

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 3306133 NOVA SCOTIA LIMITED, 1003940 NOVA SCOTIA LIMITED, HEADLINE PROMOTIONAL PRODUCTS LIMITED, BRACE CAPITAL LIMITED, BRACE HOLDINGS LIMITED AND 4648767 NOVA SCOTIA 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-

3306133 Nova Scotia Limited, 1003940 Nova Scotia Limited, Headline Promotional Products Limited, Brace Capital Limited, Brace Holdings Limited and 4648767 Nova Scotia Limited

Respondents

BRIEF OF LAW

September 15, 2024

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BRIEF OF LAW

To the Honourable Justice Keith, KSV Restructuring Inc., in its capacity as court-appointed CCAA¹ monitor (the “**Monitor**”), submits:

PART I - OVERVIEW

1. The Monitor brings this motion seeking various relief with respect to:

¹ Capitalized terms not defined herein have the meaning defined in the Ninth Report of the Monitor dated September 12, 2025 (the “**Ninth Report**”).

- (a) the sale of the property located at 311 Bluewater Road, Bedford, Nova Scotia (“**Bluewater**”), pursuant to an agreement of purchase and sale dated August 20, 2025 (the “**APS**”);
- (b) the sealing of the Confidential Appendices to the Ninth Report;
- (c) authorizing the Monitor to make distributions to: (i) Fiera up to the balance owing to it by the Companies; and (b) Eckler Admin Corp. Ltd. (“**Eckler**”) for \$500,000;
- (d) the approval of the Ninth Report; and
- (e) other relief ancillary to the foregoing.

2. The Monitor is not aware of any objections or opposition to the relief it seeks on this motion.

PART II - FACTS

Background²

3. The Companies are private companies incorporated under the laws of Nova Scotia.

4. Prior to the sale of Media Companies’ businesses and assets to PNI, the Companies published The Chronicle Herald, the Cape Breton Post, The Telegram (St. Johns) and The Guardian (Charlottetown), as well as several digital publications.

² Ninth Report, at s. 2.0 at paras. 1-3, 8-9.

5. The Media Companies' names were changed to 3306 and 1003, being their original numbered companies, following completion of the Media Companies Transaction.

6. As of the date of the Initial Order, the Media Companies owned the following locations (the "**Real Properties**") from which they formerly operated:

- (a) Bluewater;
- (b) 255 George Street, Sydney ("**George Street**");
- (c) 36 Austin Street, St. John's; and
- (d) 2 Second Street, Yarmouth ("**Second Street**").

The Transaction

7. Bluewater is an industrial building located in Bedford, Nova Scotia in 2002 with approximately 70,000 square feet of space, including offices and a warehouse. Bluewater was the premises from which the Media Companies printed their newspapers in Nova Scotia and housed a large printing press purpose-built for that facility. The press was fully removed from the property on August 5, 2025. The removal of the press was a substantial undertaking and took approximately eight months to complete.³

8. Bluewater is presently vacant. Monthly carry costs are approximately \$48,000, including for insurance, utilities, property taxes, security and maintenance, but excluding interest accruing on Fiera's debt.⁴

³ Ninth Report, s. 3.1 at para 1.

⁴ Ninth Report, s. 3.1 at para 2.

9. Bluewater has been listed for sale through CBRE since October 2024. Based on discussions with the Monitor and Fiera, CBRE listed Bluewater on an unpriced basis.⁵

10. As described in the Monitor’s Seventh Report to Court dated March 14, 2025, CBRE set a bid deadline of November 20, 2024 for the submissions of offers for Bluewater.⁶

11. The Monitor accepted a Letter of Intent to Purchase dated December 2, 2024 (the “**December LOI**”); however, an agreement of purchase and sale was never executed as the bidder advised that it would wait until the press removal process was completed to determine whether it would proceed with a transaction.⁷

12. In July 2025, with the press removal process near completion, CBRE re-launched the marketing of the property. This resulted in a “Letter of Intent to Purchase” from 3098637 Nova Scotia Limited (the “**Purchaser**”) on July 16, 2025. The party that submitted the December LOI did not submit a new offer.

13. The key terms and provisions of the APS are as follows:⁸

Purchaser	3098637 Nova Scotia Limited, an arm’s length party, which owns several properties adjacent or close to Bluewater. ⁹
Vendor	1003, by the Monitor.

⁵ Ninth Report, s. 3.1 at para 3.

⁶ Ninth Report, s. 3.1 at para 4.

⁷ Ninth Report, s. 3.1 at para 5.

⁸ Capitalized terms not defined herein have the meaning defined in the APS.

⁹ The Purchaser’s lawyer notified the Monitor on September 12, 2025 that the Purchaser is assigning the agreement to a wholly owned subsidiary called 311 BW Holdings Limited.

Purchased Assets	Includes the: (i) Lands and premises municipally known as 311 Bluewater Road, Bedford, Nova Scotia; (ii) Fixtures and Chattels (as described in the APS); and (iii) Assumed Contracts, which the Monitor understands are likely to be nil.
Deposit	\$1 million, which has been paid to the Monitor's counsel, in trust.
Assumed Liabilities	On Closing, the Purchaser shall assume and be liable for: (i) The Permitted Encumbrances; and (ii) All Liabilities under the Assumed Contracts.
Closing Date	The latter of: (i) 14 days after the Purchaser waives its Due Diligence Condition, which occurred on September 4, 2025; and (ii) Two business days after the AVO is final.
Material Conditions	(i) The obligation of the Purchaser to complete the Transaction is subject to the Purchaser being satisfied with respect to the results of its due diligence investigation and inspections of the Purchased Assets on or prior to 5:00 pm EST on the last day of the Conditional Period; and (ii) The Court shall have issued the AVO and the AVO being final.

14. The Transaction is subject to approval of this Court, which the Monitor recommends for the reasons set out in the Ninth Report and summarized in paragraph 22 below.

Distribution

15. The net sale proceeds from the Transaction are expected to be sufficient to repay the outstanding amount of approximately \$5.2 million owed under an interim financing facility advanced by Fiera pursuant to the Initial Order (the “**Interim Financing Facility**”), and several

subsequent increases to the Interim Financing Facility, which represents a first ranking charge against the Companies' business and assets, subject only to the charge in favour of the Monitor, its legal counsel and Fiera's legal counsel.

16. Furthermore, pursuant to the Order of the Court issued August 8, 2024, Eckler holds a charge on the property of 1003 (the "**1003 Property**") for an amount not exceeding \$500,000 to secure the amounts payable by 1003 to Eckler, in its capacity as administrator of The Herald Retirement Plan, which ranks in priority to all other security interests, trusts, liens, charges, and encumbrances, claims of secured creditors, statutory or otherwise on the 1003 Property, but subordinate to the other court-ordered charges granted in this proceeding.

Monitor's Activities

17. Since the date of the Eighth Report, the Monitor, with the assistance of the Former COO, has, among other things:

- (a) worked with CBRE regarding the sale processes for the Real Properties;
- (b) corresponded with CBRE with regards to the APS;
- (c) corresponded with ReMax Banner Real Estate (Yarmouth), the listing agent for Second Street, regarding the Second Street Transaction;
- (d) corresponded with Coldwell regarding the George Street property;
- (e) worked with the Former COO to deal with the removal of the printing press at Bluewater;

- (f) coordinated the Media Companies' HST return filings and corresponded with Canada Revenue Agency regarding same;
- (g) monitored the Companies' receipts and disbursements and reported to Fiera as required under the Interim Financing Facility; and
- (h) prepared the Supplement Report and this Ninth Report.

PART III - ISSUES AND ANALYSIS

18. This Brief will address the following main legal issues raised on this motion:

- (a) Should the Court approve the Transaction and grant the AVO?
- (b) Should the Court seal the Confidential Appendices?
- (c) Should the Court authorize and direct the Monitor to make distributions to Fiera and Eckler from the proceeds of the Transaction?
- (d) Should the Court approve the Ninth Report and the activities described therein?

PART IV - LAW & ARGUMENT

A. Approval of the Transaction

19. In deciding whether to exercise its discretion to approve a sale transaction, this Court must review the transaction as a whole and decide whether it is appropriate, fair, and reasonable.¹⁰

¹⁰ [*PCAS Patient Care Automation Services Inc \(Re\)*, 2012 ONSC 3367](#) at para 54 citing [*White Birch Paper Holding Company \(Arrangement relatif à\)*, 2010 QCCS 4915](#) at para 49.

20. Section 36(3) of the CCAA provides a non-exhaustive list of factors to be considered:¹¹

- (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 its 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.

21. The s. 36(3) factors are not intended to be exhaustive, and the principles established in *Royal Bank v. Soundair Corp.* for approval of a sale in an insolvency proceeding remain relevant.¹²

Applying these principles, courts examine: (a) whether the party conducting the sale made sufficient efforts to obtain the best price and did not act improvidently; (b) the interests of all

¹¹ [*Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended \("CCAA"\), s. 36\(3\).](#)

¹² [*Harte Gold Corp \(Re\)*, 2022 ONSC 653 at para 20.](#)

parties; (c) the efficacy and integrity of the process by which offers were obtained; and (d) whether there has been unfairness in the working out of the process.¹³

22. In this case, the Monitor respectfully submits that the Transaction satisfies the criteria described above and recommends that it be approved for, among other things, the following reasons:¹⁴

- (a) Bluewater has been marketed for sale since October 2024 by CBRE, a recognized and reputable national realtor, using standard procedures for real estate;
- (b) CBRE has extensive experience selling industrial properties in Nova Scotia, including around the Bedford area, and widely canvassed the market for prospective purchasers;
- (c) the Monitor, Fiera and CBRE are of the view that the Transaction is the best available in the circumstances and maximizes recovery for the property;
- (d) the Monitor, Fiera and CBRE are of the view that further time spent marketing the property will not result in a superior transaction;
- (e) completing the Transaction will eliminate ongoing carrying costs (\$48,000 per month) and the professional fees associated with this asset. Additionally, it will substantially advance completion of the CCAA proceedings as the Bluewater property is a major asset owned by the Companies;

¹³ [*Royal Bank of Canada v Soundair Corp*](#) (1991), [1991 CanLII 2727](#) (ONCA).

¹⁴ Ninth Report, s. 3.2 at para 1.

- (f) the Transaction is now unconditional - the Purchaser has waived all conditions, other than Court approval - and the Purchaser has paid a substantial deposit;
- (g) Fiera is the only stakeholder that will receive proceeds from the Transaction. Fiera has advised the Monitor that it supports the Transaction; and
- (h) as at the date of its Ninth Report, the Monitor is not aware of any objections to the relief being sought to the proposed AVO.

B. Sealing of the Confidential Appendices

23. The Monitor is seeking a sealing order with respect to: (a) a summary of the offers received for Bluewater at the initial bid deadline of November 20, 2024; and (b) the purchase price in connection with the Transaction, pending further order of the Court or closing of the Transaction.¹⁵

24. In *Sierra Club of Canada v. Canada (Minister of Finance)*, Justice Iacobucci held that a sealing order should only be granted when:¹⁶

- (a) such an order is necessary in order to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects

¹⁵ Ninth Report, s. 3.3 at para 1.

¹⁶ [*Sierra Club of Canada v Canada \(Minister of Finance\)*, 2002 SCC 41](#) at para 53.

on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.

25. In *Sherman Estate v. Donovan* (“***Sherman Estate***”), the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that:¹⁷

- (a) court openness poses a serious risk to the public interest;
- (b) the order sought is necessary to prevent the risk to the identified interest because reasonable alternative measures will not prevent the risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

26. Sealing the Confidential Appendices until the Transaction closes or further order of the Court should assist to maximize recoveries in these proceedings as the agreed selling price will not be public if the Transaction does not close. The Monitor believes that making the Confidential Appendices publicly available may negatively impact any future sale process for Bluewater if the Transaction is not approved by the Court or does not close.¹⁸

27. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Monitor is of the view that the sealing of Confidential Appendices “1” and “2” is consistent with the decision in *Sherman Estate*. Accordingly, the Monitor believes the proposed sealing order is appropriate in the circumstances.¹⁹

¹⁷ [*Sherman Estate v Donovan*, 2021 SCC 25](#) at para 38 (“***Sherman Estate***”).

¹⁸ Ninth Report, s. 3.3 at para 2.

¹⁹ Ninth Report, s. 3.3 at para 3.

C. Approval of the Ninth Report

28. As noted by R.S.J. Morawetz (as he then was) in *Target Canada Co. (Re)*²⁰, requests to approve a CCAA monitor's report are not unusual, and there are good policy and practical reasons for the court to do so, including:

- (a) allowing the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;
- (b) bringing the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) providing certainty and finality to processes in a CCAA proceeding and activities undertaken (e.g., asset sales), all parties having been given an opportunity to raise specific objections and concerns;
- (d) enabling the court, tasked with supervising the CCAA process, to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;
- (e) providing protection for the monitor not otherwise provided by the CCAA; and
- (f) protecting creditors from the delay in distributions that would be caused by (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the monitor.

²⁰ [*Target Canada Co \(Re\)*, 2015 ONSC 7574](#) at para 23.

29. For all of these reasons, the Monitor respectfully submits that approval of the Ninth Report and the Monitor's activities described therein is appropriate at this stage.

PART V - RELIEF SOUGHT

30. For the reasons set out above, the Monitor respectfully requests the relief set out in its Notice of Motion.

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



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SCHEDULE “A”

LIST OF AUTHORITIES

Tab	Title	Pinpoints
Case law		
1	<u><i>Harte Gold Corp (Re)</i>, 2022 ONSC 653</u>	20
2	<u><i>PCAS Patient Care Automation Services Inc (Re)</i>, 2012 ONSC 3367</u>	54
3	<u><i>Royal Bank of Canada v Soundair Corp</i>, 1991 CanLII 2727</u>	
4	<u><i>Sherman Estate v Donovan</i>, 2021 SCC 25</u>	38
5	<u><i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41</u>	53
6	<u><i>Target Canada Co (Re)</i>, 2015 ONSC 7574</u>	23
7	<u><i>White Birch Paper Holding Company (Arrangement relatif à)</i>, 2010 QCCS 4915</u>	49

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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.

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NOTICE OF MOTION

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