2020 – about two years after The Halifax Herald Limited had already begun withholding payments. The Halifax Herald Limited now owes these monies ($2,656, 656) to the Pension Plan as confirmed by Norton, J. in the decision bearing citation 2024 NSSC 19.

f. The remaining affiliated SaltWire entities become entangled in this proceeding through an interconnected ownership structure and the various forms of security held by Fiera in support of the underlying debts.

3. Both applications contain the materials which must accompany the initial application and include a projected cash flow on a weekly basis (section 10 of *CCAA*). That said, there are issues regarding the cash flows as presented which I will return to later.

THE PARTIES' ARGUMENTS

[7] As indicated, SaltWire proposes that Grant Thornton serves as monitor. Fiera proposes KSV. No party is suggesting that either Grant Thornton or KSC are unqualified to fulfill the role of monitor in this proceeding. The factors which bear upon the choice between Grant Thornton and KSV has nothing to do with their expertise or capabilities.

[8] The parties' arguments generally focussed on the following factors:

1. SaltWire's express agreement to cooperate with Fiera in these proceedings;
2. The impact of the *CCAA*'s statutory objectives when selecting between the debtor company's choice for monitor and the senior lender's choice;
3. The proposed monitor's familiarity with SaltWire together with related issues regarding independence and the related perception of neutrality;
4. The extent to which need for a local presence; and
5. The monitor's approach to the issue of interim financing.

[9] Each issue will be discussed separately below.

SALTWIRE'S AGREEMENT

[10] Between February 28, 2019 and October 27, 2023, Fiera and SaltWire entered into 9 Forbearance Agreements. The first agreement was simply entitled "Forbearance Agreement". It was following by eight additional "Restated" agreements ending with the final "Eighth Amended and Restated Forbearance Agreement" made as of October 27, 2023, but deemed to be effective as of July 15, 2023 (Affidavit of Russell French sworn March 8, 2024, Exhibit AA).

[11] Fiera points out that in Section 8.02(b)(ii) of the Eighth Amended and Restated Forbearance Agreement made as of October 27, 2023, SaltWire expressly agreed that, among other things, it:

> consent[ed] to the [Fiera's] immediate enforcement of all of the Security to which it is a party (including the appointment of a trustee in bankruptcy, the appointment of an agent, a receiver, a manager, or a receiver and manager, as the Lenders may see fit in their sole absolute discretion.

[12] Moreover, in a signed consent attached as Schedule "B" to this Eighth Amended and Restated Forbearance Agreement, Mark Lever, Sarah Dennis, and a number of affiliated SaltWire companies agreed that, in the event of further default, they would "consent to the commencement of creditor-led proceedings pursuant to the *Companies' Creditors Arrangement Act*."

[13] Fiera says that SaltWire not only refused to cooperate, as agreed, but actively opposed Fiera's application under the *CCAA* and launched its own competing application. Fiera acknowledges that the Court retains a broad discretion to proceed in a manner which best achieves the statutory objectives of the *CCAA* and is not

bound to enforce or adopt whatever advance agreements creditors and debtors may make. Nevertheless, Fiera states that the agreements and SaltWire's failure to abide by them are relevant factors to be taken into account and that SaltWire should not be entitled to lightly reject its own contractual commitments when they no longer prove useful.

[14] SaltWire rejects Fiera's characterization of its decision to oppose Fiera's proceedings under the *CCAA*. It accepts the commitments which made as part of the Eighth Amended and Restated Forbearance Agreement but points to section 11 of the *CCAA* which states:

> Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

[15] SaltWire states that the Court's overriding, dominant concern must remain focussed on the statutory objective of enabling debtor companies to restructure their debt and continue as ongoing businesses. To the extent prior agreements conflict with those objectives, the Court must be allowed to exercise its discretion accordingly. And SaltWire must be entitled to bring its concerns forward in order to ensure that discretion is properly exercised. Ultimately, SaltWire says, KSV's prior actions as Fiera's financial advisor reveal both a potential for bias and a related appearance of conflict sufficient to disqualify it as an appropriate candidate for the Court to approve as monitor under the *CCAA*.

THE IMPACT OF THE CCAA'S STATUTORY OBJECTIVES

[16] SaltWire argues that the *CCAA* is intended to provide a process whereby debtor companies can restructure their affairs with a view to continuing in business. All things being equal, if SaltWire continues, the debtor's company choice of monitor should be preferred.

[17] Fiera counters that the *CCAA* may be initiated by either a debtor company or a creditor, without prioritizing one over the other.

FAMILIARITY, INDEPENDENCE AND NEUTRALITY

[18] Fiera argues that KSV has been working as a financial advisor for Fiera on this matter since October 2023. In that role, KSV engaged with SaltWire as part of an informal restructuring effort described in the motion materials as a "recapitalization program". The details and specific nature of the "recapitalization program" are not clear. However, Fiera argues that KSV's efforts were focussed on a restructuring that would see SaltWire continue as a company. And that KSV's experience, knowledge and familiarity with the SaltWire affiliated companies operates in KSV's favour as the preferred choice of monitors in these types of complicated proceedings. It enables KSV to quickly assess and process the debtor's company's (including affiliates) requirements and provide valuable input in what will foreseeably be very stressful circumstances.

[19] Fiera relies heavily upon the decision in *Groupe Sélection*. In that case, the debtor company and its affiliates were in the business of real estate development. The corporate structure was extremely complex but, of note, the debtor companies were among the most important owners and operators of senior residences in Québec.

[20] The debtor companies became insolvent and commenced proceedings under the *CCAA*. A lending syndicate responded with a competing application to approve a "creditor-led" *CCAA* process involving the appointment of its own financial advisor (PwC) as monitor and the approval of a $20 million interim loan.

[21] Justice Pinsonnault of the Superior Court of Québec dismissed the company's application and granted the relief sought by the lending syndicate, approving *CCAA* proceedings to be conducted primarily by the lender's choice of monitor, PwC. PwC had been advising various financial institutions (including the lending syndicate seeking relief under the *CCAA*) for about 3 years leading up to the initial application and it expressed major concerns regarding the debtor company's financial management and reporting. (at paragraphs 124 – 157)

[22] The debtor company argued that PwC's historical involvement with the company created an irreconcilable conflict of interest which, in turn, prevented it from having the distance and independence needed to serve as monitor. (at paragraph 161) Pinsonnault, J. disagreed. He found that PwC understood that, as monitor, "it must exercise impartially, becoming from the moment of [its] appointment the eyes and ears of the Court, which will rely on [its] full and frank assistance throughout the restructuring process that is beginning today." (at paragraph 163)

[23] Importantly for present purposes, Pinsonnault, J. also determined that PwC's prior experience was a positive factor in the circumstances. When commenting on

the alternate choice for monitor being proposed by the debtor company, he wrote that "their learning curve impeded the urgency to act imposed by the circumstances and the very particular context at hand, which was not the case for PwC." (at paragraph 169)

[24] An urgent application for leave to appeal the initial order was dismissed by Justice Kalichman of the Court of Appeal of Québec on 28 November 2022.

[25] SaltWire states *Groupe Sélection* was determined on the unique facts in that case. In this matter, SaltWire argues, KSV's familiarity and its close connections to Fiera are the very reasons it should be rejected as an appropriate choice for monitor. SaltWire contends that KSV's actions as Fiera's financial advisor over the past number of months demonstrate a lack of independence or, at a minimum, the appearance of being too closely aligned (and dedicated to) Fiera's interests. If KSV is selected as monitor, the concern is that the appearance of bias will taint the proceedings and undermine the need for a monitor to remain objective, impartial and above the fray. SaltWire also maintains that its relationship with KSV over the last few months has become strained and that strain is something the debtor companies alleged that the companies cannot afford during the restructuring of a company process.

[26] On the issue of independence, in an affidavit sworn March 8, 2024, one of SaltWire's key directing minds, Mark Lever expresses concerns that KSV may have other conflicting interests. He notes that KSV has been involved in the insolvency proceedings of another media company local to British Colombia and called Black Press Ltd.. Mr. Lever raises the spectre that "while KSV have assured the SaltWire Group that an ethical screen has been implemented within KSV, we have been asked for information on audience engagement numbers and other confidential business information, which was described by KSV as being helpful for other insolvency files." The implication is that confidential or sensitive information may be shared or misused.

[27] KSV insists that this is a misplaced attempt to manufacture a problem that does not exist. It says that appropriate internal protocols have been put in place to avoid any conflict and notes that, in any event, Grant Thornton is also involved in bankruptcy proceedings involving a media company called Metroland Media Group Ltd. In short, KSV says that Mr. Lever's concerns are speculative at best and cannot give rise to a disqualifying conflict in the circumstances.

[28] As to SaltWire's preferred choice of monitor, SaltWire's original, unnamed selection ultimately proved unable to accept the appointment. Thus, SaltWire was

only able to recently retain Grant Thornton on March 3, 2024. Since that time, SaltWire says that Grant Thornton worked diligently to familiarize itself with the business and its ongoing struggles. Grant Thornton confirms that it has gained the requisite knowledge and understand of SaltWire's business and financial difficulties to serve as monitor.

[29] In fact, SaltWire argues, Grant Thornton's lack of history to (or connections with) any party is a positive factor. It better ensures that the monitor has the necessary distance, independence, and objectivity to properly fulfill the role of monitor – certainly as compared to KSV.

LOCAL PRESENCE

KSV

[30] SaltWire states that KSV's lack of a local presence is a significant shortcoming in the circumstances of this case having regard to SaltWire's significant relationships with local employees and the sensitivities around SaltWire's position as the dominant provider of local news in Atlantic Canada and leader in local journalism.

[31] KSV states that it regularly works around the country, without concern or objection. As well, it is committed to being physically present in Nova Scotia to the extent necessary during the course of these proceedings. Finally, Fiera notes that all parties agree that David Boyd, a local insolvency expert with the entity known as Resolve Advisory Services Ltd., will be working with SaltWire as the Chief Restructuring Officer who will, among other things, be addressing operational decisions and engaging with the Monitor on any restructuring proposal. Thus, Fiera concludes, while Mr. Boyd will not be acting as monitor, he will be an important local voice within the proceeding.

[32] By contrast, SaltWire emphasizes that Grant Thornton maintains offices in Atlantic Canada and has the ability to more effectively and immediately address local issues as they arise.

INTERIM FINANCING

[33] Finally, Fiera states that KSV has a more realistic approach to SaltWire's financial condition and immediate needs, particularly with respect to interim (or D.I.P.) financing. KSV states that SaltWire's projected cashflows are thin and that Grant Thornton's suggestion that no interim financing will be needed in the first 10

days following the initial CCAA order ignores the financial pandemonium which predictably occurs in the wake of creditor protection proceedings. KSV argues that it will not be "business as usual" and cash flow predictions based on that presumption are likely to prove inadequate. KSV says critical suppliers confronted with an insolvent customer will almost certainly demand immediate payment of any outstanding receivable and upfront cash for any future requirements. KSV proposes $500,000 of interim D.I.P. financing is reasonable in the circumstances. Fiera is prepared to front those funds at an annual interest rate of 8%.

[34] SaltWire counters by noting that Grant Thornton has described its cash flow projections as "reasonable" and include a contingency fund totalling almost $113,000 over the next 10 days. Besides, if the Court does not accept Grant Thornton's assessment of cash flow needs, SaltWire confirmed during the course of oral argument on March 13, 2024[2] that a company known as 3313067 Nova Scotia Limited confirmed its willingness to step in as a D.I.P. lender and immediately fund any interim cash shortfall at an annual interest rate of 12%.

ANALYSIS

[35] The choice between Grant Thornton and KVS as monitor is difficult. Both possess the necessary expertise and capacity to serve as monitor. This decision should not be read as suggesting otherwise. Having carefully considered the arguments, in my view, KVS is in a better position to assume the role given the circumstances.

[36] Not all relevant factors are in Fiera's favour. For example, Fiera did little to dispel concerns around KSV's independence as a monitor by submitting an interim financing term sheet that is conditional upon Fiera's choice of monitor being accepted. Section 7(g) of Fiera's Terms Sheet for Interim financing contains the following "condition precedent":

> Resolve shall have been appointed CRO and KSV shall have been appointed as Monitor on such terms and with such authorities as agreed on by the Interim Lender and shall include, without limitation, the express authorization to and shall make themselves available to have direct discussions with the Interim Lender, and the Interim Lender shall be entitled to receive information from the

[2] SaltWire filed a supplementary affidavit of Mark Lever sworn March 13, 2024 attaching an Interim Financing Credit Facility term sheet but it was conditional upon the Court entering an Amended Restated Initial Order which, obviously, could only arise **after** the initial stay under the *CCAA* (no more than 10 days) expired. (section 7(c) of the term sheet). At the initial hearing itself, counsel for SaltWire stated that they had been in communication with the proposed lender who confirmed a willingness to make the financing immediately available.

> CRO and/or the Monitor as may be requested by the Interim Lender from time to time….

[37] Similarly, at paragraph 86 of the Affidavit of Russell French, filed in support of Fiera's application, Mr. French attests that Fiera is not:

> …prepared to consent to a proceeding in which KSV is not appointed as the Court-appointed monitor given the significant experience KSV has gained since being retained, including dealing with FTI concerning the Recapitalization Process and its oversight of the Borrowers' financial situation and reporting (which is complicated).

[38] Interim (including Debtor in Possession or "D.I.P.") creditors are obviously free to request (or reject) the terms upon which they are prepared to grant interim financing. To that extent, there is nothing inherently wrong with Fiera's term sheet.

[39] However, creditors (including proposed D.I.P. lenders) cannot presume to fetter the Court's discretion in choosing the entity that will be installed as monitor to serve as the Court's independent officer. A creditor may apply to replace the monitor in appropriate circumstances (section 11.7(3) of the *CCAA*) but, here again, the Court maintains control over the monitor's selection. Interim lenders who seek to impose their choice of monitors in *CCAA* proceedings run the significant risk of tainting the Court's view as to that monitor's independence and impartiality. On this, I note sections 11.2(4) and (5) provides a list of relevant factors that the Court is to consider when making an Order for interim financing. None of them refer to the monitor who, again, is appointed by the Court to offer independent assistance in these types of proceedings.

[40] Notwithstanding this preliminary concern and based on the evidence before me at this initial hearing, I am satisfied that the remaining factors tilt heavily in favour of KSV's appointment. My reasons include:

1. Bobby Kofman, President of KSV, will be serving as KSV's representative in this proceeding. He was present at the initial hearing to answer the Court's questions. I am satisfied Mr. Kofman appreciates, understands, and shall comply with the duties and obligations placed upon a monitor as an independent, impartial actor whose duties include providing assistance and information to the Court – not advancing the interests of a particular interested party;
2. Fiera's somewhat forceful request that KSV be installed as monitor are, in these circumstances, somewhat mitigated by SaltWire's refusal to

honour its prior contractual commitment that it would consent to these proceedings. In other words, Fiera was expecting SaltWire's cooperation, not opposition. Fiera's arguments around KSV's appointment may be viewed in that light of those existing agreements;

3. I agree with Fiera's statement that "KSV is the financial advisory firm with the most familiarity with [SaltWire's] business, economic circumstances and issues affecting the business, having been involved since October 2023" (Affidavit of Russell French affirmed March 8, 2024, paragraph 16). While the underlying issues, financial arrangements and corporate structures in this case are not nearly as complicated as was the case in *Groupe Sélection*, similar complications exist in terms of the immediate and pressing nature of the problem, the somewhat complicated nature and geographic scope of the businesses, and the underlying public interest. As it was in *Groupe Sélection*, KSV's existing familiarity with SaltWire's businesses is beneficial. Given Grant Thornton's very recent engagement, it is not in a position to replicate that experience. To repeat for clarity, these reasons and KSV's appointment as monitor should not be seen as somehow blessing or blindly adopting whatever informal restructuring efforts (described in the materials as a "Recapitalization Program") might have occurred in the past. I have no details regarding this program and, at this initial hearing, make no determination as to the shape or content of the formal restructuring process which will occur under the auspices of the *CCAA*. I simply make the observation that, in my view, KSV's past experience and familiarity is a positive factor;

4. SaltWire originally consented to KSV's appointment as a financial advisor by Fiera. More importantly, KSV has been attempting to assist in an informal restructuring effort. To that extent, its objectives were not entirely dissimilar to the objectives which all parties hope to achieve under the *CCAA*. I have no evidence to suggest that, during the informal restructuring process unfolding over the past few months, KSV has acted in way that might be fairly characterized as an unreasonable manner or inappropriate or bad faith. Respectfully, the evidence from Mark Lever regarding KSV's conduct in the past is neither detailed nor compelling. In his affidavit sworn March 8, 2024, Mr. Lever complains that:

> From the beginning, the relationship between the SaltWire Group management and KSV has been strained. KSV has sought financial information on timelines that have not been achievable for the

> SaltWire Group, given it was trying to operate the business, support the FTI engagement, and meet Fiera's financial reporting obligations, while seeking to compile the requests from KSV, some of which were requested at random times. (at paragraph 147)

No further details or supporting evidence is provided. Without anything more, it is difficult to condemn as a disqualifying bias KSV's pressing demand for immediate financial reporting from a company engaged in informal restructuring discussions and on the brink of insolvency. I agree that a creditor's former representative should not be automatically installed as monitor without careful scrutiny and assessment for potential bias. However, in the circumstances of this case, KSV's prior assistance in a cooperative, informal restructuring process and its corresponding familiarity with SaltWire will prove beneficial as the debtor company and their affiliates now move to navigate through more formal proceedings under the *CCAA* – certainly when compared against PwC's relative lack of familiarity.

5. SaltWire's prior agreement to cooperate with "creditor-led" proceedings is not a determinative factor. Obviously, parties cannot expect to bind the Court to their prior agreements or otherwise compromise the Court's broad discretion in the appointment of a monitor. That said, it is clear that SaltWire agreed to cooperate and, in my view, the reasons for SaltWire now seeking to act in a manner inconsistent with that contractual commitment is insufficient to disqualify KSV or undermine the factors that favour KSV's appointment as monitor.

6. Respectfully and in my view, KSV's approach to the need for interim financing pending the next hearing in this matter was more realistic given the circumstances. As indicated, Grant Thornton stated that the cash flow projections for the debtor companies were reasonable and that they did not require interim financing during this initial period (i.e. the 9 days between the initial hearing on March 13, 2024 and the upcoming hearing on Friday, March 22, 2024). However, if the Court disagreed, SaltWire said that interim financing would now be made available through its proposed lender (3313067 Nova Scotia Limited). Several concerns arise regarding the proposition that interim financing is reasonably not required for the first 9 days of this proceeding:

    a. The cash flow projections were prepared by management based on certain "hypothetical assumptions" that SaltWire's managements believes are "reasonable" and "suitable" for the

purposes of the cash flow. That said, the cash flow projections are just that – projections or predictions. Thus, by its nature (and SaltWire properly acknowledges in the actual cash flow document) that "actual results may vary";

b. The bulk of revenue anticipated in the short term are from "collection of accounts receivables" which, in turn, are the "subscription revenues" collected by SaltWire and The Chronicle Herald for the media, advertising and printing services they provide. In terms of assessing the need for interim financing, these "subscription revenues" may be foreseeably compromised where customers may become concerned about the future of the business;

c. Similarly, SaltWire's anticipated cash outlay described in the documents as "Cash Disbursements – Operational" may increase. I accept KSV's concerns that once formal creditor protection proceedings are launched, the circumstances under which the debtor company will have to operate become increasingly difficult in the sense key suppliers will foreseeably demand immediate payment of any arrears and cash in advance as conditions for future supply arrangements;

d. The cash flow does include a "contingency" which is calculated at 5% of the "Cash Disbursements – Operational". However, the available contingency funds are not immediately available in the sense that these figures are based on weekly disbursements. Thus, there is only $40,417 of contingency funds in the first week of these proceedings and another $72,662 in the second week. Creditor protection proceedings do not always follow this sort of predictable, mathematical model which slowly increases over time as a percentage of the expected revenue stream. Rather, for the reasons discussed, the debtor company's demands may be more immediate as suppliers increase their demands for immediate payment. In that foreseeable circumstances, the company's requirements for interim funding may arrive in the form of an immediately cash crunch;

e. Ultimately, in my view, the debtor company's cash reserves are thin when compared to projected revenues. Even setting aside the concerns described above, the cash flow

document predicts that the company will only have about $25,000 remaining in the bank as of March 23, 2024;

f. SaltWire's interim financing proposals were very fluid and, indeed, were amended during the course of oral argument when it confirmed interim financing would be made immediately available should the Court consider it appropriate. On this issue, I am equally compelled to note that I harbour concerns regarding the resources of SaltWire's proposed lender: 3313067 Nova Scotia Limited. SaltWire confirms that the signatory for this numbered company is an individual of significant means. However, respectfully, I cannot take judicial notice of a proposed lender's means based on the presumed wealth of its directing mind.

On this issue, I am aware of the statutory considerations listed in section 11.2(4) of the *CCAA*. As indicated, these reasons are focussed on the choice of monitor. That said, I am satisfied that the debtor company is in need of the interim financing arrangements recommended by KSV. I repeat the reasons mentioned above. Moreover, Fiera is the senior secured lender and it approves the interim financing. With the mutually agreed appointment of Resolve as CRO, I understand the management of the debtor company will have the confidence of Fiera. In my opinion, the proposed interim financing would enhance the prospects of a viable compromise or arrangement being made in respect of the company.

7. I do not consider SaltWire's concerns regarding KSV's lack of a local presence to create a disqualifying factor, either taken separately or in the context of the evidence as a whole. I understand KSV is prepared to be present in the jurisdiction as required.

8. As to SaltWire's argument that applications by a debtor company should be preferred over a competing application by creditors, I agree that proceedings under the *CCAA* often culminate in free and clear asset dispositions, ideally preserving the company's going concern. Thus, in, the Alberta Court of Appeal observed that the *CCAA* is to be interpreted generously and expansive, all in pursuit of enabling debtor companies to carry on business. (*Hurricane Hydrocarbons Ltd. v. Komarnicki*, 2007 ABCA 361 at paragraphs 14 – 15) In *Re US Steel Canada Inc.*, 2016 ONCA 662, the Ontario Court of Appeal wrote that the *CCAA*'s purpose is: "to avoid the devastating social and economic

> effects of commercial bankruptcies. It permits the debtor to continue to carry on business and allows the court to preserve the status quo while "attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all" (at paragraph 47). Given these statutory goals, it is often the debtor company which seeks protection under the *CCAA* in an effort to survive. However, the *CCAA* clearly and equally permits creditors to apply under the *CCAA*. So long as the statutory objectives and goals are being advanced properly and in good faith, I am unable to conclude that there is a presumption in favour of SaltWire's choice of monitor; or that, in the circumstances of this case, SaltWire's wishes necessarily predominate or outweigh all of the factors that otherwise favour KSV's appointment as monitor.

CONCLUSION

[41] An initial order under the *CCAA* shall issue in form to be approved by the Court, with KSV being appointed monitor.

Keith, J.