

SUPREME COURT OF NOVA SCOTIA

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

BETWEEN:

Fiera Private Debt Fund III LP and Fiera Private Debt Fund V LP,
each by their general partner, Fiera Private Debt GP Inc.

Applicants

-and-

Saltwire Network Inc., The Halifax Herald Limited, Headline Promotional Products Limited, Titan
Security & Investigation Inc., Brace Capital Limited and Brace Holdings Limited

Respondents

BRIEF OF LAW

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To the Honourable Justice Keith, the Applicants submit:

PART I - OVERVIEW

1. The Applicants are bringing this motion to seek orders pursuant to the *Companies' Creditors Arrangement Act* (Canada)¹ ("**CCAA**") in respect of Saltwire Network Inc. ("**Saltwire**"), The Halifax Herald Limited ("**The Herald**" and together with Saltwire, the "**Media Companies**"), Headline Promotional Products Limited ("**Headline**") Titan Security & Investigation Inc. ("**Titan**"), Brace Capital Limited and Brace Holdings Limited (collectively, the "**Companies**").

2. Specifically, the Applicants seek the granting of:

¹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ["**CCAA**"].

- (a) an amended and restated initial order (“**ARIO**”) approving, among other things:
- (i) An extension of the Stay Period (as defined below) to May 3, 2024;
 - (ii) An increase in the borrowing limit under the DIP Facility (as defined below);
 - (iii) An increase in the Administration Charge (as defined below);
 - (iv) Expanding and enhancing the powers of David Boyd, a representative of Resolve Advisory Services Ltd., in his capacity as Chief Restructuring Officer (“**CRO**”) of the Companies; and
 - (v) Expanding and enhancing the powers of KSV Restructuring Inc. (“**KSV**”), in its capacity as Court-appointed monitor (the “**Monitor**”) as set out in the ARIO;
- (b) an order approving, among other things (the “**SISP Order**”): (i) an engagement agreement with FTI Capital Advisors Canada ULC (“**FTI**”) dated March 14, 2024 (the “**SISP Agent Agreement**”) for FTI to act as the SISP agent (in such capacity, the “**SISP Agent**”); (ii) a sale and investment solicitation process (the “**SISP**”) for the sale of or investment in the Media Business (defined below); and (iii) granting the SISP Agent’s Charge (defined below); and
- (c) an order (the “**WEPPA Order**”) confirming that pursuant to Section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47 s. 1 (“**WEPPA**”), as amended, Headline and its employees meet the criteria prescribed by Section 3.2 of the Wage Earner Protection Program Regulations, SOR/2008-222 (the “**WEPPA Regulations**”) and are individuals to whom WEPPA applies as of the date of this Order.

3. Capitalized terms used herein and not otherwise defined have the meanings given to them in the First Report of the Monitor dated March 19, 2024 (the “**First Report**”).²

PART II - FACTS

A. Initial Order

4. On March 13, 2024, the Applicants brought an application (the “**Lenders’ CCAA Application**”) for an initial order (the “**Initial Order**”) pursuant to the CCAA in respect of the Companies.³

5. On the same day, the Companies brought a competing application also seeking an initial order pursuant to the CCAA (the “**Companies’ CCAA Application**”).⁴

6. After hearing the Lenders’ CCAA Application and the Companies’ CCAA Application, the Court ruled in favour of the Lenders’ CCAA Application and granted the Initial Order which included, among other things, the following relief⁵:

- (a) Approved an initial stay of proceeding up to and including March 22, 2024 (the “**Stay Period**”);
- (b) Appointed KSV as Monitor in these CCAA proceedings;
- (c) Appointed the CRO;
- (d) Authorized the Companies to obtain and borrow funds pursuant to a secured debtor-in-possession financing facility (“**DIP Facility**”) pursuant to an interim financing term sheet as agreed on between the parties (the “**First Interim**”).

² First Report of the Monitor, KSV Restructuring Inc., dated March 19, 2024 (the “**First Report**”).

³ Affidavit of Russell French affirmed March 19, 2024 (the “**March 19 French Affidavit**”) at para 6.

⁴ March 19 French Affidavit at para 7.

⁵ March 19 French Affidavit at para 8.

Financing Term Sheet") which was made available by the Lenders, in the maximum initial amount of \$500,000 (the "**Initial Borrowing Limit**"); and

- (e) Granted the following priority charges:
 - (i) First, a charge in the maximum amount of \$300,000 (the "**Administration Charge**") to secure payment of the fees and disbursements of the Monitor, its counsel, the CRO and counsel to the Lenders, incurred both before and during the CCAA proceedings;
 - (ii) Second, a charge to secure the obligations under the DIP Facility (the "**DIP Lender's Charge**"); and
 - (iii) Third, a charge in the maximum of \$1.075 million to secure an indemnity in favour of the Companies' directors and officers for obligations and liabilities they may arise in such capacity post-filing.

Background

7. The background to the CCAA proceedings can be found in the affidavits of Russell French sworn March 8, 2024 (the "**March 8 French Affidavit**") and March 19, 2024, the pre-filing report of KSV dated March 28, 2024 and the First Report. Reference to the facts in those materials is incorporated herein.

8. Briefly,

- (a) The Media Companies, being Saltwire and The Herald, publish *The Chronicle Herald*, the *Cape Breton Post*, *The Telegram* (St. Johns) and *The Guardian*

(Charlottetown), as well as several digital publications and are the largest media and newspaper businesses in Atlantic Canada.⁶

- (b) The Applicants are the senior secured creditors of the Media Companies pursuant to two Credit Agreements (as defined in the March 8 French Affidavit) and are owed over \$32 million (plus fees and interest which continue to accrue). The other Companies have guaranteed the obligations of the Media Companies to the Applicants and have also granted security.⁷
- (c) The Media Companies presently employ approximately 390 employees (including over 100 unionized employees) and 800 independent contractors.⁸
- (d) The Media Companies maintain various benefit and registered pension plans including a defined benefit plan (The Herald) and a defined contribution plan (Saltwire).⁹

9. The principal purpose of the CCAA proceedings is to create a stabilized environment to enable the Companies, particularly the Media Companies, to secure financing to continue to operate while the Media Companies pursue a restructuring or sale of their businesses and assets through a Court-supervised SISP.¹⁰

Amended and Restated Interim Financing Term Sheet

10. The First Interim Financing Term Sheet was based on a proposed term sheet filed with the Lenders' CCAA Application and reflected changes requested both by the Court and the

⁶ First Report at s 2.0, para 2.

⁷ First Report at s 1.0, para 2.

⁸ First Report at s 2.0, para 10.

⁹ First Report at s 2.0, para 11.

¹⁰ First Report at s 1.0, para 4.

Companies for the first 10 days of the filing given the circumstances around which the application was made. The primary goal of the First Interim Financing Term Sheet was to ensure the Companies had immediately available interim financing (“**DIP Financing**”) it was required prior to the comeback, but it was understood that subsequent financing would provide for more robust terms which were more consistent with traditional DIP term sheets.¹¹

11. The revised cash flow forecast (the “**Cash Flow**”) attached to the First Report indicates that the Companies may require up to \$1.5 million of DIP Financing during the proposed Stay Period.¹²

12. The Applicants and the Companies have agreed on the terms of an amended and restated interim financing term sheet (the “**Interim Financing Term Sheet**”) which provides for additional funding and re-incorporates many of the originally proposed terms as set out in the March 8 French Affidavit.¹³

The SISP Agent’s Agreement

13. In late October 2023, the Media Companies engaged FTI to assist them in their effort to raise capital and/or to conduct a process to sell or identify investors for the Media Companies’ businesses and assets (the “**Pre-filing SISP**”).¹⁴ The Pre-filing SISP commenced on November 8, 2023. FTI canvassed an extensive list of prospective purchasers and/or investors, facilitated due diligence through, *inter alia*, an online data room and arranged meetings between certain interested parties and management of the Media Companies.¹⁵

¹¹ March 19 French Affidavit at para 16.

¹² First Report at s 6.0, paras 3 and 4; Revised Cash Flow Forecast, Appendix G to the First Report.

¹³ First Report at s 6.1, paras 1-3; Interim Financing Term Sheet and Blackline, Appendix I to the First Report.

¹⁴ First Report at s 5.0, para 3.

¹⁵ First Report at s 5.0, para 3.

14. The Media Companies have now agreed on the terms of a continued engagement of FTI to act as SISP Agent in the SISP. The SISP Agent Agreement provides for a new fee structure, which includes: (a) a work fee of up to: (i) \$250,000 for Phase 1 (defined in the SISP) of the SISP; and (ii) \$250,000 for Phase 2 (defined in the SISP) of the SISP (collectively, the “**Work Fee**”); and (b) a transaction fee of \$250,000 if a successful going concern transaction for the Media Business is achieved (the “**Transaction Fee**” and together with the Work Fee, the “**Fees**”). If the SISP is terminated in accordance with its terms, FTI would only be entitled to its Work Fees to that point in time. FTI will not be entitled to a transaction fee on the sale of the Real Properties or the sale of any of the assets / businesses of the Non-Media Companies. The Fees are to be secured by a charge in the maximum amount of \$500,000 (the “**SISP Agent’s Charge**”) which will rank *pari passu* with the Administration Charge.¹⁶

The SISP

15. The SISP is intended to be a continuation of the Pre-filing SISP for the sale of or investment in the Media Companies (the “**Media Business**”) as a going concern. Titan and Headline are not included in the SISP.¹⁷

16. The following table provides a summary of key process milestones and dates under the proposed SISP.¹⁸

Milestone	Deadline
SISP Commencement Date	March 25, 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

¹⁶ First Report at s 5.1, para 2, s 5.2, para 1-3 and s 7.0, para 1(a).

¹⁷ First Report at s 5.3, para 2.

¹⁸ First Report at s 5.3, para 4.

17. As set out above, the SISP is intended to be conducted in two stages:
- (a) Phase 1 of the SISP is intended to solicit indicative non-binding letters of intent (“**LOIs**”) from interested parties; and
 - (b) During Phase 2, any parties who submit qualifying LOIs will be permitted to participate in Phase 2 and will be required to submit binding offers on or before the Phase 2 Bid Deadline.¹⁹
18. The criteria to be considered and the process for assessing qualification is set out in the SISP itself and will largely be considered by the SISP Agent and the CRO in consultation with the Monitor and, where applicable, the Applicants.²⁰
19. The SISP provides that the deadlines may be extended in the discretion of the SISP Agent and the Monitor, provided that the aggregate discretionary extensions shall not exceed 15 business days. If 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.²¹
20. The SISP also provides additional flexibility to allow the Monitor to (a) seek approval of a stalking horse agreement; (b) seek to terminate the SISP in certain circumstances; (c) seek approval of 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 Media Business; and (d) seek approval of a transaction for certain Property of some or all of the Companies of *de*

¹⁹ First Report at s 5.3, para 5.

²⁰ First Report at s 5.3, para 6.

²¹ First Report at s 5.3, para 7

minimis value and which the Monitor, in consultation with the CRO and SISP Agent, can be sold independently of the Business.²²

Headline

21. It is anticipated that Headline is going to be wound down in the near term. Headline currently employs approximately 10 employees who are currently remaining to assist with the wind down and subsequently will be terminated.²³

CRO and Monitor

22. The ARIO provides for an expansion and enhancement of the CRO's powers and Monitor's powers.²⁴

23. The enhancement of the CRO's powers is intended to provide the CRO with significant operational and managerial control of the Companies given, among other things, Mr. Lever's stepping down and to address the confidence issues expressed by the Applicants.²⁵

24. The enhancement of the Monitor's powers is largely to provide it with the ability to bring motions before the Court including in respect of a going concern transaction and to approve disbursements of the Companies as an added level of oversight.²⁶

PART III - ISSUE AND ANALYSIS

25. The issue to be determined is whether the proposed ARIO and SISP Orders should be granted.

²² First Report at s 5.3, para 10.

²³ First Report at s 8.0, paras 2-3

²⁴ First Report at s 9.0, para 3.

²⁵ First Report at s 9.0, para 4.

²⁶ First Report at s 10.0, paras 1-2.

26. The issues that will be addressed in this brief include: (a) the proposed extension of the Stay Period; (b) the increase in the Initial Borrowing Limit under the DIP Facility; (c) the increase in the Administration Charge; (d) the enhancement of the CRO's and Monitor's powers; and (e) the approval of the SISP including the granting of the SISP Agent's Charge.

PART IV - LAW & ARGUMENT

The Timing for hearing of the Motion Should be Abridged

27. The initial hearing was heard on March 13, 2024. Pursuant to the CCAA, there must be a comeback hearing within 10 days of the initial hearing.²⁷

28. The Court has the power to excuse compliance with a rule, including shortening or dispensing with notice to a party pursuant to *Nova Scotia Civil Procedure Rules* 2.03(c) which should be granted given the statutory requirement to return within 10 days under the CCAA.²⁸

The Stay Period Should be Extended

29. Pursuant to Section 11.02(1) of the CCAA, the Court has the jurisdiction to extend the stay of proceedings after an initial order has been made.²⁹

30. The Court may not make the order unless (a) the Court is satisfied that the circumstances exist that make the order appropriate; and (b) the [debtor] also satisfies the court that the [debtor] has acted, and is acting, in good faith and with due diligence.³⁰

31. The Companies require an extension of the stay period while the SISP is commenced for the sale of the Media Business. The proposed extension of the Stay Period is appropriate given:

²⁷ *Companies' Creditors Arrangement Act* ("CCAA"), [s 11.02\(1\)](#).

²⁸ *Nova Scotia Civil Procedure Rules*, R [2.03\(c\)](#)

²⁹ CCAA, [s 11.02\(1\)](#).

³⁰ CCAA, [s 11.02\(3\)](#).

- (a) the Companies' Cash Flow indicates that, subject to the DIP Financing, the Companies are forecast to be able to meet their obligations as they come due;
- (b) the Companies are acting in good faith and with due diligence;
- (c) the Stay Extension will allow for the orderly conduct of the SISF for the Media Business; and
- (d) the Monitor does not believe that any creditor will be materially prejudiced if the extension is granted.³¹

The Initial Borrowing Limit under the DIP Facility Should be Increased

32. In determining whether to grant a charge to secure the interim financing sought, it is submitted that the Court should review the following factors described in Section 11.2 of the CCAA³²:

- (a) whether notice has been given to secured creditors who are likely to be affected by the subject charge;
- (b) whether the amount of the interim financing to be secured by the charge is appropriate and necessary having regard to the [debtors'] cash flow statement;
- (c) whether the charge secures an obligation that would exist before the order is made; and
- (d) the enumerated factors in subsection 11.2(4) of the CCAA.

³¹ First Report at s 12.0, para 2.

³² CCAA, [s 11.2](#).

33. The Court should consider the following when considering subsection 11.2(4) of the CCAA: (a) the period during which the Companies are expected to be subject to proceedings under the CCAA; (b) how the Companies' business and financial affairs are to be managed during the proceedings; (c) whether the Companies' management has the confidence of its major creditors; (d) whether the proposed interim financing would enhance the prospects of a viable compromise or arrangement; (e) the nature and value of the Applicant's property; (f) whether any creditor would be materially prejudiced as a result of the security or charge; and (g) the proposed Monitor's report.³³

34. The revised Interim Financing Term Sheet including the terms set out therein have been agreed upon by the Companies and the Applicants. The proposed terms are standard for debtor-in-possession financing facilities and not overly onerous and the economic terms of the proposed financing are below market.³⁴ The proposed increase in the Initial Borrowing Limit is reasonable given:

- (a) the Cash Flow projects that the Company will require additional financing of \$1 million for the extended Stay Period; and
- (b) without increased borrowing limit, the Companies are not projected to have the funding they require to operate their business and/or to fund these proceedings.³⁵

³³ CCAA, [s 11.2\(4\)](#).

³⁴ Pre-Filing Report of KSV Restructuring Inc. dated March 8, 2024 ("**Pre-Filing Report**") at s 4.3, para 1(d); Comparative DIP Loan Schedule, Appendix E to the Pre-Filing Report.

³⁵ First Report at s 6.1, para 5 (a) and (c).

The Administration Charge Should be Increased

35. Section 11.52 of the CCAA provides that the quantum of the Administration Charge is appropriate and that the charges should extend to all proposed beneficiaries.³⁶

36. Pursuant to the Initial Order, the Administration Charge was granted up to a maximum of \$300,000 and was granted to secure payment of the fees of the Monitor, its counsel, the Applicants' counsel and the CRO for the period prior to and during these proceedings.³⁷

37. The proposed increase in the Administration Charge to \$450,000 is appropriate given: (a) the extended time of the CCAA proceedings; (b) the extension of the Administration Charge to include the fees of restructuring counsel to the Companies; (c) the increase in the Administration Charge is supported by the Applicants, the Monitor, the CRO and the Companies.³⁸

The Enhancement of the CRO's Powers should be Approved

38. Pursuant to Section 11 of the CCAA,³⁹ the Court has the jurisdiction to grant any order it considers appropriate in the circumstances. The expansion of the CRO's powers will afford him with additional operational and managerial control over the business of the Companies and should be granted given, among other things:

- (a) The expanded role will further assist the Companies with their restructuring efforts;
- (b) Mr. Lever has or will be stepping down to participate as a bidder in the SISP;
- (c) Mr. Boyd is an experienced CRO;

³⁶ CCAA, [s 11.52](#).

³⁷ First Report at s 1.0, para 6(e).

³⁸ March 19 French Affidavit at para 20; First Report at s 7.0, para 3.

³⁹ CCAA, [s 11](#).

- (d) The Monitor has recommended the expansion and enhancement of the powers;
- (e) It is a condition of the Applicants' ongoing support of the CCAA proceedings; and
- (f) It has been agreed upon by the Companies.⁴⁰

The Enhancement of the Monitor's Powers should be Approved

39. The Court has the jurisdiction to expand the powers of a monitor beyond what has been provided for in Section 23 of the CCAA and the standard model orders.⁴¹ Indeed, in recent years, courts have routinely granted the monitor expanded powers where it has been appropriate in the circumstances.⁴²

40. It has become accepted that the monitor's powers may be expanded to the extent of allowing it to function as a "super monitor" under the CCAA.⁴³ Such enhanced powers should be granted in furtherance of the remedial objectives of the CCAA, one of which is the maximization of creditor recovery.⁴⁴ This is also consistent with the Court's analysis in *Arrangement relatif à Bloom Lake General* ("**Bloom Lake**"), where it affirmed that the Court may grant such powers as is necessary and appropriate to enable the monitor to fulfill its duties to, among other things, "further the valid purpose of the CCAA".⁴⁵

41. In the present circumstance, the proposed expansion of the Monitor's powers has been limited to (a) approval of disbursements; and (b) authorization to bring motions in these proceedings including in respect of a sale transaction. The expanded powers are balanced and

⁴⁰ First Report at s 9.0, paras 1-4; March 19 French Affidavit at para 23.

⁴¹ CCAA, ss 11 and 23(1)(k).

⁴² See e.g. *Arrangement relatif à Bloom Lake General*, [2021 QCCS 2946 \(CanLII\)](#) ["**Bloom Lake**"]; *Ernst & Young Inc. v. Essar Global Fund Limited*, [2017 ONCA 1014 \(CanLII\)](#).

⁴³ *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, [2020 QCCA 659 \(CanLII\)](#) at para 68.

⁴⁴ *Aquadis*, *supra* at para 62. See also *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, [Endorsement of Justice Conway](#) (May 12, 2023) at para 13; *Harte Gold Corp. (Re)*, [2022 ONSC 653 \(CanLII\)](#) at paras 91-93; and *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88 \(CanLII\)](#) at para 85.

⁴⁵ *Bloom Lake*, *supra* at para 73.

appropriate in the circumstances and should be approved, given, among other things, they are intended to increase efficiency and flexibility in these proceedings and provide added oversight to the Companies' business for the benefit of its stakeholders, they are a condition of the Applicants' ongoing support of these proceedings and have been agreed upon by the Companies.⁴⁶

The SISP Should be Approved

42. FTI has been engaged as SISP Agent to conduct the SISP for the Media Business.⁴⁷ The SISP Agent's Agreement should be approved given, among other things,

- (a) the fees payable to FTI are consistent with market and commercially reasonable;
- (b) FTI has obtained significant knowledge about the Media Companies;
- (c) FTI has canvassed dozens of financial and strategic parties to determine their interest in this opportunity. FTI has an ongoing dialogue with certain of these parties. Introducing a new financial advisor at this stage would confuse the market;
- (d) FTI is ready to continue the SISP without delay, which will save time and money, both in context of professional fees and funding for these CCAA proceedings;
- (e) a new (reputable) financial advisor is likely to require similar fees and payment guarantees for its fees; and
- (f) the Applicants have consented to FTI's engagement as the SISP Agent, including the fees payable under the SISP Agent Agreement.⁴⁸

⁴⁶ First Report at s 10.0 paras 1 and 2.

⁴⁷ First Report at s 5.0, para 5.

⁴⁸ First Report at s 5.2, para 1.

43. The SISP Agent's Charge is reasonable in the circumstances. Courts have granted charges to sales agents in similar circumstances given such agents require the secure knowledge that their fees will be paid if earned.⁴⁹ The SISP Agent requires the SISP Agent's Charge as a condition of its engagement.⁵⁰

44. The Court has the jurisdiction to approve the SISP.⁵¹ Courts have recognized that the broad remedial nature of the CCAA confers the power upon the Court to, among other things, approve sale and investment solicitation processes in respect of CCAA debtors and their property.⁵²

45. Courts have routinely recognized that the following factors, referred to as the *Nortel* criteria, are applicable when determining if a proposed sale process should be approved in the context of a CCAA proceeding: (a) is a sale transaction warranted at this time? (b) will the sale benefit the whole "economic community"? (c) do any of the debtors' creditors have a *bona fide* reason to object to the sale of the business? and (d) is there a better viable alternative?⁵³

46. Courts have found that there is a distinction in the application of the criteria set out in Section 36 of the CCAA when seeking approval of a SISP as opposed to the subsequent approval of a sale.⁵⁴ However, the criteria set out in Section 36 of the CCAA may still be instructive when considering the terms of the proposed SISP.⁵⁵

⁴⁹ *Target Canada Co. (Re)*, [2015 ONSC 303 \(CanLII\)](#) at paras 72-75. See also: *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc., et al.* (August 18, 2022), Superior Court of Justice (Commercial List), Toronto, CV-21-00658423-00CL, ([Order of Justice McEwen](#)); *In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc.*, (October 30, 2023), Superior Court of Justice (Commercial List), Toronto, CV-23-00707394-00CL, ([Order of Justice Kimmell](#)); *In the Matter of a Plan of Compromise or Arrangement of Wallace & Carey Inc., et al.*, (August 28, 2023), Court of King's Bench of Alberta, Calgary, 2301-08305, ([Order of Justice Hollins](#)).

⁵⁰ First Report at s 5.2, para 3.

⁵¹ CCAA, [s 11](#); *Freshlocal Solutions Inc. (Re)*, [2022 BCSC 1616 \(CanLII\)](#) at para 22.

⁵² *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(On SC\)](#) [*"Nortel"*] at para 36.

⁵³ *Nortel*, *supra* at para 49.

⁵⁴ *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at paras 16-17.

⁵⁵ CCAA, [s 36](#).

47. Additional factors that have been considered by courts include:

- (a) The fairness, transparency and integrity of the proposed process;
- (b) The commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) Whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.⁵⁶

48. These factors are to be considered in light of the principles from *Royal Bank v. Soundair Corp.*⁵⁷ (“**Soundair**”).⁵⁸ As the Court in *Terrace Bay Pulp Inc. (Re)* pointed out, the *Soundair* principles largely overlap with the factors set out in Section 36(3) of the CCAA:

- (a) Whether the court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;
- (b) The interest of all parties;
- (c) The efficacy and integrity of the process by which the offers are obtained; and
- (d) Whether there has been unfairness in the working out of the process.⁵⁹

49. The specific terms of a SISF including the milestone dates, the number of phases and the parties who have consent or consultation rights will vary depending on the circumstances of the matter. The proposed SISF is appropriate in these circumstances, given, among other things:

⁵⁶ *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750 \(CanLII\)](#) at para 6; *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107 \(CanLII\)](#) at para 20.

⁵⁷ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#).

⁵⁸ *DCL Corporation (Re)*, [2023 ONSC 3686 \(CanLII\)](#) at para 19.

⁵⁹ *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247 \(CanLII\)](#) at para 44.

- (a) the primary purpose of these CCAA proceedings is to conduct a sale process for the Media Companies to attempt to complete a going concern transaction and maximize value for all stakeholders;
- (b) the SISP is commercially reasonable and will provide for a further re-canvassing of the market;
- (c) a two stage SISP is appropriate such that, at the completion of Phase 1, the SISP Agent, CRO and Monitor, in consultation with the Applicants, may assess the likelihood of a successful Phase 2 bid and the associated cost with continuing the SISP for Phase 2;
- (d) given breadth and duration of the Pre-filing SISP, the duration of the SISP is sufficient to allow interested parties to complete their due diligence and submit offers;
- (e) the SISP deadlines can be excluded, if necessary, subject to the consent of the Monitor or an order of the Court;
- (f) FTI is prepared to continue that process without delay;
- (g) FTI is a well-known financial corporate advisor and has significant experience conducting sale and investment processes both within and outside of CCAA proceedings;
- (h) the SISP will be carried out under the supervision of the Monitor; and

- (i) the SISP is supported by the Monitor, the Companies and the CRO.⁶⁰

The WEPPA Order should be granted

50. The WEPPA Order seeks a declaration that pursuant to Section 5(5) of the WEPPA, Headline and its employees meet the criteria established by Section 3.2 of the WEPPA Regulations.⁶¹

51. Section 5(1) of WEPPA provides as follows⁶²:

- (a) An individual is eligible to receive a payment if:
 - (i) the individual's employment for a reason prescribed by the regulation;
 - (ii) one of the following applies:
 - (1) the former employer is bankrupt;
 - (2) the former employer is subject to a receivership,
 - (3) the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the *Bankruptcy and Insolvency Act*, and
 - (A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - (B) a trustee is appointed, or

⁶⁰ First Report at s 5.4, para 1.

⁶¹ First Report at s 8.1, para 1.

⁶² *Wage Earner Protection Program Act* ("WEPPA"), s 5(1).

(4) the former employer is the subject of proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(iii) the individual is owed eligible wages by the former employer.

52. Section 5(5) of WEPPA provides: [o]n application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation". Section 3.2 of the WEPPA Regulations provides that "[f]or the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.⁶³

53. Declarations under Section 5(5) of WEPPA and Section 3.2 of the WEPPA Regulation have been made in previous CCAA proceedings where the criteria of Section 3.2 of the WEPPA Regulations were satisfied.⁶⁴

54. Headline and its former employees would become eligible under WEPPA at the date of the WEPPA Order, if granted.

⁶³ WEPPA, ss 5(5); Wage Earner Protection Program Regulations, SOR/2008-222, [reg. 3.2](#).

⁶⁴ *In the Matter of a Plan of Compromise or Arrangement of IMV Inc., et al.*, (September 6, 2023), Supreme Court of Nova Scotia, Halifax, Hfx No. 523334, ([Interim Distribution and WEPPA Order of Justice John O. Bodurtha](#)) at para 4; *In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., et al.*, (February 2, 2022), Superior Court of Justice (Commercial List), Toronto, CV-21-00655373-00CL, ([Order of Justice McEwen](#)) at para 4; *In the Matter of a Plan of Compromise or Arrangement of Rambler Metals and Mining Canada Limited, et al.*, (April 6, 2023), Supreme Court of Newfoundland and Labrador (Bankruptcy and Insolvency), Newfoundland, 23-01G-0841, ([Order of Justice MacDonald](#)) at para 2.

55. Headline has approximately 10 employees who are currently being retained to wind down the operations and it is anticipated will be terminated in connection with the completion of the wind down of Headline under the CCAA proceedings. The granting of the WEPPA Order will assist these employees in providing them with the benefits provided for in WEPPA.⁶⁴

PART V - RELIEF SOUGHT

56. For the reasons set out above, the Applicants request the Orders substantially in the form attached to the Applicants' notice of motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of March, 2024.



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⁶⁴ First Report at s 8.1, paras 5 and 6.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Arrangement relatif à Bloom Lake General*, [2021 QCCS 2946 \(CanLII\)](#)
2. *Ernst & Young Inc. v. Essar Global Fund Limited*, [2017 ONCA 1014 \(CanLII\)](#)
3. *Arrangement relatif à 9323-7055 Québec inc. (Aquadis International Inc.)*, [2020 QCCA 659 \(CanLII\)](#)
4. *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, [Endorsement of Justice Conway](#) (May 12, 2023)
5. *Harte Gold Corp. (Re)*, [2022 ONSC 653 \(CanLII\)](#)
6. *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.*, [2023 NLSC 88 \(CanLII\)](#)
7. *Target Canada Co. (Re)*, [2015 ONSC 303 \(CanLII\)](#)
8. *In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc., et al.* (August 18, 2022), Superior Court of Justice (Commercial List), Toronto, CV-21-00658423-00CL, ([Order of Justice McEwen](#))
9. *In the Matter of a Plan of Compromise or Arrangement of Tacora Resources Inc.*, (October 30, 2023), Superior Court of Justice (Commercial List), Toronto, CV-23-00707394-00CL, ([Order of Justice Kimmell](#))
10. *In the Matter of a Plan of Compromise or Arrangement of Wallace & Carey Inc., et al.*, (August 28, 2023), Court of King's Bench of Alberta, Calgary, 2301-08305, ([Order of Justice Hollins](#)).
11. *Freshlocal Solutions Inc. (Re)*, [2022 BCSC 1616 \(CanLII\)](#)
12. *Nortel Networks Corporation (Re)*, [2009 CanLII 39492 \(On SC\)](#)
13. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#)
14. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750 \(CanLII\)](#)
15. *Walter Energy Canada Holdings, Inc. (Re)*, [2016 BCSC 107 \(CanLII\)](#)
16. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
17. *DCL Corporation (Re)*, [2023 ONSC 3686 \(CanLII\)](#)
18. *Terrace Bay Pulp Inc. (Re)*, [2012 ONSC 4247 \(CanLII\)](#)
19. *In the Matter of a Plan of Compromise or Arrangement of IMV Inc., et al.*, (September 6, 2023), Supreme Court of Nova Scotia, Halifax, Hfx No. 523334, ([Interim Distribution and WEPPA Order of Justice John O. Bodurtha](#))

20. *In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc., et al.*, (February 2, 2022), Superior Court of Justice (Commercial List), Toronto, CV-21-00655373-00CL, ([Order of Justice McEwen](#))
21. *In the Matter of a Plan of Compromise or Arrangement of Rambler Metals and Mining Canada Limited, et al.*, (April 6, 2023), Supreme Court of Newfoundland and Labrador (Bankruptcy and Insolvency), Newfoundland, 23-01G-0841, ([Order of Justice MacDonald](#))

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 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.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and
- (b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

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

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Monitors

Duties and functions

23 (1) The monitor shall

- **(a)** except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,
 - **(i)** publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and
 - **(ii)** within five days after the day on which the order is made,
 - (A) make the order publicly available in the prescribed manner,
 - (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and
 - (C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;
- **(b)** review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;
- **(c)** make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;
- **(d)** file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —
 - (i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,
 - (ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and
 - (iii) at any other time that the court may order;
- **(d.1)** file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the Bankruptcy and Insolvency Act do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;
- **(e)** advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

- **(f)** file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;
- **(f.1)** for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;
- **(g)** attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;
- **(h)** if the monitor is of the opinion that it would be more beneficial to the company's creditors if proceedings in respect of the company were taken under the Bankruptcy and Insolvency Act, so advise the court without delay after coming to that opinion;
- **(i)** advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;
- **(j)** make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and
- **(k)** carry out any other functions in relation to the company that the court may direct.

Restriction on disposition of business assets

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

Notice to creditors

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

Factors to be considered

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - **(b)** whether the monitor approved the process leading to the proposed sale or disposition;
 - **(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - **(d)** the extent to which the creditors were consulted;
 - **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

- (4)** If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that
- **(a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

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

Related persons

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

- **(a)** a director or officer of the company;
- **(b)** a person who has or has had, directly or indirectly, control in fact of the company; and
- **(c)** a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

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

Restriction — employers

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

Restriction — intellectual property

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

Wage Earner Protection Program Act, SC 2005, c 47, s 1

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
 - (i) the former employer is bankrupt,
 - (ii) the former employer is subject to a receivership,
 - (iii) the former employer is the subject of a foreign proceeding that is recognized by a court under [subsection 270\(1\)](#) of the [Bankruptcy and Insolvency Act](#) and
 - (A) the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - (B) a trustee is appointed, or
- (iv) the former employer is the subject of proceedings under Division I of Part III of the [Bankruptcy and Insolvency Act](#) or under the [Companies' Creditors Arrangement Act](#) and a court determines under subsection (5) that the criteria prescribed by regulation are met; and
- (c) the individual is owed eligible wages by the former employer.
- (d) [Repealed, [2009, c. 2, s. 343](#)]

Prescribed criteria — other proceedings

(5) On application by any person, a court may, in proceedings under Division I of Part III of the [Bankruptcy and Insolvency Act](#) or under the [Companies' Creditors Arrangement Act](#), determine that the former employer meets the criteria prescribed by regulation.

Wage Earner Protection Program Regulations, SOR/2008-222

Proceedings Under Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

Nova Scotia Civil Procedure Rules

2.03 General judicial discretions

(1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:

- (a) give directions for the conduct of a proceeding before the trial or hearing;
- (b) when sitting as the presiding judge, direct the conduct of the trial or hearing;
- (c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.

(2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:

- (a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;
- (b) require an excused person to do anything in substitution for compliance;
- (c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.

(3) The general discretions do not override any of the following kinds of provisions in these Rules:

- (a) a mandatory provision requiring a judge to do, or not do, something;
- (b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;
- (c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations

