

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

AND IN THE MATTER OF HSP LIQUIDATION, LLC, HHFH LIQUIDATION, LLC, HSPK LIQUIDATION, LLC, PCF LIQUIDATION, LLC, PCFC LIQUIDATION, LLC, HSPC LIQUIDATION LIMITED

APPLICATION OF HSP LIQUIDATION, LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

**FACTUM OF THE APPLICANT**

November 27, 2024

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**TO: SERVICE LIST**

## PART I - NATURE OF THIS MOTION

1. This factum is filed in support of a motion by HSP Liquidation, LLC (formerly Hollander Sleep Products, LLC) in its capacity as the foreign representative (the “**Foreign Representative**”) of itself and six other debtors in possession (collectively, the “**Chapter 11 Debtors**,” and each, a “**Chapter 11 Debtor**”) that filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the Southern District of New York (the “**U.S. Court**”). The Chapter 11 Debtors include HSPC Liquidation Limited (formerly Hollander Sleep Products Canada Limited) (“**HSP Canada**”), which formerly operated in Canada. This Court (the “**Ontario Court**”) has recognized the Chapter 11 Cases as foreign main proceedings (the “**CCAA Recognition Proceedings**”) within the meaning of Part IV of the *Companies’ Creditors Arrangement Act*.<sup>1</sup>

2. The CCAA Recognition Proceedings have served their purpose and are nearly complete. Pursuant to the terms of the court-approved *Debtors’ Modified First Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* (the “**Confirmed Plan**”), substantially all of the Chapter 11 Debtors’ assets (including the assets of HSP Canada) have been sold. Drivetrain, LLC, which was appointed as plan administrator under the Confirmed Plan (the “**Plan Administrator**”), has nearly completed its post-confirmation wind-down of the Chapter 11 Debtors’ affairs. On November 15, 2024, the U.S. Court granted the *Final Decree Closing the Chapter 11 Cases Pursuant to Section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Bankruptcy Rule 3022-1* (the “**Final Decree**”) which, among other things, provides that the Chapter 11 Cases

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<sup>1</sup> R.S.C. 1985, c. C-36 [CCAA].

are now closed and authorizes the Plan Administrator to take all remaining steps necessary to wind up the affairs of the Chapter 11 Debtors consistent with the terms of the Confirmed Plan.

3. The Applicant therefore seeks an order (the “**CCAA Termination Order**”) providing for a mechanism for termination of the CCAA Recognition Proceedings, including discharging the Information Officer (as defined below), granting releases to certain parties who materially contributed to the CCAA Recognition Proceedings, and approving the Information Officer’s activities, along with the fees and disbursements of the Information Officer and its counsel.

4. The CCAA Termination Order should be granted so the CCAA Recognition Proceedings can be brought to an orderly close, providing certainty and finality for all stakeholders.

## **PART II - SUMMARY OF THE FACTS**

5. The facts are more fully set out in the Affidavit of Marc Rosenberg.<sup>2</sup>

### **A. Background to the Chapter 11 Cases and CCAA Recognition Proceedings**

6. On May 19, 2019, the Chapter 11 Debtors commenced the Chapter 11 Cases before the U.S. Court. On May 23, 2019, the Ontario Court granted the Initial Order, which recognized the Chapter 11 Cases as foreign main proceedings, recognized the appointment of the Foreign Representative, and granted stays of proceedings in favour of the Chapter 11 Debtors. On the same date, the Ontario Court granted the Supplemental Order, which among other things: (i) appointed KSV Kofman Inc. (now KSV Restructuring Inc.) as Information Officer (the “**Information Officer**”); (ii) granted a charge in favour of the DIP ABL Agent and the DIP ABL Lenders in

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<sup>2</sup> Affidavit of Marc Rosenberg, sworn November 25, 2024 [Rosenberg Affidavit]. Capitalized terms not otherwise defined have the same meaning as in the Rosenberg Affidavit. Dollar amounts are given in U.S. dollars unless otherwise specified.

respect of the DIP ABL Facility; and (iii) granted an Administration Charge in the amount of \$200,000 in favour of the Information Officer and its counsel.<sup>3</sup>

7. On September 5, 2019, the U.S. Court entered its *Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Modified First Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code* (the “**Confirmation Order**”), which confirmed the Confirmed Plan.<sup>4</sup> On September 11, 2019, the Ontario Court issued the Recognition, Approval and Vesting Order, and recognized three additional Orders of the U.S. Court, including the Confirmation Order.<sup>5</sup>

8. The Confirmed Plan contemplated the sale of substantially all of the Chapter 11 Debtors' assets (including the assets of HSP Canada) to Bedding Acquisition, LLC (the “**Purchaser**”), pursuant to an asset purchase agreement (the “**Asset Purchase Agreement**”). As part of the Asset Purchase Agreement, the Purchaser agreed to extend offers of employment to all employees of the Chapter 11 Debtors, including the employees of HSP Canada.<sup>6</sup>

9. On September 13, 2019, the Effective Date (as defined in the Confirmed Plan) occurred, and the sale transaction contemplated by the Asset Purchase Agreement closed. Pursuant to the Confirmed Plan, the Chapter 11 Debtors provided a \$1 million reserve to the Plan Administrator to: (i) wind down the Chapter 11 Debtors' businesses; (ii) resolve any Disputed Claims; (iii) pay Allowed Claims; (iv) litigate any remaining causes of action; (v) file tax returns; (vi) administer the Confirmed Plan; and (vii) consult with the Information Officer in respect of any of the foregoing matters as they related to Canada.<sup>7</sup>

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<sup>3</sup> Rosenberg Affidavit at paras. 9-11.

<sup>4</sup> Rosenberg Affidavit at para. 2.

<sup>5</sup> Rosenberg Affidavit at para. 14.

<sup>6</sup> Rosenberg Affidavit at para. 15.

<sup>7</sup> Rosenberg Affidavit at paras. 16-17.

**B. Update on the Chapter 11 Cases and CCAA Recognition Proceedings**

10. Since the Effective Date, the Plan Administrator has assumed all responsibilities for the administration of the Chapter 11 Debtors' affairs and has engaged in a number of post-confirmation activities on behalf of the Foreign Representative and the other Chapter 11 Debtors. In particular, the Plan Administrator has engaged in the following activities:

- (a) **Wind-Down Activities:** The Plan Administrator has: (i) engaged professionals to assist with wind-down activities in both Canada and the U.S.; (ii) engaged with the Purchaser with respect to post-confirmation accounts and reconciliation; (iii) wound down various operating plants of the Chapter 11 Debtors; (iv) corresponded with the Information Officer with respect to issues involving Canada; and (v) filed pleadings related to the post-confirmation administration of the Chapter 11 Cases.<sup>8</sup>
- (b) **Asset Recovery:** The Plan Administrator has successfully engaged in asset recovery on behalf of the Chapter 11 Debtors, including by: (i) resolving Claims asserted by the U.S. Customs and Border Protection ("**CBP**") and related surety bonding companies, which resulted in the return of \$1,200,000 in cash collateral; (ii) recovering over \$422,000 from the Purchaser regarding CBP refunds of the Chapter 11 Debtors' estates cashed by the Purchaser; and (iii) recovering funds in the amount of \$3,300,268.36 from a variety of other sources.<sup>9</sup>
- (c) **Claims Reconciliation:** The Plan Administrator has reconciled, objected to, or negotiated resolutions with respect to all filed Secured, Priority, Administrative,

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<sup>8</sup> Rosenberg Affidavit at para. 20.

<sup>9</sup> Rosenberg Affidavit at paras. 21-23.

and General Unsecured Claims against the Chapter 11 Debtors. During this process, Canadian creditors with Allowed Claims received the same treatment as U.S. creditors with Allowed Claims.<sup>10</sup>

- (d) **Distributions:** All Claim reconciliations have been completed, and distributions made to holders of Allowed Secured, Administrative, and Priority Claims.<sup>11</sup>

11. In addition to the activities outlined above, the Plan Administrator, acting on behalf of the Foreign Representative and the other Chapter 11 Debtors, and the Foreign Representative's advisors, have been involved in two ongoing tax audits with the Canada Revenue Agency ("CRA") and Revenu Quebec. After the conclusion of the audits and extensive negotiations with the taxing authorities, it was determined that the Canadian estate was in a credit position. Accordingly, HSP Canada has received approximately CAD \$240,000 from Revenu Quebec, and approximately CAD \$435,000 from the CRA.<sup>12</sup> The Information Officer was consulted on any material issues and correspondence in connection with these audits and related matters.

12. On October 28, 2024, the Chapter 11 Debtors filed the Application for Final Decree, and the Final Decree was entered by the U.S. court on November 15, 2024. The U.S. Final Decree, among other things, provides that the Chapter 11 Cases are closed.<sup>13</sup>

### **PART III - ISSUES AND THE LAW**

13. This Factum addresses the following issues:

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<sup>10</sup> Rosenberg Affidavit at paras. 24-28.

<sup>11</sup> Rosenberg Affidavit at para. 29.

<sup>12</sup> Rosenberg Affidavit at paras. 30-31.

<sup>13</sup> Rosenberg Affidavit at paras. 32-33.

- (a) the CCAA Recognition Proceedings should be terminated upon the filing of the Information Officer's Termination Certificate (as defined below);
- (b) the Releases (as defined below) should be granted; and
- (c) the Information Officer's activities, and the fees and disbursements of the Information Officer and its counsel, should be approved.

**A. The CCAA Recognition Proceedings Should be Terminated**

14. The CCAA Recognition Proceedings have achieved their purpose. All property contemplated to be transferred or distributed pursuant to the Confirmed Plan has been, or will soon be, transferred or distributed.<sup>14</sup> All contested matters, including the lengthy negotiations with the CRA and Revenu Quebec, have been resolved. The Applicant accordingly seeks the CCAA Termination Order, which will, among other things:

- (a) upon service on the Service List of a certificate by the Information Officer (the **"Information Officer's Termination Certificate"**) confirming that, to the knowledge of the Information Officer, all matters to be attended to in connection with the CCAA Recognition Proceedings have been completed: (i) terminate the CCAA Recognition Proceedings; (ii) discharge the Information Officer from all further duties, except for matters ancillary to these proceedings that may arise after

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<sup>14</sup> The Final Decree authorizes the Plan Administrator to take all steps necessary to wind up the affairs of the Chapter 11 Debtors consistent with the terms of the Confirmed Plan, including remitting all undeliverable distributions along with any final cash on hand to the Holders of Class 4 Term Loan Claims (as defined in the Confirmed Plan), less appropriate reserves, pursuant to the terms of the Confirmed Plan: Fifth Report of the Information Officer dated November 26, 2024 [Fifth Report] at para. 3.0.6.

termination of the proceedings; and (iii) discharge the charges granted in the Supplemental Order; and

- (b) approve the activities and fees of the Information Officer as well as its counsel's fees.<sup>15</sup>

15. As indicated above, this Court has recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to sections 47 and 48 of the CCAA.<sup>16</sup> When a foreign main proceeding has been recognized under Part IV of the CCAA, section 49 empowers this Court to make any order that it considers appropriate to protect the debtor's property or the interests of one or more creditors.<sup>17</sup> The Court's discretion is broad: an order under Part IV “may be made on any terms and conditions that the Court considers appropriate in the circumstances,”<sup>18</sup> and has been held to include the authority to terminate proceedings under Part IV.<sup>19</sup>

16. This Court therefore has jurisdiction to grant the CCAA Termination Order, which is appropriate in the circumstances. Terminating the CCAA Recognition Proceedings upon service of the Information Officer's Termination Certificate will prevent the filing of additional motions before the Ontario Court, which will both save professional fees and eliminate the need to take up court time in respect of additional non-contentious motions.<sup>20</sup> Orders approving similar

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<sup>15</sup> Rosenberg Affidavit at para. 34.

<sup>16</sup> CCAA, s. 47-48.

<sup>17</sup> CCAA, s. 49(1).

<sup>18</sup> CCAA, s. 50.

<sup>19</sup> *Instant Brands Acquisition Holding Inc. et al. (Re)*, (February 26, 2024), Ont. S.C.J [Commercial List], CV-23-00701159-00CL ([Endorsement of Justice Osborne](#)) at para. 29 [*Instant Brands*]. For orders terminating recognition proceedings, see, i.e., *David's Bridal, LLC et al. (Re)*, (September 23, 2023), Ont. S.C.J [Commercial List], CV-23-00698107-00CL ([Endorsement of Justice Conway](#)) at para. 5 [*David's Bridal* (Endorsement)]; *Kidkraft, Inc. (Re)*, (June 28, 2024), Ont. S.C.J [Commercial List], CV-24-007220035-00CL ([Endorsement of Justice Cavanaugh](#)) at paras. 18-20 [*Kidkraft*]; *Revlon, Inc. et al. (Re)*, (April 21, 2023), Ont. S.C.J [Commercial List], CV-22-00682880-00CL ([Endorsement of Justice Conway](#)) [*Revlon*].

<sup>20</sup> Rosenberg Affidavit at para. 36.



mechanisms for terminating Part IV proceedings, including the discharge of the information officer and any remaining charges, are commonly granted by this Court.<sup>21</sup> The Information Officer is not aware of any other matters that need to be attended to in the CCAA Recognition Proceedings, subject to the payment of any remaining amounts secured by the Administration Charge, and supports the proposed termination and discharges as reasonable and appropriate in the circumstances.<sup>22</sup>

## **B. The Releases Should be Granted**

17. The CCAA Termination Order contains certain releases (the “**Releases**”) in favour of the Information Officer and its counsel, the Plan Administrator and its counsel, and Canadian counsel to the Foreign Representative and the other Chapter 11 Debtors (together, the “**Released Parties**”).

18. The Releases are appropriate in the circumstances and should be granted. CCAA courts have granted similar releases in the past.<sup>23</sup> Further, the proposed Releases satisfy the well-established test for third-party releases under the CCAA, which asks: (i) whether the parties to be release were necessary to the restructuring of the debtor; (ii) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (iii) whether the restructuring could succeed without the release; (iv) whether the parties being released contributed

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<sup>21</sup> See, i.e., *David’s Bridal, LLC et al. (Re)*, (September 23, 2023), Ont. S.C.J [Commercial List], CV-23-00698107-00CL ([CCAA Termination Order](#)) at paras. 4-10 [*David’s Bridal* (Order)]; *Jack Cooper Inc. et al. (Re)*, (October 18, 2019), Ont. S.C.J [Commercial List], CV-19-62500-00CL ([Sale Recognition and Vesting Order](#)) at paras. 19-24; *Kidkraft, Inc. (Re)*, (June 28, 2024), Ont. S.C.J [Commercial List], CV-24-007220035-00CL ([Plan Confirmation Order, Sale Order, Termination of CCAA Proceedings, and Related Relief](#)) at paras. 19-23; *Pier Imports Inc. et al. (Re)*, (October 13, 2020), Ont. S.C.J [Commercial List], CV-20-00636511-00CL ([Recognition of Confirmation Order](#)) at paras. 11-15; *Revlon, Inc. et al. (Re)*, (April 21, 2023), Ont. S.C.J [Commercial List], CV-22-00682880-00CL ([Plan Confirmation Order and Termination of CCAA Proceedings](#)) at paras. 11-15.

<sup>22</sup> Fifth Report at paras. 4.0.1 and 4.0.3.

<sup>23</sup> See, in respect of information officers, their counsel, and Canadian counsel to foreign debtors, *David’s Bridal* (Order), at para. 9. See, in respect of a plan administrator, *Teleglobe Inc. et al. (Re)*, (October 28, 2011), Ont. S.C.J [Commercial List], 02-CL-4528 (Order to Authorize Final Distribution, Terminate CCAA Proceedings and Other Ancillary Relief) at para. 20, attached hereto as Schedule “C”.

to the restructuring; and (v) whether the releases benefit the debtors as well as the creditors generally.<sup>24</sup> It is not necessary for each of these factors to apply in order for a release to be granted.<sup>25</sup>

19. The proposed Releases satisfy this test. The Released Parties have been critical components of the CCAA Recognition Proceedings, including most recently with respect to the extensive negotiations with the CRA and Revenu Quebec.<sup>26</sup> Further, the proposed Releases are appropriately limited in scope as they do not apply in respect of any claim or liability arising out of gross negligence or willful misconduct on the part of the Released Parties. Finally, it is in the interest of all parties that the Releases be granted, as once the CCAA Recognition Proceedings are brought to a close, granting the Releases will provide certainty and finality to all parties.

20. The Releases are supported by the Information Officer, which regards each of the Released Parties as having been essential and as having contributed in a material way to the CCAA Recognition Proceedings. The Information Officer views it as unlikely that the CCAA Recognition Proceedings would have achieved their purpose without the involvement of the Released Parties.<sup>27</sup>

**C. The Information Officer's Activities, and the Fees and Disbursements of the Information Officer and its Counsel, Should be Approved**

21. The CCAA Termination Order provides for the approval of the activities of the Information Officer as set out in the Fifth Report, and further provides for the approval of the fees and disbursements of the Information Officer and its counsel, Gowling WLG (Canada) LLP

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<sup>24</sup> *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para. 54.

<sup>25</sup> *Green Relief Inc. (Re)*, [2020 ONSC 6837](#) at para. 28.

<sup>26</sup> Rosenberg Affidavit at para. 35.

<sup>27</sup> Fifth Report at para. 4.0.4.

(“**Gowling**”), from September 1, 2019 to September 30, 2022, plus an accrual of CAD \$25,000 plus HST (the “**Fee Accrual**”) to cover the fees and disbursements incurred or to be incurred by the Information Officer and Gowling from October 1, 2022 until the service of the Information Officer’s Termination Certificate, including the costs involved in this motion.<sup>28</sup>

22. The requested relief is fair and reasonable in the circumstances and should be granted. CCAA termination orders in Part IV proceedings commonly approve the activities, fees, and disbursements of the information officer and its counsel.<sup>29</sup> The Information Officer has acted diligently and with good faith throughout the CCAA Recognition Proceedings, including more recently consulting and corresponding with the Plan Administrator in respect of issues relating to Canada, including the negotiations with the CRA and Revenu Quebec.<sup>30</sup> The fees and disbursements of the Information Officer are reasonable in the circumstances, and the Information Officer is of the view that the hourly rates charged by its counsel are reasonable and appropriate.<sup>31</sup>

23. The Foreign Representative supports the requested approval of the Information Officer’s fees and disbursements, and the Fee Accrual.<sup>32</sup>

#### **PART IV - NATURE OF THE ORDER SOUGHT**

24. The Applicant therefore requests the CCAA Termination Order substantially in the form attached at Tab 3 to the Motion Record.

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<sup>28</sup> Fifth Report at paras. 1.1.1(c), 5.0.6.

<sup>29</sup> See, i.e., *David’s Bridal* (Endorsement), at para. 7; *Instant Brands*, at para. 33; *Kidkraft*, at para. 20; *Revlon*, at para. 6.

<sup>30</sup> Rosenberg Affidavit at paras. 17, 20(d); Fifth Report at para. 3.0.3.

<sup>31</sup> Fifth Report at para. 5.0.5.

<sup>32</sup> Rosenberg Affidavit at para. 40.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of November, 2024.



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Lawyers for the Applicant

## SCHEDULE “A”: LIST OF AUTHORITIES

1. *David’s Bridal, LLC et al. (Re)*, (September 23, 2023), Ont. S.C.J [Commercial List], CV-23-00698107-00CL ([CCAA Termination Order](#))
2. *David’s Bridal, LLC et al. (Re)*, (September 23, 2023), Ont. S.C.J [Commercial List], CV-23-00698107-00CL ([Endorsement of Justice Conway](#))
3. *Green Relief Inc. (Re)*, [2020 ONSC 6837](#)
4. *Instant Brands Acquisition Holding Inc. et al. (Re)*, (February 26, 2024), Ont. S.C.J [Commercial List], CV-23-00701159-00CL ([Endorsement of Justice Osborne](#))
5. *Jack Cooper Inc. et al. (Re)*, (October 18, 2019), Ont. S.C.J [Commercial List], CV-19-62500-00CL ([Sale Recognition and Vesting Order](#))
6. *Kidkraft, Inc. (Re)*, (June 28, 2024), Ont. S.C.J [Commercial List], CV-24-007220035-00CL ([Plan Confirmation Order, Sale Order, Termination of CCAA Proceedings, and Related Relief](#))
7. *Kidkraft, Inc. (Re)*, (June 28, 2024), Ont. S.C.J [Commercial List], CV-24-007220035-00CL ([Endorsement of Justice Cavanaugh](#))
8. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
9. *Pier Imports Inc. et al. (Re)*, (October 13, 2020), Ont. S.C.J [Commercial List], CV-20-00636511-00CL ([Recognition of Confirmation Order](#))
10. *Revlon, Inc. et al. (Re)*, (April 21, 2023), Ont. S.C.J [Commercial List], CV-22-00682880-00CL ([Plan Confirmation Order and Termination of CCAA Proceedings](#))
11. *Revlon, Inc. et al. (Re)*, (April 21, 2023), Ont. S.C.J [Commercial List], CV-22-00682880-00CL ([Endorsement of Justice Conway](#))
12. *Teleglobe Inc. et al. (Re)*, (October 28, 2011), Ont. S.C.J [Commercial List], 02-CL-4528 (Order to Authorize Final Distribution, Terminate CCAA Proceedings and Other Ancillary Relief)

**SCHEDULE “B”**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

***COMPANIES’ CREDITORS ARRANGEMENT ACT***

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

**Cross-border Insolvencies**

**Application for recognition of a foreign proceeding**

**46** (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

**Documents that must accompany application**

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

**Documents may be considered as proof**

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

**Other evidence**

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative’s authority that it considers appropriate.

**Translation**

(5) The court may require a translation of any document accompanying the application.

### **Order recognizing foreign proceeding**

**47** (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

### **Nature of foreign proceeding to be specified**

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

### **Order relating to recognition of a foreign main proceeding**

**48** (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor 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 debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

### **Scope of order**

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

### **When subsection (1) does not apply**

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

### **Application of this and other Acts**

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

## **Other orders**

**49** (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

## **Restriction**

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

## **Application of this and other Acts**

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

## **Terms and conditions of orders**

**50** An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.



# SCHEDULE "C"

Court File No: 02-CL-4528



## ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

THE HONOURABLE

D.  
JUSTICE BROWN

) FRIDAY, THE 28<sup>TH</sup> DAY

)

) OF OCTOBER, 2011

IN THE MATTER OF the *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement  
of TELEGLOBE INC. and the other Applicants listed on Schedule "A"

Applicants

### ORDER TO AUTHORIZE FINAL DISTRIBUTION, TERMINATE CCAA PROCEEDINGS AND OTHER ANCILLARY RELIEF

THIS MOTION, by Kathleen A. Morgan ("Ms. Morgan"), in her capacity as plan administrator (the "Plan Administrator") in the insolvency proceedings of Teleglobe Inc. ("Teleglobe") and certain of its affiliates that are also applicants in these proceedings (collectively, the "Applicants") for an Order, amongst other things:

- (i) authorizing the Final Distribution (as hereinafter defined);
- (ii) discharging and releasing Ms. Morgan as Plan Administrator and confirming the appointment of Cbridgetrst LLC ("Caliolo") as successor Plan Administrator;
- (iii) upon the filing of the Plan Administrator's Certificate (as hereinafter defined), appointing Caliolo as the Distribution Agent (as hereinafter defined) and

authorizing the Distribution Agent to make Supplemental Distributions (as hereinafter defined), to undertake such other duties as may be necessary to effect the orderly wind-up and dissolution of the Applicants, and requiring the Distribution Agent to report to this Court in respect thereof;

- (iv) permitting the Distribution Agent, in its discretion, to not make any Supplemental Distributions to a creditor where the amount payable to such creditor is less than \$50.00;
- (v) approving the Document Destruction Process (as hereinafter defined);
- (vi) authorizing the release of the Unresolved Claims Reserve and the Post-Filing Claims Reserve (as each such term is defined in the Applicants' consolidated plan of arrangement or compromise dated January 26, 2005 (the "**Plan**"));
- (vii) authorizing the release of amounts held by the Monitor in respect of Intelsat, pursuant to Orders of this Honourable Court in these proceedings dated August 27, 2002 and March 12, 2004 (collectively, the "**Intelsat Orders**"), respectively;
- (viii) discharging any remaining Court-Ordered Charges (as hereinafter defined);
- (ix) authorizing the dissolution of the remaining Applicants, and directing Industry Canada and the Registraire des entreprises du Québec to accept such documents as shall be required to effect the wind-up or dissolution of Teleglobe Inc., Teleglobe Financial Holdings Ltd. and Teleglobe Canada Limited Partnership;
- (x) discharging and releasing the Plan Administrator;
- (xi) discharging and releasing Ernst & Young Inc. ("**E&Y**") as monitor (the "**Monitor**"), interim administrator (the "**Interim Administrator**") and Intelsat Escrow Agent (as such term is defined in the Intelsat Orders); and
- (xii) terminating these *Companies' Creditors Arrangement Act* proceedings (the "**CCAA Proceedings**") upon the filing of the Plan Administrator's Certificate,

was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Kathleen A. Morgan sworn October 7, 2011 and the exhibits thereto (the “**Affidavit**”), the affidavit of John J. Caliollo sworn October 21, 2011 and the exhibits thereto (the “**Caliolo Affidavit**”), the affidavit of John N. Birch sworn October 26, 2011 and the thirty-sixth report of the Monitor dated October 11, 2011 (the “**36<sup>th</sup> Report**”), and on hearing submissions from counsel for the Plan Administrator and counsel for the Monitor and Interim Administrator, no one appearing for any other person on the service list, although served as appears from the affidavit of service of Denise Grant, sworn October 26, 2011, filed:

**SUCCESSOR PLAN ADMINISTRATOR**

1. **THIS COURT ORDERS AND DECLARES** that the appointment of Caliollo as successor Plan Administrator is confirmed, and that Caliollo as successor Plan Administrator shall continue to have all the powers and authority vested in the Plan Administrator by virtue of the Plan and the Plan Administration Agreement (as such terms are defined in the Affidavit) and any Order made in these proceedings.
2. **THIS COURT ORDERS AND DECLARES** that Ms. Morgan be and is hereby released and discharged from any and all liability that she now has or may hereafter have by reason of, or in any way arising out of, her acts or omissions while acting in her capacity as Plan Administrator herein, including with respect to any reliance thereon, save and except for any gross negligence or wilful misconduct on her part. Without limiting the generality of the foregoing, Ms. Morgan is hereby forever released and discharged from any and all liability relating to matters that were raised, or that could have been raised, within the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on her part.
3. **THIS COURT ORDERS** that all claims of any Person (as defined in the Plan), whether such claims are direct, indirect, derivative or otherwise, against Ms. Morgan in her capacity as Plan Administrator, arising from or relating to her capacity, conduct or the services provided to the Applicants in the CCAA Proceedings, including with respect to any reliance thereon and including without limitation, any act or omission pertaining to the discharge of duties under the Plan, or with respect to any other duties or obligations in respect of the implementation of the

Plan, shall be and are hereby stayed, extinguished and forever barred from enforcement and Ms. Morgan shall have no liability in respect thereof, save and except for any claim against her for gross negligence or wilful misconduct on her part.

**FINAL DISTRIBUTION AND PROCEEDS RECEIVED AFTER THE FINAL DISTRIBUTION**

4. **THIS COURT ORDERS AND DECLARES** that the Plan Administrator be and is hereby authorized to distribute, in one or more final distributions (collectively, the “**Final Distribution**”) to the Unsecured Creditors (as such term is defined in the Plan) in accordance with the Plan, all remaining funds in its control together with all funds received by it on or before November 15, 2011 (the “**Final Distribution Date**”), including the Settlement Proceeds (collectively, the “**Final Distribution Funds**”).

5. **THIS COURT ORDERS** that, upon the filing of the Plan Administrator's Certificate in accordance with paragraph 27 herein, Caliollo be and is hereby appointed as a distribution agent (the “**Distribution Agent**”) for the purpose of receiving and distributing, in accordance with this Order, the Plan and the Litigation Protocol (as such term is defined in the Plan), proceeds derived from the Applicants' remaining assets, if any, that are received after the Final Distribution Date, including any funds received or held after the Final Distribution Date as a result of cheques remaining uncashed six months after issuance or refunds (collectively, the “**Post-Distribution Funds**”) in distributions supplemental to the Final Distribution (collectively, the “**Supplemental Distributions**”), and to undertake such other duties as may be necessary to effect the orderly wind-up and dissolution of the Applicants as soon as practicable.

6. **THIS COURT ORDERS** that the Distribution Agent shall file with this Court, a report, at least once annually, the first such report to be delivered and filed no later than one year from the date of this Order, setting out the status of funds received and distributed, tax filings, corporate dissolutions, and the status of matters generally. The Distribution Agent shall continue to deliver to the Monitor for posting on the Monitor's website, and file such reports until such time as it has disbursed all Post-Distribution Funds in accordance with the terms of this Order, and completed all other outstanding matters related to its activities including but not limited to those matters on which it is required to report, or October 31, 2015, whichever is earlier.

7. **THIS COURT ORDERS AND APPROVES** the engagement letter entered into between the Plan Committee (as such term is defined in the Plan) and the Distribution Agent, in the form attached as Exhibit "C" to the Caliolo Affidavit, filed with this Court.

8. **THIS COURT ORDERS AND DECLARES** that the Distribution Agent be and is hereby authorized and directed to take control, into a separate bank account under the control of the Distribution Agent, of any and all Post-Distribution Funds, and that all powers and authority necessary to deal with such Post-Distribution Funds in accordance with and subject to the terms of the Plan, the Litigation Protocol and this Order be and are hereby vested in the Distribution Agent.

9. **THIS COURT ORDERS AND DECLARES** that, in making the Final Distributions or Supplemental Distributions, as applicable, and upon the consent of each to attorn to the jurisdiction of this Court, the Plan Administrator and the Distribution Agent be and are hereby authorized and directed, except as otherwise set out herein, to abide by the terms of the Litigation Protocol and the Plan, including any adjustments or re-allocations provided for therein in respect of any uncashed cheques or returned funds.

10. **THIS COURT ORDERS** that, in addition to the other obligations imposed on the Distribution Agent in this Order, the Distribution Agent be and is hereby required to effect the distribution of the Post-Distribution Funds, if any, as follows:

- (a) to the extent proceeds are received on or before October 31, 2012 (or during any subsequent twelve month period commencing on October 31 of each year, and ending October 31, 2015, or at such earlier time as the Distribution Agent is satisfied that all Post-Distribution Funds have been finally received) whether from one or more of the Applicants' debtors or otherwise, and such proceeds are in the aggregate in excess of US\$25,000, then the Distribution Agent shall be required to distribute such funds to the Unsecured Creditors in accordance with the Plan or the Litigation Protocol, as applicable; and
- (b) to the extent proceeds are received on or before October 31, 2015, or at such earlier time as the Distribution Agent is satisfied that all Post-Distribution Funds

have been finally received, whether from one or more of the Applicants' debtors or otherwise, and such proceeds not yet distributed are in the aggregate less than US\$25,000, then the Distribution Agent shall remit such amount to Centraide Montréal.

11. **THIS COURT ORDERS AND DECLARES** that notwithstanding the terms of the Plan and the Litigation Protocol, the Applicants and the Distribution Agent be and are hereby permitted in their discretion not to make any *de minimus* Supplemental Distribution to an Unsecured Creditor, where the amount due to that creditor at the time of such distribution is less than US \$50 and, that the resulting undistributed Post-Distribution Funds be redistributed in accordance with the Plan, the Litigation Protocol and this Order.

#### **DOCUMENT DESTRUCTION PROCESS**

12. **THIS COURT ORDERS** that the Plan Administrator and the Distribution Agent be and are hereby authorized to implement and proceed with the destruction of the Applicants' books, records and files pertaining to the periods (i) prior to February 16, 2000 and (ii) after May 15, 2002 (collectively, the "**Specified Documents**"), and otherwise in accordance with the process and according to the timelines set out in more detail in the Affidavit (the "**Document Destruction Process**"), and that the Plan Administrator shall have no further obligation concerning the Specified Documents pursuant to Section 5.1(a) of the Plan Administration Agreement (as such term is defined in the Plan).

#### **RELEASE OF RESERVES**

13. **THIS COURT ORDERS** that the funds contained in the Unresolved Claims Reserve be and are hereby released to the Plan Administrator, or as the Plan Administrator may direct, and that the Plan Administrator shall be authorized to distribute such funds to the Unsecured Creditors in accordance with the Plan.

14. **THIS COURT ORDERS** that the Monitor be authorized and directed to release and hereby is authorized and directed to release all funds contained in the Post-Filing Claims Reserve currently held by the Monitor to the Plan Administrator, or as the Plan Administrator may direct,

and that the Plan Administrator shall be authorized to distribute such funds to the Unsecured Creditors in accordance with the Plan.

15. **THIS COURT ORDERS** that the Monitor be authorized and directed to release and hereby is authorized and directed to release all funds contained in the “Intelsat Escrow”, as referred to in the Intelsat Orders and the “Escrow Agreement” referred to in the August 27, 2002 Order, to the Plan Administrator or as the Plan Administrator may direct, and the Plan Administrator shall be authorized to distribute such funds to the Unsecured Creditors in accordance with the Plan.

#### **DISCHARGE OF COURT-ORDERED CHARGES**

16. **THIS COURT ORDERS AND DECLARES** that the Creditor Professional Charge (as defined in the Affidavit), the Teleglobe Charge (as defined in the Affidavit) and the Escrow Agent Charge (as defined in the Affidavit) (collectively, the “**Court-Ordered Charges**”) be and are hereby fully and finally discharged.

#### **DISSOLUTION OF THE REMAINING APPLICANTS**

17. **THIS COURT ORDERS AND DECLARES** that the Distribution Agent be and is hereby authorized to execute and file, at such time as the Distribution Agent determines to be appropriate, with Industry Canada, the Registraire des entreprises du Québec, and any other applicable governmental entity, such documents as shall be required to effect the wind-up or dissolution of any Applicant.

18. **THIS COURT ORDERS** that Industry Canada and the Registraire des entreprises du Québec be and are hereby required to accept such documents as shall be required to effect the wind-up or dissolution of Teleglobe Inc., Teleglobe Financial Holdings Ltd. and Teleglobe Canada Limited Partnership.

#### **DISCHARGE OF PLAN ADMINISTRATOR**

19. **THIS COURT ORDERS AND DECLARES** that Caliolo, together with its professional advisors, be and is hereby released and discharged from any and all liability that he now has or may hereafter have by reason of, or in any way arising out of, his acts or omissions

while acting in his capacity as Plan Administrator herein, including with respect to any reliance thereon, save and except for any gross negligence or wilful misconduct on his part. Without limiting the generality of the foregoing, the Plan Administrator, together with its professional advisors, is hereby forever released and discharged from any and all liability relating to matters that were raised, or that could have been raised, within the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on the Plan Administrator's part.

20. **THIS COURT ORDERS** that, effective upon the filing of the certificate provided in paragraph 27, all claims of any Person (as defined in the Plan), whether such claims are direct, indirect, derivative or otherwise, against the Plan Administrator and its professional advisors, arising from or relating to its capacity, conduct or the services provided to the Applicants in the CCAA Proceedings, including with respect to any reliance thereon and including without limitation, any act or omission pertaining to the discharge of duties under the Plan, or with respect to any other duties or obligations in respect of the implementation of the Plan, shall be and are hereby stayed, extinguished and forever barred from enforcement and the Plan Administrator and its professional advisors shall have no liability in respect thereof, save and except for any claim against the Plan Administrator for gross negligence or wilful misconduct on his part.

21. **THIS COURT ORDERS** that the Plan Administrator shall be discharged of his duties and obligations pursuant to the Plan, the Plan Administration Agreement and all Orders made in the CCAA Proceedings upon the filing with this Court of the Plan Administrator's Certificate (as such term is defined below).

**DISCHARGE OF MONITOR, INTERIM ADMINISTRATOR AND INTELSAT  
ESCROW AGENT**

22. **THIS COURT ORDERS** that all actions and conduct of, and reports of the Monitor and Interim Administrator including, but not limited to the 36<sup>th</sup> Report of the Monitor and the activities described therein, be and are hereby approved.

23. **THIS COURT ORDERS AND DECLARES** that each of E&Y LLP and E&Y Inc. (hereinafter, collectively, "E&Y"), together with their professional advisors, be and is hereby



released and discharged from any and all liability that E&Y now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of E&Y while acting in its capacity as Monitor or Interim Administrator or Intelsat Escrow Agent herein, including with respect to any reliance thereon, save and except for any gross negligence or wilful misconduct on the part of the Monitor, Interim Administrator or Intelsat Escrow Agent. Without limiting the generality of the foregoing, they and each of them and their professional advisors are hereby forever released and discharged from any and all liability relating to matters that were raised, or that could have been raised, within or related to the CCAA Proceedings, save and except for any gross negligence or wilful misconduct on the part of the Monitor, Interim Administrator or Intelsat Escrow Agent.

24. **THIS COURT ORDERS** that, effective upon the filing of the certificate provided in paragraph 27, all claims of any Person, whether such claims are direct, indirect, derivative or otherwise, against E&Y, in its capacity as Monitor, Interim Administrator, or Intelsat Escrow Agent and their professional advisors arising from or relating to its capacity, conduct or the services provided to the Applicant in the CCAA Proceedings including with respect to any reliance thereon and including without limitation, any act or omission pertaining to the discharge of duties under the Plan or as requested by the Plan Administrator or with respect to any other duties or obligations in respect of the implementation of the Plan (including but not limited to the discharge of its duties as Intelsat Escrow Agent) shall be and are hereby stayed, extinguished and forever barred from enforcement and E&Y, in its capacity as Monitor, Interim Administrator or Intelsat Escrow Agent and their professional advisors, shall have no liability in respect thereof, save and except for any claim against E&Y, in its capacity as Monitor, Interim Administrator or Intelsat Escrow Agent, for gross negligence or wilful misconduct on its part.

25. **THIS COURT ORDERS** that E&Y, in its capacity as Interim Administrator and Intelsat Escrow Agent, be and is hereby released and discharged, effective immediately.

26. **THIS COURT ORDERS** that, notwithstanding the discharge as provided for in this Order, of the appointment of E&Y as Monitor pursuant to the Initial Order issued on May 15, 2002, and as Interim Administrator pursuant to an order of this Court issued on February 19, 2003, E&Y shall continue to be authorized to report to this Court in respect of reports of the Distribution Agent and related matters, to post such Distribution Agent reports on the website

www.EY.com/CA/teleglobe and to be compensated by the Distribution Agent from the estate in respect thereof.

27. **THIS COURT ORDERS** that the Monitor shall be discharged of its duties and obligations pursuant to the CCAA, the Plan and all Orders made in the CCAA Proceedings, upon the filing with this Court of a certificate of the Plan Administrator (the “**Plan Administrator’s Certificate**”) certifying that the Final Distribution has been made.

#### **TERMINATION OF CCAA PROCEEDINGS**

28. **THIS COURT ORDERS** that, except as expressly set out in this Order and for the benefit and protections provided to the Monitor, Interim Administrator and to the Plan Administrator pursuant to the CCAA and the Orders of the Court made in the CCAA Proceedings, the CCAA Proceedings shall be and are hereby terminated effective on the filing of the Plan Administrator’s Certificate, and no further documents or materials, including reports of the Distribution Agent, shall be served on those parties on the Service List.



FILED AT / LEVÉ À TORONTO  
ON / LE 28 OCT 2011  
LE / DANS LE REGISTRE NO.:  
OCT 28 2011

REGISTRAR:



IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36,  
as amended

Court File No: 02-CL-4528

AND IN THE MATTER OF a Plan of Compromise or Arrangement of TELEGLOBE INC.  
and the other Applicants listed in Schedule "A"

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER TO AUTHORIZE FINAL  
DISTRIBUTION, TERMINATE  
CCAA PROCEEDINGS AND  
OTHER ANCILLARY RELIEF**

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Lawyers for the Plan Administrator

IN THE MATTER OF the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

AND IN THE MATTER OF a Plan of Compromise or Arrangement of TELEGLOBE INC. and the other Applicants listed in Schedule "A"

Court File No: 02-CL-4258


Oct 28/11

Administratrix has understood temporary agreement as document retention issue with BNP Paribas which is reflected in the amended draft order.

No other person appeared to oppose the motion.

Order to go in accordance with draft filed which I have signed. I am satisfied that the proposed course of action is reasonable and consistent with the Plan.

Paribas to continue discussions on document retention and to approve before me on Nov 14/11 to deal with the matter.

  
D.M. BROWN

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

Proceeding commenced at Toronto

MOTION RECORD  
(RETURNABLE OCTOBER 28, 2011)

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Lawyers for the Plan Administrator

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

Court File No: CV-19-620484-00CL

AND IN THE MATTER OF HSP LIQUIDATION, LLC, HHFH LIQUIDATION, LLC, HSPK LIQUIDATION, LLC, PCF LIQUIDATION, LLC, PCFC LIQUIDATION, LLC, HSPC LIQUIDATION LIMITED

APPLICATION OF HSP LIQUIDATION, LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

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