

**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 A PLAN OF COMPROMISE OR
ARRANGEMENT OF JAMES E. WAGNER CULTIVATION
CORPORATION, JAMES E. WAGNER CULTIVATION LTD., JWC 1
LTD., JWC 2 LTD., JWC SUPPLY LTD. AND GROWTHSTORM INC.**

Applicants

FACTUM OF THE APPLICANTS

August 24, 2020

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FACTUM OF THE APPLICANTS

PART I: INTRODUCTION

1. James E. Wagner Cultivation Corporation, James E. Wagner Cultivation Ltd., JWC 1 Ltd., JWC 2 Ltd., JWC Supply Ltd. and GrowthStorm Inc. (collectively, the "**Applicants**") are in the process of trying to close a sale transaction for substantially all of the Applicants' assets (the "**Transaction**", as described below). The particular form of order sought to be granted under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") will depend on whether the Transaction has closed prior to the date of the hearing of this motion. Therefore, in this factum, the Applicants are addressing the proposed two forms of order, and will inform the Court which order is being sought at or prior to the hearing of the motion.

2. If the Transaction closes on August 28, 2020, as anticipated, the Applicants will be seeking an order with the following relief, *inter alia*:

- (a) an extension of the Stay of Proceedings (defined below) until the Monitor files a discharge certificate terminating the CCAA proceedings; and
- (b) expanding the powers of the Monitor upon the resignation of the Applicants' board of directors (the "**Closing Order**").

3. If the Transaction does not close by August 28, 2020, the Applicants will be seeking an order with the following relief, *inter alia*:

- (a) an extension of the Stay of Proceedings until September 30, 2020, provided that if the Transaction closes prior to September 30, 2020, there will be an extension of

the Stay of Proceedings until the Monitor files a discharge certificate terminating the CCAA proceedings;

- (b) approving the execution by the Applicants of the Fifth Amendment to the Interim Financing Term Sheet, dated August 24, 2020 (the "**Fifth DIP Amendment**"), which will increase the maximum available borrowings under the current interim financing and associated charge by \$1 million (to a total of \$9.2 million); and
- (c) expanding the powers of the Monitor upon the resignation of the Applicants' board of directors (the "**Extension Order**").

PART II: FACTS

4. The facts underlying these proceedings are more fully set out in the affidavit of Nathan Woodworth, sworn March 31, 2020, the affidavit of Philip Armstrong, sworn April 6, 2020, and the Sixth Report of the Monitor dated August 24, 2020 (the "**Sixth Report**"), which is relied upon for purposes of this motion.

A. The CCAA Proceedings

5. On April 1, 2020, the Applicants, which operate in the cannabis industry, obtained an initial order (the "**Initial Order**") which, *inter alia*, granted a stay of proceedings until April 10, 2020 (the "**Stay of Proceedings**"), appointed the Monitor, and granted certain limited charges over the Applicants' property. The Initial Order also approved DIP financing in the maximum amount of \$4,000,000 (the "**DIP Loan**") with Trichome Financial Corp. ("**Trichome**") as the DIP Lender and a corresponding charge in the amount of \$800,000 (the "**DIP Lender's Charge**"), being the

amount to be funded in the initial 10 days as the amount necessary to continue ordinary course business operations during that time.

6. Trichome, in addition to being the DIP Lender, is the Applicants' first lien lender.

7. On April 9, 2020, the Applicants obtained an amended and restated initial order (the "**Amended and Restated Initial Order**"), *inter alia*, extending the Stay of Proceedings until June 26, 2020 and increasing the DIP Lender's Charge to \$4,000,000, being the total amount of the DIP Loan approved pursuant to the Initial Order.

8. On that same date, the Applicants also obtained a Bidding Procedures and Stalking Horse APA Approval Order, which approved a stalking horse asset purchase agreement with Trichome (the "**Stalking Horse APA**") as well as a sale and investor solicitation process (the "**SISP**") and related bidding procedures, in which Trichome acted as the stalking horse bidder.

9. On May 11, 2020, the Applicants sought and obtained the First DIP Amendment Order which, among other things, increased the maximum borrowings available under the DIP Loan, and the associated DIP Lender's Charge, up to \$5.5 million (an increase of \$1.5 million).

10. This increase was required largely due to the impact of the COVID-19 pandemic on sales, as well as certain sales that were originally forecasted to occur during the forecast period but were subsequently forecasted to occur at a later date. As a result of these events, the Applicants required additional funding in order to continue ordinary course business operations while the SISP was completed.

11. The SISP was subsequently completed pursuant to the court-approved bidding procedures, however no other qualified bids were received. As a result, the Applicants sought approval of the Stalking Horse APA as the successful bid.

12. On June 2, 2020, the Applicants obtained the Approval and Vesting Order which approved the Stalking Horse APA and vests in Trichome's designee all of the Applicants' rights, title and interest in and to the Purchased Assets under the Stalking Horse APA. In addition, on that same day, the Court granted the Second DIP Amendment Order, which, among other things, permitted Trichome to assign the DIP Term Sheet without the prior written consent of the Monitor, provided that Trichome guaranteed the funding obligations of any assignee. Additionally, it required that any reports prepared by the Chief Restructuring Officer for the Special Committee, or vice versa, be shared with Trichome. This non-material Second DIP Amendment was mainly intended to provide Trichome with flexibility to re-capitalize the Applicants.

13. On that same day, the Applicants also obtained an Ancillary Order to extend the Stay of Proceedings by four days (from June 26, 2020 to June 30, 2020) in order to align the Stay of Proceedings with the maturity date of the DIP Loan at that time.

14. On June 30, 2020, the Applicants obtained an order extending the Stay of Proceedings to July 31, 2020 and authorizing the Third DIP Amendment to increase the maximum available borrowings and associated charge by \$1.7 million (to a total of \$7.2 million) (the "**Third DIP Amendment and Stay Extension Order**").

15. The main reason behind the Third DIP Amendment and Stay Extension Order was the ongoing delay with respect to regulatory matters. In particular, the Transaction is conditional on the issuance of licenses that are substantially similar to the two Health Canada licenses held by the

Applicants.¹ The Health Canada licenses and associated regulatory matters had not yet been resolved and therefore the parties required more time to resolve the issues, and additional funding to continue ordinary course business operations during that time.

16. On July 30, 2020, the Applicants obtained an order extending the Stay of Proceedings to August 31, 2020, and authorizing a Fourth DIP Amendment to increase the maximum available borrowings under the DIP Loan and the associated DIP Lender's Charge by \$1 million (to a total of \$8.2 million) (the "**Fourth DIP Amendment and Stay Extension Order**"). The main reason behind the Fourth DIP Amendment and Stay Extension Order was that while the parties had made progress with Health Canada, the regulatory issues, including obtaining the requisite Health Canada licenses, remained outstanding and the Transaction could not yet close. Therefore, the Applicants required additional time and funding for ordinary course business operations while they continued to pursue the regulatory matters.

17. On that same day, July 30, 2020, the Applicants also obtained an order which, *inter alia*, terminates, upon the filing of a Discharge Certificate, these CCAA proceedings and discharges the Monitor, and authorizes the Monitor and/or the Applicants to file assignments into bankruptcy on behalf of the Applicants, if necessary (the "**CCAA Termination Order**"). The CCAA Termination Order was sought at that time to avoid the costs of later bringing another motion as it was anticipated at that time that the Transaction would close prior to the expiration of the current Stay of Proceedings.

¹ Sixth Report of KSV Kofman Inc. as Monitor, dated August 24, 2020 at para 1.0(8) [**Sixth Report**].

B. Status of the Transaction

18. The regulatory matters with Health Canada are advancing but have still not been resolved and therefore it is unclear if the Transaction will close prior to the hearing of this motion, and the expiration of the current Stay of Proceedings.² As such, the Applicants have put forward two draft orders on this motion depending on whether the parties are able to close the Transaction prior to the hearing of this motion.

C. Relief Sought if the Transaction Closes

19. Should the Transaction close prior to August 31, 2020, the Applicants are seeking the Closing Order, which will, *inter alia*, extend the Stay of Proceedings to allow the Applicants and the Monitor time to address wind-down and post-closing matters. Upon completion, the Monitor will file the Discharge Certificate and the Stay of Proceedings will terminate.³

20. It is also expected that the board of directors of each of the Applicants will resign shortly after closing. Therefore, the Applicants are also seeking relief to expand the Monitor's powers in that circumstance such that the Monitor will have all requisite authority to address any post-closing issues, such as outstanding tax filings. The expanded powers would only become effective upon the resignation of the directors.⁴

21. Once all post-closing and wind-down matters are completed, it is expected that the Monitor will assign the Applicants into bankruptcy.⁵

² *Ibid* at para 1.1(1).

³ *Ibid* at para 1.1(2).

⁴ *Ibid*.

⁵ *Ibid*.

D. Relief Sought if the Transaction Does Not Close

22. If the Transaction does not close prior to the hearing of this motion, the Applicants are seeking the Extension Order that will, *inter alia*, extend the Stay of Proceedings to September 30, 2020, and increase the DIP Loan, and associated DIP Lender's Charge, by \$1 million (for a total of \$9.2 million). This will provide additional time for the Transaction to close and provide the Applicants with funds to continue ordinary course business operations.⁶

23. However, if the Transaction closes on or before September 30, 2020, the Extension Order provides that the Stay of Proceedings will be extended until the Monitor files a Discharge Certificate terminating the CCAA proceedings.⁷

24. While the board of directors of each Applicant is expected to remain in place until the Transaction closes, once it does, it is expected that all of the directors will resign. Therefore, in the Extension Order, the Applicants are also seeking an expansion of the Monitor's powers to address any wind-down and post-closing matters.⁸

E. Cash Flow Forecast

25. The Cash Flow Forecast demonstrates that the Applicants require an additional \$1 million of funding to the end of September 2020.⁹

⁶ *Ibid* at para 1.1(3).

⁷ *Ibid*.

⁸ *Ibid*.

⁹ *Ibid* at para 3.0(1).

PART III: ISSUES

26. As the appropriate Order sought will depend on whether the Transaction has closed prior to the hearing of this motion, the relief sought in both the Closing Order and the Extension Order are addressed in this factum, resulting in the following three issues:

- (a) If the Transaction does not close, should the Fifth DIP Amendment be authorized?
- (b) Should the Stay of Proceedings be extended?
- (c) Whenever the Transaction closes and the board of directors of each Applicant resigns, should the powers of the Monitor be expanded?

PART IV: LAW AND ARGUMENT

A. The Fifth DIP Amendment Should be Approved

27. Where an increase in DIP financing is sought, the factors in section 11.2 of the CCAA are considered again.¹⁰ The bases for obtaining the DIP Loan and the DIP Lender's Charge in the Initial Order, and the Amended and Restated Initial Order, as well as the subsequent increases to the DIP Loan and the DIP Lender's Charge pursuant to the First DIP Amendment Order, Third DIP Amendment and Stay Extension Order, and Fourth DIP Amendment and Stay Extension Order¹¹ are still present and support the relief sought on this motion.

28. Subsection 11.2(1) of the CCAA provides the Court with the statutory jurisdiction to grant a DIP financing charge "on notice to the secured creditors who are likely to be affected by the

¹⁰ [*PCAS Patient Care Automation Services Inc. Re.* 2012 ONSC 2423](#) at para 9.

¹¹ As described in paragraph 12 of this Factum, the Second DIP Amendment Order was a non-material amendment and did not increase the amount of the DIP Loan.

security or charge – in an amount that the court considers appropriate...having regard to [the debtors'] cash-flow statement. The security or charge may not secure an obligation that exists before the order is made."

29. In accordance with this provision, notice has been provided to the secured creditors and, as with the existing DIP Lender's Charge, the charge does not secure an obligation that exists before the order is made.

30. Subsection 11.2(4) of the CCAA sets out the following non-exhaustive factors to be considered by the Court in deciding whether to grant a DIP financing charge:

11.2(4) *Factors to be considered.* – 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.

31. In addition to the considerations relied upon by this Honourable Court in granting the DIP Loan and the DIP Lender's Charge in the Initial Order and the Amended and Restated Initial Order, and the considerations relied upon in granting the First DIP Amendment Order, the Third DIP

Amendment and Stay Extension Order, and the Fourth DIP Amendment and Stay Extension Order, the following factors support approving the Fifth DIP Amendment in the Extension Order:

- (a) the increase in amount is appropriate in light of the Applicants' Cash Flow Forecast which reflects that the Applicants will require an additional \$1 million to the end of September 2020;
- (b) the additional funding is required to continue ordinary course business operations while the outstanding regulatory matters are addressed;
- (c) funding the business without disruption is in the best interests of all stakeholders as it will allow the Applicants to continue to operate the business while the Transaction is completed which will maximize recoveries and continue employment for approximately 110 employees;
- (d) the DIP Lender requires the additional advance be subject to the DIP Lender's Charge;
- (e) no stakeholder is prejudiced by the Fifth DIP Amendment; and
- (f) the Monitor is supportive of the Fifth DIP Amendment.¹²

B. The Extension to the Stay of Proceedings Should be Granted

32. In order to extend the Stay of Proceedings, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good

¹² Sixth Report, *supra* note 1 at paras 4.0(2)-4.0(3).

faith and with due diligence.¹³ A stay of proceedings is appropriate to provide the debtor with breathing room while it seeks to restore its solvency and emerge from the CCAA on a going concern basis.¹⁴

33. If the Transaction closes in advance of the return of the motion, the Applicants require an extension to the Stay of Proceedings in order to address certain wind-down matters, such as dealing with tax filings. If the Transaction does not close in advance of the return of the motion, the Applicants require an extension to the Stay of Proceedings to continue to operate the business in the ordinary course, and to provide additional time to deal with the requisite regulatory matters, until the Transaction can be completed in the best interests of their stakeholders. Both of these circumstances are appropriate situations in which to grant an extension to the Stay of Proceedings and further the purposes of this CCAA proceeding.¹⁵

34. Once the Transaction closes, and the Monitor files a Discharge Certificate, the Stay of Proceedings will come to an end.

35. In addition to the above:

- (a) since the granting of the Initial Order, the Applicants have acted and continue to act in good faith and with due diligence to complete a going concern sale under the CCAA, namely the implementation of the Transaction, while maintaining ordinary course business operations;

¹³ [Companies' Creditors Arrangement Act, RSC 1985, c. C-36](#), s. 11.02(3) [CCAA].

¹⁴ [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#) at para 14; [Target Canada Co., 2015 ONSC 303](#) at para 8.

¹⁵ Sixth Report, *supra* note 1 at paras 1.1(2)-(3), 5.0(2).

- (b) the Monitor supports the extension of the Stay of Proceedings in both circumstances (the Closing Order and the Extension Order);
- (c) the Applicants are forecast to have sufficient liquidity to fund their operations;
- (d) no creditor will be prejudiced by the extension; and
- (e) the Applicants are not aware of any party opposed to the proposed extension.¹⁶

C. Expansion of the Monitor's Powers

36. Pursuant to section 11 and paragraph 23(1)(k) of the CCAA, this Court has the authority to expand the powers of a monitor and grant additional powers as considered appropriate in furtherance of the purpose of the CCAA proceeding.¹⁷ Expansion of the role of a monitor, sometimes referred to as a "super monitor" have become increasingly common in CCAA proceedings.¹⁸

37. In this case, the expanded powers for the Monitor would only become effective upon resignation of the board of directors. At that time, the Monitor will need to address certain wind-down and post-closing matters, such as tax filings, in order to bring the CCAA proceedings to an

¹⁶ *Ibid* at para 5.0.

¹⁷ *CCAA*, *supra* note 13, s 11, s 23(1)(k); [Arrangement relatif à 9323-7055 Québec inc. \(Aquadis International Inc.\), 2020 OCCA 659](#) at paras 61-62 [9323-7055 Québec]; [Ernst & Young Inc v Essar Global Fund Limited, 2017 ONCA 1014](#) at paras 106-108, 117-118 [Essar Global].

¹⁸ [9323-7055 Québec](#), *ibid*; [Essar Global](#), *ibid*; [Essar Steel Algoma Inc. \(September 26, 2016\) Toronto, CV-15-000011169-00CL](#) (Order); [Sears Canada Inc. \(December 3, 2018\) Toronto, CV-17-11846-00CL](#) (Governance Protocol and Stay Extension Order); [Nortel Networks Corp. Re. 2009 CarswellOnt 9378](#) at para 4; [Nortel Networks Corporation. \(August 14, 2009\). Toronto, CV-09-CL-7950](#) (Expansion of Monitor's Role and Powers Order); [Nortel Networks Corporation. \(October 3, 2012\) Toronto, CV-09-CL-7950](#) (Monitor's Expansion of Power Order #2).

orderly and efficient end. As such, the expanded powers sought will further the purpose of these CCAA proceedings, and there should be no prejudice or impact on any stakeholder.¹⁹

PART V: RELIEF REQUESTED

38. The Applicants submit that they meet all of the qualifications required to obtain the requested relief and request that this Court grant the proposed form of Closing Order or Extension Order that is sought at the hearing of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 24, 2020

¹⁹ Sixth Report, *supra* note 1 at para 6.0.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. [Arrangement relatif à 9323-7055 Québec inc. \(Aquadis International Inc.\), 2020 QCCA 659](#)
2. [Century Services Inc v Attorney General \(Canada\), 2010 SCC 60](#)
3. [Ernst & Young Inc v Essar Global Fund Limited, 2017 ONCA 1014](#)
4. [Essar Steel Algoma Inc, \(September 26, 2016\) Toronto, CV-15-000011169-00CL](#) (Order)
5. [Nortel Networks Corp, Re, 2009 CarswellOnt 9378](#)
6. [Nortel Networks Corporation, \(August 14, 2009\), Toronto, CV-09-CL-7950](#) (Expansion of Monitor's Role and Powers Order)
7. [Nortel Networks Corporation, \(October 3, 2012\) Toronto, CV-09-CL-7950](#) (Monitor's Expansion of Power Order #2)
8. [PCAS Patient Care Automation Services Inc, Re, 2012 ONSC 2423](#)
9. [Sears Canada Inc, \(December 3, 2018\) Toronto, CV-17-11846-00CL](#) (Governance Protocol and Stay Extension Order)
10. [Target Canada Co, 2015 ONSC 303](#)

SCHEDULE B – STATUTES RELIED ON

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

Section 11

General power of court

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.

Section 11.02

Stays, etc. – initial application

(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.

Section 11.2

Interim financing

(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.

Section 23

Duties and functions

(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.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

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Court File No. CV-20-00639000-00CL

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Proceedings commenced in Toronto

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