SUPREME COURT OF NOVA SCOTIA

Citation: *Fiera Private Debt Fund v. SaltWire Network Inc.*, 2024 NSSC 89

Date: 20240326
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

Judge:	The Honourable Justice John A. Keith
Heard:	March 24 and 25, 2024, in Halifax, Nova Scotia
Written Decision:	March 26, 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 Issues

[1] These proceedings arise under the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended (the "*CCAA*") and involve The Halifax Herald Limited ("**The Halifax Herald**"), SaltWire Network Inc. ("**SaltWire Network**"), Headline Promotional Products Limited ("**Headline Promotional**"), Titan Security & Investigation Inc. ("**Titan Security**"), Brace Holdings Limited, and Brace Capital Limited. Where necessary, I refer to these entities collectively as the "**Debtor Companies**".

[2] On March 13, 2024, I heard the following, competing emergency motions, each seeking an initial Order under the *CCAA*:

1. A motion filed by Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP. Each fund is a limited partnership represented by their general partner, Fiera Private Debt GP Inc. (collectively, "**Fiera**"). Fiera is owed in excess of $32,700,000 by the Debtor Companies and is the senior secured lender in this proceeding;
2. A motion filed by the Debtor Companies under Court File No. 531475.

[3] Fiera and the Debtor Companies were aligned on several important issues. They agreed that:

1. The Debtors Companies were insolvent;
2. The Debtor Companies required protection (including emergency, stabilizing relief) under the *CCAA*;
3. David Boyd of Resolve Advisory Services Ltd. would serve as the Chief Restructuring Officer ("**CRO**") during the *CCAA* process.

[4] The differences between the two competing applications narrowed essentially to the question of who would serve as monitor in these *CCAA* proceedings. Fiera proposed that KSV be appointed monitor. The Debtor Companies proposed Grant Thornton. There was a related, more minor dispute around who would provide interim (or Debtor-in-Possession, "**D.I.P.**") financing and the terms of any such

financing. However, again, the dispute effectively turned on whether the Court appointed KSV or Grant Thornton as monitor.

[5] I issued an initial order appointing KSV Restructuring Inc. ("**KSV**") as monitor (the "**Initial Order**"). My reasons are reported at 2024 NSSC 79.

[6] The return hearing was scheduled for Friday, March 22, 2024 in accordance with the deadlines established under section 11.02(1) of the *CCAA* (the "**Comeback Hearing**").

[7] The first report of the Monitor, KSV, was filed on March 19, 2024.

[8] Also on March 19, 2024, Fiera filed a Notice of Motion seeking the following relief at the Comeback Hearing:

1. Declaring that one of the affiliated debtor companies (Headline Promotional) meets the criteria prescribed by section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 and that Headline's employees are eligible to receive payments under and in accordance with the *Wage Earner Protection Program Act*, S.C. 2005, c. 47 s. 1, as amended. (the "**WEPP Order**")
2. Amending and restating the Initial Order, to, among other things:
    a. Extend the stay of proceedings up to and including to May 3, 2024;
    b. Increase the maximum principal amount which the Debtor Companies may borrow under the secured debtor-in-possession financing facility from $500,000 to $1.5 million pursuant to an amended and restated interim financing term sheet;
    c. Increase the Administration Charge from $300,000 to $450,000;
    d. Increase the aggregate limit of pre-filing payments from $300,000 to $500,000;
    e. Expand and enhance the CRO's powers; and
    f. Expand and enhance the Monitor's powers.

    (the "**First ARIO**")
3. Approving a proposed sale and investment solicitation process ("**SISP**") to be conducted by FTI Capital Advisors-Canada ULC (the "**FTI**

Capital") and, in turn, approving an engagement letter dated March 14, 2024 and entered into between the CRO on behalf of the Debtor Companies and the Financial Advisor. The proposed SISP Order would also grant the Financial Advisor a charge in respect of its proposed fees (the "**Financial Advisor's Charge**").

(the "**SISP Order**")

[9] I will address each requested Order separately.

WEPP Order for Headline Promotional

[10] The WEPP Order was not controversial.

[11] Headline Promotional is a promotional products company that employs 10 people. It is not integral to the operations and business prospects of either:

1. The Halifax Herald or SaltWire Network which are the media companies representing the key business opportunities offered at this stage of the *CCAA* restructuring process;
2. Titan Security.[1]

[12] As of December 31, 2021, Headline Promotional year-end losses were $100,962. As of December 31, 2022, the year-end losses more than doubled to $220,475. As of December 31, 2023, the year-end losses increased again to $303,325.35.

[13] I am satisfied that winding down Headline Promotional will stop the financial hemorrhaging and will not materially impact the ongoing efforts to optimize the value which can be realized in the remaining Debtor Companies. For present purposes, the more important point is that the WEPP Order will assist Headline Promotional's terminated employees to access benefits under the *Wage Earner Protection Program Act* (e.g. compensation for unpaid wages, vacation pay, termination pay and severance pay). The Monitor supports granting the WEPP Order.

[14] The WEPP Order will be issued in the form presented.

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1 Titan Security is a full-service security and health care services company with approximately 100 full and part-time employees. Based on the evidence before the Court, Titan Security recorded a positive net income of $640,860.16 (or Adjusted EBITDA of $744,442.48) for the year ending December 31, 2024. Titan Security will be the subject of a separate marketing and sale process.

The ARIO

[15] I issued the ARIO immediately following the hearing on March 22, 2024. My reasons include:

1. **Extending the stay from March 22, 2024 to May 3, 2024**: This is not a controversial proposition. It is not only reasonable and necessary to extend the stay to May 3, 2024, it is essential. The Debtors Companies clearly require time to pursue restructuring and, in particular, advance the proposed SISP process;

2. **Increased D.I.P. Financing**: Fiera states that the Debtor Companies will require an additional $1,000,000 in D.I.P. financing, increasing the available amount available under this facility from $500,000 to $1,500,000. The Debtor Companies do not dispute the need for this access to cash. The Monitor confirms that the Debtor Companies have already been required to access about $250,000 of the original $500,000 and concludes the proposed increase is reasonable and appropriate noting that:

    a. The cash flow projections indicate that an additional $1,000,000 will be required to sustain the Debtor Companies through the extended stay period;

    b. The Companies are not projected to have the funding needed to operate and continue these proceedings without this additional access to cash; and

    c. The terms of the additional financing are essentially in line with the existing D.I.P. funding, previously approved.

    I carefully reviewed the cash-flow statements submitted by the CRO. The increase would clearly enhance the prospects of the Debtor Companies emerging from these proceedings as a viable, on-going business. With the CRO in place, the concerns around management have dissipated. Finally, the financial terms associated with the increased $1,000,000 in interim funding is commercially reasonable and consistent with the original $500,000 D.I.P. financing term sheet. Overall, I am satisfied the requirements for interim financing under section 11.2 of the *CCAA* are met.

3. **Increased Administration Charge**: The Order increased the proposed Administration Charge from $300,000 to $450,000. The increase was not contested and is largely related estimated professional fees

forecasted over the extended stay period. The increases will ensure the effective participation of those professionals essential to the necessary management and execution of the upcoming SISP process. I agree to the proposed increase in the Administration Charge.

4. **Increased pre-filing payments**: At para. 6 of the Initial Order, I confirmed that, with the consent of the Monitor and the CRO, a total amount of no more than $300,000 may be paid for those pre-filing debts considered necessary for the ongoing operation of the Debtor Companies. In the Monitor's First Report dated March 19, 2024, the Monitor came to the view that an increased limit of $500,000 for Pre-Filing Payments "should be sufficient, subject to the Debtor Companies' or the Monitor's right to bring a motion to Court on an urgent basis should the need arise to increase this amount." (Monitor's First Report dated March 19, 2024 at page 17) Section 11.4(1) of the *CCAA* contemplates payments to persons who supply goods or services that "are critical to the company's continued operation." Further, in *Re Performance Sports Group Ltd.*, 2016 ONSC 6800, Newbould, J. wrote that "recent amendments [to the *CCAA*], including Section 11.4, do not detract from the inherently flexible nature of the *CCAA* or the Court's broad and inherent jurisdiction to make such orders that will facilitate the debtor's restructuring of its business as a going concern." (at paragraph 24).

I emphasize that suppliers will be expected to comply with the terms of this Court's Orders and the Monitor reserves the right to bring motions compelling such compliance among suppliers. However, the Court cannot ignore (and the Debtor Companies cannot afford) the destabilizing influence of critical suppliers who may improperly delay or deny the provision of goods or services. I agree to this increase on the understanding that:

a. The Monitor and CRO deem (and consent to) the payments as critical to the ongoing and uninterrupted operations of the Debtor Companies and the preservation of their property;

b. The continued supply of services by the supplier is critical and integral to the business;

c. The failure to pay will result in an immediate materially adverse impact on the Debtor Companies which could seriously jeopardize these ongoing *CCAA* proceedings; and

d. A minor error at para. 6 of the first Amended Restated Initial Order be corrected. It should read:

e. Para. 6 of the first Amended Restated Initial Order be corrected. It should read:

> "With the consent of the Monitor and the CRO, the Companies ~~Applicant~~ may make payments owing to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order where such payments are deemed by the Companies ~~Applicant~~ to be necessary for the ongoing operation of the Companies ~~Applicant~~ of the preservation of the Property, up to an aggregate limit of $500,000.

(See also *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para. 32)

5. **CRO's expanded and enhanced powers**: It is proposed that the Monitor be expressly vested with the following powers, without limiting those already conferred in the CRO Agreement:

a. approve all of the Debtor Companies' receipts and disbursements;

b. oversee and have access to all elements of the management and operation of the business of the Debtor Companies and, without limitation, shall be provided advance details of all proposed sale transactions, including estimated production and transportation cost, price and payment terms;

c. carry out all obligations of the Debtor Companies pursuant to any proposed sale and investment solicitation process or other sale or divestiture of the assets or business of the Debtor Companies including, without limitation, executing agreements, instruments, notices, directions, settlements, filings, authorizations and other documents of whatever nature on behalf of each of the Debtor Companies in connection therewith;

d. take steps to cause the Debtor Companies, with the approval of the Monitor, to disclaim any agreements to which any of the Debtor Companies are party in accordance with the *CCAA*;

e. execute all Advance Requests (as defined in the DIP Documents) on behalf of the Debtor Companies; and

f. cause the Debtor Companies to administer the business or the property as the CRO, in consultation with the Monitor, deems necessary or desirable for the purposes of completing any transaction involving the business or the property or for purposes of facilitating distributions to creditors of the Debtor Companies.

Again, this was not a controversial amendment. Both the Debtor Companies and Fiera agreed to the appointment of David Boyd as CRO. Neither contest increasing his powers, as proposed. Mr. Boyd is an insolvency expert who enjoys the confidence of these key stakeholders. There is no suggestion that their confidence has waned. The Monitor believes that enhancing the CRO's powers will "further assist the [Debtor] Companies with their restructuring efforts and is appropriate in the circumstances." (Monitor's First Report dated March 19, 2024 at page 16). Moreover, following the Initial Order, the Debtor Companies' President (Mark Lever) stepped down and there is a suggestion that Mr. Lever may bid on some or all of the business opportunities available through the anticipated SISP process. In the circumstances, the CRO now serves as the embodiment of the Debtor Companies for the purposes of helping to ensure continued operations and implementing the SISP proposal, among other things. The proposed enhanced powers are very clearly required to enable the CRO to fulfill his duties effectively and efficiently.

6. **Monitor's Expanded and Enhanced Powers**: By Notice of Motion dated March 19, 2024, Fiera proposed that the Monitor be empowered to:

a. Monitor the Companies' receipts and approve disbursements;

b. Bring motions in these proceedings.

The Monitor's ability to bring motions was not challenged and, in my view, is both reasonable and necessary. The Monitor is an Officer of the Court who acts as its "eyes and ears" in these proceedings (*Ernst & Young Inc.* v. *Essar Global Fund Limited*, 2017 ONCA 1014 ("***Essar Global***") at para. 109 and quoted with approval by the Supreme Court of Canada in *9354-9186 Québec inc.* v. *Callidus Capital Corp.*, 2020 SCC 10 ("***9353-9186 v Callidus***") at para. 52 and again in *Canada* v.

Canada North Group Inc, 2021 SCC 30 at para. 28). The Monitor must be able to bring matters formally before the Court when necessary.

Expanding the Monitor's power to ensure it can review and keep an eye on the Debtor Companies' receipts and disbursements is also reasonable – and was uncontested.

Expanding the Monitor's power to "approve" disbursements was more controversial. Counsel for the Debtor Companies opposed this form of relief. Prior to the hearing, Fiera reconsidered this request and withdrew it. In *obiter*, the decision to withdraw was appropriate, in my view. Empowering a Monitor with broad powers (or expanding the role to what is sometimes referred to as a "super monitor") should not be a routine or regular occurrence. Extraordinary circumstances should exist. In *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 ("***Bloom Lake***"), expanded powers were considered absolutely necessary for the Monitor to fulfill its statutory duties and maximize recovery. Indeed, Pissonnault, J. concluded that, without the expanded powers, "it will be **impossible** for the Monitor to calculate what the true approximate value of [a key asset] may be in order for the Monitor to fulfill its statutory duties under the *CCAA*." (at para. 81, emphasis added) In *Essar Global*, there were a number of questionable transactions between related parties in the months leading up to *CCAA* proceedings with significant prejudice to the Debtor Company (Algoma Steel) and its stakeholders. The Court was asked to expand the Monitor's powers so that it might file a claim against the related parties alleging oppression under the *Canada Business Corporations Act*. The Court smell that wafted above the suspicious transactions prompted the Court to observe that "The monitor is to be the eyes and the ears of the court and sometimes, as is the case here, the nose." (at paragraph 109) Ultimately, the Court concluded that the Monitor is intended to play a neutral (not adversarial) role in *CCAA* proceedings. Thus, it would be unusual for a Monitor to launch separate a claim of oppression. However, the Cout concluded: "... **in exceptional circumstances**, it may be appropriate for a monitor to serve as a complainant. In my view, this is one such case." (at para. 120, emphasis added) In Luc Morin and Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven *CCAA*s", *Annual Review of Insolvency Law*, Toronto, Thomson Reuters, 2019, p. 650 similarly conclude that the Monitor's powers should be extended only when absolutely necessary.

> The authors write that: "The *CCAA* monitor should remain neutral and exercise supervisory powers over the restructuring process, driven by the debtor, unless evidence demonstrating that its management is failing or neglecting to exercise its fiduciary duties appropriately." (at p. 651)
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> In this case, as indicated, the President of the Debtor Companies (Mark Lever) has stepped down and there is some suggestion in the materials that Mr. Lever (and perhaps other key management personnel related to the Debtor Companies) may consider bidding on the business opportunities available through these proceedings, thereby giving rise to concerns around conflict. However, at Fiera's request, a CRO has been appointed and, indeed, the CRO's powers have been expanded. There is no clear reason why the Monitor must now approve the CRO's decisions regarding disbursements. Moreover, Fiera is proposing and supports a SISP proposal, seeking to liquidate and optimize value in the Debtor Companies. No party or stakeholder is suggesting that this idea is doomed such that the Monitor must step in. Finally, it is important that the Monitor retain (and be seen to retain) its neutrality. The Court should be careful not to risk potentially undermining that important objective unless there are exigent circumstances which necessarily demand that the Monitor be vested with increased powers.

SISP ORDER

Background

[16] It is necessary to provide some brief background to properly contextualize certain issues which are relevant to the SISP Order.

[17] In October, 2023:

1. Fiera and the Debtor Companies were just entering into their final Forbearance Agreement – the ninth in about 4 ½ years. In that agreement, the Debtor Companies and their principals provided their advance consent to the "commencement of creditor-led proceedings" by Fiera under the *CCAA*;
2. The Debtor Companies (with Fiera's approval) engaged FTI Capital to assist in locating potential buyers or investors for the Media Companies. The filed materials describe these efforts as the "recapitalization program". In his Affidavit sworn March 8, 2024,

> Russell French (Fiera's Managing Director, Special Situations) testifies that he "was hopeful that FTI would be successful in attracting a potential investor or buyer for The Herald and Saltwire." (at para. 74)

[18] On January 31, 2024, the final Forbearance Agreement expired and the "recapitalization program" had yet to achieve any appreciable results in terms of generating a solid offer for the Media Companies.

[19] The parties began discussing a further forbearance agreement but Fiera needed finality and, if the private "recapitalization program" failed, "a roadmap for the planning and preparation of *CCAA* proceedings at the end of the process." (Affidavit of Russell French sworn March 8, 2024 at para. 81)

[20] On February 24, 2024, Fiera received a letter of intent but described as "highly conditional" and not capable of acceptance by Fiera absent "significant investigation and further work" (Affidavit of Russell French sworn March 8, 2024 at para. 84).

[21] By February 26, 2024, the Debtor Companies and Fiera agreed that proceedings under the *CCAA* were necessary but, despite the Debtor Companies' prior consent, disputes arose. The situation deteriorated to the point where both Fiera and the Debtor companies brought competing emergency motions under the *CCAA*, as indicated.

[22] The "recapitalization program" was suspended at or around this time. After obtaining the Initial Order under the *CCAA*, Fiera now seeks to resume the SISP process.

[23] There is one further, background issue that should be briefly addressed: the materials filed in connection with this motion describe the current SISP process as a "continuation" of the original private "recapitalization program" commenced in October, 2023. Fiera states that the proposed SISP process now before the Court is "designed effectively as a continuation of the FTI-led Recapitalization Process that has been ongoing for several months and will have clear and firm deadlines for the submission of bids." (Affidavit of Russell French sworn March 8, 2042, at para. 21) The Monitor similarly observed that the pre-filing SISP process would continue during the *CCAA* proceedings. (Monitor's First Report dated March 19, 2024 at pp. 8, 9, and 12) FTI's proposed letter of engagement dated March 14, 2024 also described its mandate as continuing its prior services.

[24] There are cases in which creditors, debtors and other stakeholders agree on a plan (or transaction) in advance of filing under the *CCAA*. Formal proceedings under the *CCAA* are then launched to expedite the restructuring process already agreed

upon. The benefits include minimizing disruption to the business. This attempt at a pre-ordained result is sometimes called a "pre-packaged" proposal or "pre-pack". It can invite additional Court scrutiny because the Court is being asked to look retrospectively into events that occurred prior to *CCAA* proceedings being launched.

[25] Here, the initial process undertaken by the Financial Agent resulted in data and information which will prove useful in the upcoming SISP. However, it did not result in a proposed transaction to be approved through the *CCAA*. Thus, the current motion is not a "pre-pack" in the true sense of the word. However, similar concerns arise in that the Court may, in the future, be required to more closely review what occurred before formal *CCAA* proceedings were launched. In any event, for clarity, despite the language around a "continuation" of an existing sale or investment processs, these proceedings are not constrained (and the Court's jurisdiction is not fettered) by whatever may have occurred before Fiera filed for *CCAA* protection.

The Law

[26] Section 36 of the *CCAA* enumerates the factors which the Court will consider when assessing the merits of a sale. In *Royal Bank of Canada* v. *Soundair Corp.*, (1991) 83 DLR (4th) 76, 1991 CanLII 2727 (ON CA), the Ontario Court of Appeal helpfully distilled these factors in the following criteria to be considered when approving a proposed sale:

1. Did the receiver make a sufficient effort to get the best price and did it act providently?
2. Consideration of the interests of all parties.
3. Consideration of the efficacy and integrity of the process by which the offer was obtained.
4. Was there unfairness in the process?

[27] The *CCAA* does not contain this same sort of detailed directions for assessing the merits of the pre-transaction sales **process**. However, the jurisprudence confirms that the essential or foundational principles which animate the Court's assessment of a proposed sales transaction equally guide the Court's discretion assessing the underlying sales process. For the purposes of this proceeding, I would synthesize those principles as follows:

1. Whether a sale transaction is warranted at this time. Relevant considerations may include the business realities facing the debtor companies (e.g. liquidity problems or cash crunch; the reasons any of

the debtor company's past efforts to address its debts and obligations failed).

2. Whether the sale will benefit the whole "economic community". The goal is to optimize the value in the debtor's business for the benefit of all relevant stakeholders. On this point, and given the nature of this proceeding as a "creditor-led" proceeding under the CCAA, several additional, brief comments are relevant:

    a. Creditor-led proceedings under the *CCAA* are not particularly common but they are clearly permitted under the statute;

    b. The interim relief granted in "creditor-led" proceedings under the CCAA may need to be tailored to the circumstances. For example, the debtor company and creditor may be in full agreement that the proceedings with be initiated or "led" by the creditor. However, a "creditor-led" proceeding may be more adversarial and expose a fractured and contentious relationship between the creditor and the debtor company. Such was the situation here. Other examples include *Arrangement relatif à Groupe Sélection inc.*, 2022 QCCS 4281, urgent application for leave to appeal denied 2022 QCCA 1596 and *Crystallex International Corp.*, 2011 ONSC 7701. Indeed, in this case, the President of the Debtor Companies (Mark Lever) stepped down immediately following the Initial Order being granted. To ensure the effective management and operations of the debtor company as a going concern, it became necessary to engage an independent chief restructuring officer; and

    c. Although the powers available under the *CCAA* are sufficiently flexible to respond appropriately to the unique circumstances of the case, all parties agreed that the principles which guide the Court's discretion and the basis statutory objectives do not change. Thus, the particular interests which may motivate a creditor do not dominate the *CCAA* analysis simply because a creditor launched or "leads" the proceeding.

3. Whether a creditor has a good or *bona fide* reason for objecting to the proposed sale process. On this, the Court may consider and weigh all of the affected interests. Where there are numerous affected stakeholders,

an individual creditor's preferences or demands may not necessarily represent an enforceable objection.

4. Whether there is a more viable alternative. In very simple terms: does any person have a better idea? Is bankruptcy more beneficial?

5. The Court should ensure that the process being proposed is fair, transparent, commercially efficient, cost-effective in the circumstances, and preserves the integrity of the *CCAA* process.

6. Whether all parties to the process are acting in good faith and with due diligence.

(*Re. Nortel Networks Corporation*, 2009 CanLII 39492 (ON SC); *CCM Master Qualified Fund Ltd.* v *blutip Power Technologies Ltd.*, 2012 ONSC 1750; *Re. PCAS Patient Care Automation Services Inc.*, 2012 ONSC 2840; *Re Lydian International Limited*, 2019 ONSC 7473). (I also note that section 18.6 of the *CCAA* specifically codifies the obligation to act in good faith).

[28] These principles also reflect the following more general imperatives embedded within the *CCAA*:

1. Providing reasonably sufficient flexibility, time and space to allow the debtor company to engage in restructuring negotiations; optimize the debtor company's value for all stakeholders; and ideally enable the debtor company to emerge from *CCAA* as an ongoing concern;

2. Equally important, the Court's overarching supervisory jurisdiction and broad discretion over this statutory process. The Supreme Court of Canada's observation in *9354-9186* v *Callidus* is germane:

> …the relative weight that the differing objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the Court for approval…**the architecture of the CCAA leaves the case specific assessment and balancing of the remedial objectives to the supervising judge**.
>
> (at para. 46, emphasis added)

FTI's Engagement Letter and Related Charge

[29] Generally speaking, I am agreeable to and approve the terms of FTI's engagement letter dated March 14, 2024. I am satisfied that FTI's familiarity and

experience with the Media Companies (including its knowledge of those who may be in the market for the business opportunities presented by the *CCAA* proceeding):

1. Enables FTI to immediately engage with an identifiable market. Among other things, FTI has spent months identifying potential buyers and has a data room already populated for use in the upcoming SISP process. Ignoring these benefits will cause unnecessary waste and delay;
2. Will facilitate an efficient and commercially efficacious SISP process;
3. Will improve the likelihood of optimizing the value and restructuring options available in the Media Companies.

[30] I also accept the Monitor's view that:

1. The financial terms of the Engagement Letter are commercially reasonable;
2. FTI's requested charge for its fees is standard in these proceedings; will provide FTI with necessary assurances around payment and, in doing so, will ensure FTI's professional commitment to this mandate.

Proposed SISP Process

[31] As to the terms of the SISP Process attached to the SISP Order, again, I am generally agreeable to the proposed form. It is clear that a SISP process is required; no creditor has raised any objection and, indeed, no other person or stakeholder has identified any alternate path forward. The public interest is a consideration but this SISP offers the opportunity for renewal of the Media Companies and the public service they provide in a commercially reasonable manner.

[32] There are several amendments which were required. A copy of the revised Order which will issue is attached. Many of the amendments were minor in nature. However, the following paragraphs bear additional mention:

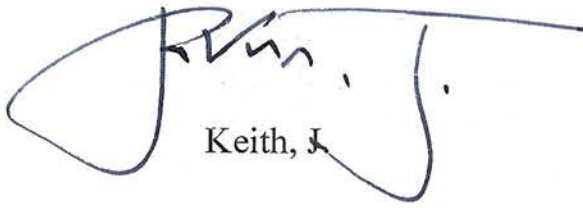
1. Paragraphs 8 and 14: In my view, it is important that any Potential Bidder (as that term is defined in the SISP Process document receive a copy of the Court's Order). Among other things, the Court's supervisory role should be formally recognized. Moreover, in my view, it is not necessary that the Monitor be required to expressly permit certain key members of the Debtor Companies' management to participate as a Potential Bidder. By way of background, the President of the Debtor Companies (Mark Lever) may be interested in bidding on the business opportunities being made available through the SISP.

Mr. Lever and others may be considered "insiders" or key members of management who acquired unique, sensitive, or important information regarding the Debtor Companies. Concerns regarding potential conflict and, more importantly, the fairness and integrity of the SISP process plainly arise. The SISP Process document will be amended to clearly define those "insiders" or key members of management who trigger these concerns. They are "any director, officer, employee, or professional advisor of the Companies with information that could prove useful or valuable to any bidder including, without limitation, [Mark] Lever, [Sarah] Dennis, the CFO, the COO or any other employee of the Companies who is asked to participate in the due diligence being performed by a purchaser or investor, including management meetings or may be a member of a purchase or investor group". The SISP Process document also contains a number of critical safeguards including an obligation to immediately and clearly advise if/when any such key management team member determines that it will be participating in the bidding process. With these protections in place and given the need to maximize value, in my view, it is unnecessary to also require the Monitor's permission before any such person can even be qualified as a potential bidder, before the due diligence process even begins.

2. Paragraph 29(b)(iii): This paragraph originally suggested that Fiera's "concurrence" was required when determining any successful bid or back-up bid. For the reasons given above, in my view, Fiera is entitled to be consulted but cannot insist upon that "concurrence" will govern. In fairness, I note that all parties agreed that it is not the intention of the SISP to fetter the Court's discretion or bind the Court to Fiera's decisions;

3. Paragraph 39: This paragraph indicates that any material amendments to the SISP requires the "consent" of Fiera. I recognize that Fiera is the senior secured lender. I also appreciate that, realistically, the value of the Debtor Companies may not exceed Fiera's debt such that Fiera represents the only actual economic interest. However, for the reasons given above, Fiera does not control the levers of this process. Its "consent" cannot be determinative. Thus, the paragraph has been altered to require that the Monitor also seek Court approval for any material changes to the SISP. For clarity, it is the Court that retains jurisdiction in this process. And, again, all parties agree that the Court

retains the ultimate discretion and jurisdiction and is not bound to the decisions of any party.



Keith, J.

Sale and Investment Solicitation Process

Introduction

On March 12, 2024, upon application by Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP, each by their general partner, Fiera Private Debt GP Inc. (collectively, the "**Applicants**") the Supreme Court of Nova Scotia (the "**Court**") granted an Initial Order (as amended and restated and as may be further amended from time to time, the "**Initial Order**") commencing proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") in respect of Saltwire Network Inc. ("**Saltwire**"), the Halifax Herald Limited ("**The Herald**"), Headline Promotional Products Limited ("**Headline**"), Titan Security & Investigation Inc. ("**Titan**"), Brace Capital Limited and Brace Holdings Limited.

Pursuant to the Initial Order, KSV Restructuring Inc. was appointed by the Court as the monitor in the CCAA Proceedings (the "**Monitor**") and Resolve Advisory Services Ltd., through the services of David Boyd, was appointed as chief restructuring officer (the "**CRO**") in the CCAA Proceedings.
Saltwire and The Herald (collectively, the "**Companies**"), through the CRO, have retained FTI Capital Advisors – Canada ULC (the "**Financial Advisor**") pursuant to a revised engagement letter dated March 14 , 2024, to conduct a sale and investment solicitation process ("**SISP**") under the supervision of the Monitor and with approval of the Court, pursuant to which all interested parties will be provided with an opportunity to participate in the SISP. The SISP will continue the pre-filing efforts of Financial Advisor in soliciting interests for the assets and/or the business of the Companies, which efforts were commenced by the Financial Advisor on November 6, 2023 pursuant to an engagement letter dated October 18, 2023.

This document outlines the SISP, comprised of two phases ("**Phase 1**" and "**Phase 2**", respectively).

Opportunity

1. The SISP is intended to solicit interest in, and opportunities for, a sale of, or investment in, all or part of assets and business operations of the Companies (the "**Opportunity**") which includes principally, the assets or shares relating to the media businesses owned by the Companies (the "**Business**").

2. The Opportunity may include one or more of:

   (a) a restructuring, recapitalization or other form of reorganization of the business and affairs of the Companies (or some of them) as a going concern; and

   (b) subject to 0, a sale of all, any or all of the assets or shares relating to the Business (the "**Property**") as a going concern.

3. For greater certainty, the Opportunity shall not include the sale or restructuring of Titan, Headline or the real property owned by the Companies (the "**Real Property**") on a stand- alone basis.

4. Prior to the date of the Initial Order, the Companies, with the assistance of the Financial Advisor, had been conducting a pre-filing sale and investment solicitation process (the "**Pre-filing SISP**") in respect of the Business. From and after the date of the SISP Order, the Pre-filing SISP will be continued under, and be governed by, this SISP. Further, and for greater certainty, any previously submitted non-binding letter of interest shall not be considered an LOI for the purposes of the SISP unless re-submitted in accordance with the terms set out herein.

Timeline

5. The following table sets out the key milestones under the SISP:

Milestone	**Deadline**
Commencement of the SISP	March 26, 2024
Phase 1 Bid Deadline	5pm ADT, April 25, 2024 ("**Phase 1 Bid Deadline**")
Phase 2 Bid Deadline	5pm ADT, May 24, 2024 ("**Phase 2 Bid Deadline**")
Court Approval Date	No later than June 28, 2024
Closing Date Deadline	July 31, 2024

Subject to the terms provided for herein or any order of the Court, these dates may be extended by the Monitor in consultation with the CRO and the Financial Advisor pursuant to this SISP.

Nothing herein shall prevent an interested from submitting a letter of intent or expression of interest prior to any deadline in the table above.

Solicitation of Interest: Notice of the SISP

6. As soon as reasonably practicable, but in any event by no later than March 26, 2024:

   (a) In consultation with the Monitor and the CRO, the Financial Advisor shall contact again those parties canvassed as part of the Pre-filing SISP to determine whether they now have an interest in this Opportunity in light of the commencement of these proceedings, pursuant to the process in paragraph 0 below. Additionally, the Financial Advisor, in consultation with the Monitor and the CRO, will contact any additional parties it believes may have an interest in this Opportunity, including parties that have approached the Companies, the Financial Advisor or the Monitor indicating an interest in the Opportunity (collectively, "**Known Potential Bidders**");

   (b) the Monitor will cause a notice of the SISP (the "**Notice**") to be published in The Globe and Mail (National Edition) and the relevant media company newspapers, and any other newspaper or journals as the CRO, Monitor and Financial Advisor, consider appropriate, if any;

   (c) the CRO will cause the Companies to issue a press release with Canada Newswire setting out the information contained in the Notice and such other relevant information which the CRO, Financial Advisor and the Monitor, consider appropriate, designating dissemination in Canada and major financial centres in the United States; and

   (d) the Financial Advisor, in consultation with the Monitor and the CRO, will prepare: (i) a process summary (the "**Teaser Letter**") describing the Opportunity, outlining the process under the SISP and inviting recipients of the Teaser Letter to express their interest pursuant to the SISP; and (ii) a non-disclosure agreement in form and substance satisfactory to the Financial Advisor and the Monitor, in consultation with the CRO and consistent with the form and substance of the non-disclosure agreement previously executed by interested parties under the Pre-filing SISP (an "**NDA**").

7. The Financial Advisor will send the Teaser Letter and NDA to all Known Potential Bidders by no later than March 26, 2024 and to any other party who request a copy of the Teaser Letter and NDA or who is identified to the CRO, the Monitor or the Financial Advisor as a potential bidder as soon as reasonably practicable after such request or identification, as applicable.

PHASE 1: NON BINDING LOIs

Qualified Bidders and Delivery of Confidential Information Package

8. Any party who wishes to participate in the SISP (a "**Potential Bidder**") must provide to the Financial Advisor:

   (a) A written acknowledgement which confirms receipt of this SISP Approval Order (including these SISP Procedures) and contains an agreement to accept and be bound by the terms of that Order;

   (b) An NDA executed by it, or any portion thereof, and a letter setting forth the identity of the Potential Bidder, the contact information for such Potential Bidder and full disclosure of the direct and indirect principals of the Potential Bidder – unless the Financial Advisor confirms to such Potential Bidder that those documents were already provided to the satisfaction of the Financial Advisor and the Monitor,

9. If it is determined by the Financial Advisor and the Monitor in their reasonable business judgement, and in consultation with the CRO that a Potential Bidder: (i) has satisfied the requirements of paragraph 8 above; (ii) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal; (iii) has delivered an NDA; and (iv) and has the financial capability based on the availability of financing, experience and other considerations, as determined by the Financial Advisor and the CRO, in consultation with the Monitor, to be able to consummate a sale or investment transaction pursuant to the SISP, then such Potential Bidder will be deemed to be a **"Phase 1 Qualified Bidder";** provided that no Potential Bidder shall be deemed not to be a Phase 1 Qualified Bidder.

10. At any time during Phase 1 of the SISP, the Financial Advisor and the CRO, with the consent of the Monitor, may eliminate a Phase 1 Qualified Bidder from the SISP, in which case such bidder will be eliminated from the SISP.

11. The Financial Advisor, with the assistance of the CRO and the Monitor, will prepare and send to each Phase 1 Qualified Bidder a confidential information

package providing additional information considered relevant to the Opportunity (the "**Confidential Information Package**"). The Financial Advisor, the CRO, the Companies, the Monitor and their respective advisors make no representation or warranty as to the information contained in the Confidential Information Package or otherwise made available pursuant to the SISP or otherwise, except to the extent expressly contemplated in any definitive sale or investment agreement with a successful bidder ultimately executed and delivered by the Companies.

12. Potential Bidders must rely solely on their own independent review, investigation and/or inspection of all information and of the Property and the Business in connection with their participation in the SISP and any transaction they enter into pursuant to this SISP.

Due Diligence

13. The Financial Advisor and the CRO, in consultation with the Monitor, shall in their reasonable business judgment and subject to competitive and other business considerations, afford each Phase 1 Qualified Bidder such access to due diligence materials and information relating to the Property and the Business as they deem appropriate. Due diligence access may include management presentations, access to electronic data rooms, on-site inspections, and other matters which a Phase 1 Qualified Bidder may reasonably request and as to which the Financial Advisor and the Monitor, in their reasonable business judgment and after consulting with CRO, may agree. The Financial Advisor, with the assistance of the Monitor, will designate a representative to coordinate all reasonable requests for additional information and due diligence access from Phase 1 Qualified Bidders and the manner in which such requests must be communicated. None of the Companies, the Financial Advisor and the Monitor will be obligated to furnish any information relating to the Property or the Business to any person other than to Phase 1 Qualified Bidders. Further and for the avoidance of doubt, selected due diligence materials may be withheld from certain Phase 1 Qualified Bidders if the Financial Advisor the CRO, in consultation with the Monitor, determine such information to represent proprietary or sensitive competitive information.

14. If any officer, director, professional advisor, or employee of the Companies has information which could prove useful or valuable to any bidder (including, without limitation Mark Lever, Sarah Dennis, the CFO and the COO or any other employee of the Companies with such information):

(a) is asked to participate in due diligence being performed by a purchaser or investor, including management meetings; or

(b) is or may be a member of a purchaser or investor group

(each, a "**Management Member**")

Then (i) any such Management Member shall be required to advise the Financial Advisor and Monitor of this potential interest. This information shall be provided to the Financial Advisor and Monitor immediately upon the Management Member being asked to participate in due diligence or becoming (or may become) a member of a purchaser or investor group and, in any event, before any management meeting occurs; (ii) competing interested parties shall be advised of the Management Member's potential involvement with another bid by the Financial Advisor or the Monitor; (iii) the Management Member will only be entitled to participate in the meetings with the consent of the interested party; and (iv) the management meeting will be supervised by either or both of the Financial Advisor and the Monitor. The Monitor reserves the right to implement such other procedures as it considers necessary to address any confidentiality issues that may arise during the conduct of the SISP. If a Management Member fails to disclose its interest or potential interest in a transaction prior to meeting with another interested party, the Monitor shall have the right to preclude that individual or the group with he or she is involved from participating in the SISP.

Non-Binding Letters of Intent from Phase 1 Qualified Bidders

15. A Phase I Qualified Bidder that wishes to pursue the Opportunity further must deliver a non-binding letter of interest (an "**LOI**") to the Financial Advisor and the Monitor in the manner specified in Schedule "I" hereto, so as to be received by them not later the Phase 1 Bid Deadline.

16. Subject to paragraph 0, an LOI so submitted will be considered a qualified LOI (a "**Qualified LOI**") only if:

(a) it is submitted on or before the Phase 1 Bid Deadline by a Phase 1 Qualified Bidder;

(b) it contains an indication of Phase 1 Qualified Bidder's offer to:

(i) acquire all, substantially all or a portion of the Property (a "**Sale Proposal**") and clearly identifies which Property it intends to acquire, or

(ii) make an investment in, restructure, reorganize or refinance the Business/the Companies (an "**Investment Proposal**") and clearly identifies which Business/Companies it intends to make an investment in, restructure, reorganize or refinance;

(c) in the case of a Sale Proposal, it identifies or contains the following:

(i) the purchase price or price range in Canadian dollars, including details of any liabilities to be assumed by the Phase 1 Qualified Bidder and key assumptions supporting the valuation;

(ii) a description of the Property that is expected to be subject to the transaction and any of the Property expected to be excluded;

(iii) a specific indication of the financial capability of the Phase 1 Qualified Bidder and the expected structure and financing of the transaction;

(iv) the key material contracts and leases, if any, the Phase 1 Qualified Bidder wishes to acquire and the Qualified Phase 1 Bidder's proposed treatment of any related cure costs;

(v) a description of the conditions and approvals required for a final and binding offer;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer; and

(vii) any other terms or conditions of the Sale Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(d) in the case of an Investment Proposal, it identifies the following:

(i) a description of how the Phase 1 Qualified Bidder proposes to structure the proposed investment;

(ii) the aggregate amount of the equity and/or debt investment to be made in the Business/the Companies in Canadian dollars;

(iii) the underlying assumptions regarding the pro forma capital structure;

(iv) a specific indication of the sources of capital for the Phase 1 Qualified Bidder and the structure and financing of the transaction;

(v) a description of the conditions and approvals required for a final and binding offer;

(vi) an outline of any additional due diligence required to be conducted in order to submit a final and binding offer;

(vii) all conditions to closing that the Phase 1 Qualified Bidder may wish to impose; and

(viii) any other terms or conditions of the Investment Proposal that the Phase 1 Qualified Bidder believes are material to the transaction;

(e) in the case of either a Sale Proposal or an Investment Proposal, it contains such other information as reasonably requested by the Financial Advisor and the Monitor in consultation with the CRO.

17. Unless otherwise ordered by the Court, the Monitor in consultation with the Financial Advisor and the CRO, may waive compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified LOI. For the avoidance of doubt, the completion of any Sale Proposal or Investment Proposal shall be subject to the approval of the Court and the requirement of approval of the Court may not be waived.

Preliminary Assessment of Phase 1 Bids and Subsequent Process

18. Following the Phase 1 Bid Deadline, the Financial Advisor and the CRO, in consultation with the Monitor, will assess the LOIs and shall determine whether an LOI is a Qualified LOI. A summary of all LOIs shall be provided to the Applicants forthwith after receipt. If it is determined by the Financial Advisor and the Monitor, in consultation with the CRO, that a Phase 1 Qualified Bidder that has submitted a Qualified LOI (i) has a *bona fide* interest in completing a Sale Proposal or Investment Proposal (as the case may be); and (ii) has the financial capability (based on availability of financing, experience and other considerations) to consummate such a transaction based on the financial information provided, then such Phase 1 Qualified Bidder will

be deemed a "**Phase 2 Qualified Bidder**". Only Phase 2 Qualified Bidders shall be permitted to proceed to Phase 2 of the SISP.

19. As part of the assessment of Qualified LOIs and the determination of the process subsequent thereto, the Financial Advisor and the CRO, in consultation with the Monitor, and after consultation with the Applicants, shall determine the process and timing to be followed in pursuing Qualified LOIs based on such factors and circumstances as they consider appropriate in the circumstances including, but not limited to: (i) the number of Qualified LOIs received, (ii) the scope of the Property or Business to which any Qualified LOIs may relate, and (iii) whether to proceed by way of sealed bid or auction (with or without a stalking horse bidder) with respect to some or all of the Property.

20. Upon the determination by the Financial Advisor and the CRO in consultation with the Monitor and the Applicants, of the manner in which to proceed to Phase 2 of the SISP, the Financial Advisor, in consultation with the Monitor, the CRO and the Applicants, will prepare a bid process letter for Phase 2 (the "**Bid Process Letter**"), and the Bid Process Letter will be (i) sent by the Financial Advisor to all Phase 2 Qualified Bidders, and (ii) posted by the Monitor on the website the Monitor maintains in respect of this CCAA proceeding.

PHASE 2: FORMAL OFFERS AND SELECTION OF SUCCESSFUL BIDDER

21. Paragraphs 0 to 0 below and the conduct of Phase 2 are subject to paragraphs 0 to 0, above, and any adjustments made to Phase 2 in accordance with the Bid Process Letter and any further Court order regarding the SISP.

Formal Binding Offers

22. Phase 2 Qualified Bidders that wish to make a formal offer to purchase or make an investment in the Business or the Property (or any of it) shall submit a binding offer that complies with all of the following requirements to the Financial Advisor and the Monitor as specified in Schedule "I" hereto, so as to be received by them not later than the Phase 2 Bid Deadline or as may be modified in the Bid Process Letter, in consultation with and with the CRO and the Applicants by the Phase 2 Bid Deadline:

    (a) the bid shall comply with all of the requirements set forth in respect of Phase 1 Qualified LOIs;

(b) the bid clearly identifies which of the Property it relates to and is on terms and conditions reasonably acceptable to the Financial Advisor and the Monitor, in consultation with the CRO;

(c) it indicates whether the bid includes the acquisition of the litigation claim of Saltwire against Transcontinental Nova Scotia Media Group Inc., et. al. and provides an allocated purchase price to the same;

(d) the bid indicates the number of employees of the Companies that the Phase 2 Qualified Bidder intends to hire;

(e) the bid confirms that any applicable collective agreements will be assumed by the Phase 2 Qualified Bidder;

(f) the bid includes a letter stating that the Phase 2 Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder (as defined below), provided that if such Phase 2 Qualified Bidder is selected as the Successful Bidder or a Back Up Bidder (defined below), its offer shall remain irrevocable until the closing of the transaction with the Successful Bidder or, in the case of a Back Up Bid (defined below), that it shall remain irrevocable until the later of the closing of the transaction with the Successful Bidder or the closing of the transaction contemplated by the Back Up Bid, if the Successful Bid has failed (the "**Back Up Bid Expiration Date**");

(g) the bid includes duly authorized and executed transaction agreements, including the purchase price or investment amount and any other key economic terms expressed in Canadian dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto;

(h) the bid includes written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, that will allow the Financial Advisor and the CRO, in consultation with the Monitor to make a determination as to the Phase 2 Qualified Bidder's financial and other capabilities to consummate the proposed transaction;

(i) the bid is not conditioned on the outcome of unperformed due diligence by the Phase 2 Qualified Bidder, apart from, to the extent applicable, to the disclosure of due diligence materials that represent proprietary or sensitive competitive information which was withheld in Phase 1 from the Phase 1 Qualified Bidder;

(j) the bid fully discloses the identity of each entity that will be entering into the transaction or the financing, or that is participating or benefiting from such bid;

(k) the bid is accompanied by a non-refundable deposit in the amount of not less than 10% (the "**Deposit**") of the purchase price or transaction value (as determined by the Financial Advisor, in consultation with the Monitor and the CRO) by wire transfer of immediately available funds, which deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with paragraph 0;

(l) the bid includes acknowledgments and representations of the Phase 2 Qualified Bidder that: (i) has had an opportunity to conduct any and all due diligence regarding the Property, the Business and the Companies prior to making its offer (apart from, to the extent applicable, the disclosure of due diligence materials that represent proprietary or sensitive competitive information which were withheld in Phase 2 from the Phase 2 Qualified Bidder); (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Business, Property, or the Companies or the completeness of any information provided in connection therewith, except as expressly stated in the definitive transaction agreement(s) entered into in connection with a transaction;

(m) the bid is received by the Phase 2 Bid Deadline; and

(n) the bid contemplates closing the transaction set out therein on or before July 31, 2024 (the "**Closing Date**").

23. Following the Phase 2 Bid Deadline, the Financial Advisor and the CRO, in consultation with the Monitor, will assess the Phase 2 bids received and, for greater certainty, copies of all Phase 2 bids shall be provided forthwith after receipt to the Applicants unless the Applicants have become a Phase 2 Qualified Bidder. The Financial Advisor and the CRO, in consultation with the Monitor, will designate the most competitive bids that comply with the foregoing requirements to be "Qualified Bids". No Phase 2 bids received shall be deemed not to be Qualified Bids without the approval of the Monitor. Only

Phase 2 Qualified Bidders whose bids have been designated as Qualified Bids are eligible to become the Successful Bidder(s).

24. The Monitor, in consultation with the Financial Advisor and the CRO, may waive strict compliance with any one or more of the requirements specified above and deem such non-compliant bids to be a Qualified Bid

25. The Financial Advisor shall notify each Phase 2 Qualified Bidder in writing as to whether its bid constituted a Qualified Bid within five (5) business days of the expiration of the Phase 2 Bid Deadline, or at such later time as the Financial Advisor and the Monitor, in consultation with the CRO and the Applicants, deem appropriate.

26. If the Financial Advisor and the CRO, with the consent of the Monitor, are not satisfied with the number or terms of the Qualified Bids or otherwise believe that the SISP would benefit from extending the Phase 2 Bid Deadline, the Financial Advisor and the CRO, with the consent of the Monitor and subject to paragraph 0, may extend the Phase 2 Bid Deadline provided that the Phase 2 Bid Deadline shall not be extended for more than 10 business days without the approval of the Monitor or Order of the Courts.

27. The Financial Advisor and the CRO, with the consent of the Monitor, may aggregate separate bids from unaffiliated Phase 2 Qualified Bidders to create one "Qualified Bid".

Evaluation of Competing Bids

28. A Qualified Bid will be valued based upon several factors, including, without limitation, items such as the Purchase Price and the net value provided by such bid, the identity, circumstances and ability of the Phase 2 Qualified Bidder to successfully complete such transactions, the proposed transaction documents, factors affecting the speed, certainty and value of the transaction, the assets included or excluded from the bid, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Financial Advisor and the Monitor, in consultation with the CRO.

Selection of Successful Bids

29. Subject to the Bid Process Letter, the Financial Advisor, the CRO and the Monitor:

(a) will review and evaluate each Qualified Bid, provided that each Qualified Bid may be negotiated among the Financial Advisor, in consultation with the Monitor and the CRO, and the applicable Phase 2 Qualified Bidder, and may be amended, modified or varied to improve such Phase 2 Qualified Bid as a result of such negotiations, and

(b) may

(i) (i) identify the highest or otherwise best bid or bids (each, a "**Successful Bid**", and the Phase 2 Qualified Bidder making each such Successful Bid, a "**Successful Bidder**") for any particular Property or Business in whole or part; and/or

(ii) Identify one or more Qualified Bids to be accepted on a conditional basis subject to the failure of the transaction(s) contemplated by the Successful Bid(s) (a "**Back Up Bid**" and such Phase 2 Qualified Bidder, a "**Back Up Bidder**"); and/or

(iii) (ii) direct such Phase 2 Qualified Bidders to participate in an auction ("**Auction**") to be conducted and administered by the Monitor in accordance with the Auction Procedures Letter (defined below), with the assistance of the Financial Advisor and the CRO. The determination of any Successful Bid and Back Up Bid by the Financial Advisor and the CRO, with the concurrence of the Monitor and in consultation with the Applicants, shall be subject to approval by the Court.

30. In the event that it is determined that there is to be an Auction in respect of some or all of the Property or Business, the Auction shall be governed by an auction procedures letter ("**Auction Procedures Letter**") to be prepared by the Monitor and sent to all applicable Phase 2 Qualified Bidders setting out, among other things, (a) the date, time and location of the Auction (including whether in person or by videoconference); (b) the amount of the starting bid; and (c) the initial minimum overbid.

Sale Approval Motion Hearing

31. At the hearing of the motion to approve any transaction with a Successful Bidder or Successful Bidders (the "**Sale Approval Motion**"), the Monitor shall seek, among other things, approval from the Court to consummate any Successful Bid.

Confidentiality and Access to Information

32. All discussions regarding a Sale Proposal, Investment Proposal, LOI or Phase 2 bid should be directed through the Financial Advisor. Under no circumstances should the management of the Companies be contacted directly without the prior consent of the Financial Advisor and the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the SISP process, in the discretion of the Monitor.

33. Participants and prospective participants in the SISP shall not be permitted to receive any information that is not made generally available to all participants relating to the number or identity of Potential Bidders, Phase 1 Qualified Bidders, Phase 2 Qualified Bidders, Phase 2 Qualified Bids, the details of any bids submitted or the details of any confidential discussions or correspondence between the CRO, the Financial Advisor, the Monitor and such other bidders or Potential Bidders in connection with the SISP, except to the extent the Financial Advisor and the CRO, with the consent of the Monitor, and consent of the applicable participants, are seeking to combine separate bids from Phase I Qualified Bidders or Phase 2 Qualified Bidders.

34. Without limiting the rights of the Applicants herein, the Financial Advisor and the Monitor may consult with any other parties with a material interest in the CCAA proceedings, including the Applicants, regarding the status and material information and developments relating to the SISP to the extent considered appropriate by the Monitor in consultation with the Financial Advisor, provided that such parties (other than the Applicants) shall have entered into confidentiality arrangements satisfactory to the Financial Advisor and the Monitor. The Financial Advisor and/or the Monitor may discuss the status of the SISP throughout the conduct of the SISP.

Supervision of the SISP

35. The Monitor will oversee, in all respects, the conduct of the SISP by the Financial Advisor and, without limitation to that supervisory role, the Monitor will participate in the SISP in the manner set out in herein, in any Bid Process Letter and the Initial Order and is entitled to receive all information in relation to the SISP.

36. This SISP does not and will not be interpreted to create any contractual or other legal relationship between the Companies and any Phase I Qualified Bidder, any Phase 2 Qualified Bidder or any other party, other than as

specifically set forth in a definitive agreement that may be signed in connection with a Successful Bid.

37. Without limiting the preceding paragraph, neither the Financial Advisor nor the Monitor shall have any liability whatsoever to any person or party, including without limitation any Potential Bidder, Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, the Successful Bidder, the Companies, the Applicants or any other creditor or other stakeholder of the Companies, for any act or omission related to the process contemplated herein. By submitting a bid, each Phase 1 Qualified Bidder, Phase 2 Qualified Bidder, or Successful Bidder shall be deemed to have agreed that it has no claim against the Monitor or the Financial Advisor for any reason whatsoever.

38. Participants in the SISP are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any LOI, Phase 2 bid, due diligence activities, and any further negotiations or other actions whether or not they lead to the consummation of a transaction.

39. Subject to the limitations in paragraph 0, the Financial Advisor , with the consent of the Monitor, or order of the Court, shall have the right to modify the SISP (including, without limitation, pursuant to the Bid Process Letter) if, in their reasonable business judgment, such modification will enhance the process or better achieve the objectives of the SISP; provided that the Service List in this CCAA proceeding shall be advised of any substantive modification to the procedures set forth herein. Any material amendment to the SISP, in the opinion of the Monitor, will require the consent of the Applicants. However, for clarity and irrespective of the Applicants' foregoing consent rights, the Monitor shall seek the Court's approval for any material changes to the SISP.

40. The deadlines provided for in this SISP may be extended in the discretion of the Financial Advisor and the Monitor provided that the aggregate discretionary extensions shall not exceed 15 business days. In the event that any one milestone deadline is extended, all subsequent milestones shall be extended by the same number of days and a revised timetable shall be provided to all applicable interested parties and posted on the Monitor's website.

Miscellaneous

41. Notwithstanding the other provisions of the SISP, the Monitor may, in consultation with the CRO, the Financial Advisor and the Applicants, at any time bring a motion:

    (a) to seek approval of a stalking horse agreement in respect of some or all of the Property and related bid procedures in respect of such Property or to establish further or other procedures for Phase 2; and/or

    (b) to seek approval to terminate the SISP if (i) no *bona fide* purchasers or investors, in the opinion of the Monitor are participating in the SISP; or (ii) the Applicants, acting reasonably, have advised the Financial Advisor and the Monitor that none of the LOIs submitted in phase 1 will result in a transaction acceptable to the Applicants, and after consideration, the Financial Advisor, CRO and the Monitor concur with that view or (iii) the Applicants, acting reasonably, have advised the Financial Advisor, the CRO and the Monitor that none of the offers submitted in phase 2 will result in a transaction acceptable to the Applicants, and after consideration, the Financial Advisor, the CRO and the Monitor concur with that view; and/or

    (c) to seek approval of a transaction for any of the Real Property, provided that prior to the completion of the SISP, such Real Property sale does not impair the ability to complete a transaction for the Business; and/or

    (d) to seek approval of a transaction for certain Property of some or all of the Companies of de minimis value and which the Monitor, in consultation with the CRO and Financial Advisor, can be sold independently of the Business.

42. In the event that the SISP is terminated in connection with paragraph 0 above, the Applicants shall not, by virtue of having not participated in the SISP, be disqualified from submitting an offer for the Business on the basis of a credit bid or otherwise. For clarity, it is the strong preference of the Applicants to find a solution that results in a transaction where the Applicants are not the controlling shareholder of the Companies or the Business.

43. Except to the extent otherwise set forth in a definitive sale or investment agreement with a successful bidder, any sale of any of the Property or investment in the Business will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Monitor, the Companies, the CRO the Financial Advisor, or any of their

respective agents, advisors or estates, and, in the event of a sale, all of the right, title and interest of the Companies in and to the Property to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests therein and thereon pursuant to Court orders, except as otherwise provided in such Court orders or the definitive documents entered into in connection with the Successful Bid.

44. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. In the event that the Successful Bid is not completed due to a breach or default of the bidder's obligations thereunder, the Deposit shall be forfeited to the Companies as damages and such Deposit shall be in addition to, and not in lieu of, any other rights in law or equity that the Companies have in respect of such breach or default. Any Deposit delivered with a Phase 2 Qualified Bid that is not selected as a Successful Bid or a Back Up Bid will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the earliest of (a) Court approval of an alternative Successful Bid for the same Property or Business, which Order shall have become a final order; (b) the closing of a transaction in respect of the same Property or Business; or (c) 60 days after the date the Phase 2 Qualified Bidder is notified its bid is not a Successful Bid. Deposits in respect of a Back Up Bid will be returned as soon as reasonably practicable (but not later than ten (10) business days) after the Back Up Bid Expiration Date.

45. The consultation and other rights afforded to the CRO herein shall not extend to other officers, shareholders and/or the directors of the Companies without the consent of the Monitor, in its sole discretion.

Schedule "1"

Addresses of Monitor and Financial Advisor

All LOIs and formal binding offers (and any accompanying documents) shall be transmitted by way of email to the Monitor and Financial Advisor as follows:

To the Monitor:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20
Toronto, Ontario M5J 2W4
Attention: Bobby Kofman (bkofman@ksvadvisory.com) and Mitch Vininsky (mvininsky@ksvadvisory.com)

To the Financial Advisor:

FTI Capital Advisors – Canada ULC
79 Wellington Street West, Suite 2010
Toronto, ON M5K 1G8
Attention: Dean Mullett (dean.mullett@fticonsulting.com) and Richard Kim (richard.kim@fticonsulting.com)