



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-23-00696017-00CLDATE: MARCH 10, 2023REGISTRAR: LOUISE PATERSONNO. ON LIST: 1 @ 8:00 AMTITLE OF PROCEEDING: LOYALTYONE, CO.BEFORE JUSTICE: CONWAY**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
SEE ATTACHED PARTICIPANT INFORMATION SHEET		

ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of LoyaltyOne, Co. dated March 10, 2023.

[1] This is an application by LoyaltyOne, Co. for an initial order under the CCAA. The evidence on the application is set out in the affidavit of Shawn Stewart, President of the Applicant, sworn March 10, 2023 and the Pre-Filing Report of the Proposed Monitor dated March 10, 2023. All factual references in this Endorsement come from those materials.

THE APPLICANT AND ITS BUSINESS

[2] The Applicant operates the AIR MILES[®] Reward Program (the “**Program**”). The Applicant’s headquarters and primary place of business are in downtown Toronto. Its registered office is in Nova Scotia. The sole member of the Application is LVI Lux Financing S.ar.l., a Luxembourg-based entity. The ultimate parent company of the Applicant is Loyalty Ventures Inc. (“**LVI**”). It is a public Delaware corporation currently listed on the NASDAQ.

[3] Travel Services is a wholly-owned subsidiary of the Applicant. It arranges travel services for consumers enrolled in the Program (“**Collectors**”) in exchange for the redemption of Reward Miles, for cash, or for a combination of both. Travel Services is regulated by various travel statutes.

[4] Contemporaneously with this Application, the Applicant's affiliates, the U.S. Debtors, are commencing Chapter 11 Proceedings in the U.S. Bankruptcy Court.

[5] The Program was originally launched in Canada in 1992. It is a full-service, outsourced loyalty program that assists its clients ("**Partners**") in acquiring and retaining customers through the issuance and redemption of Reward Miles. The economic driver of the business is focused on a small group of Partners who pay the Applicant a fee per Reward Mile issued. In return, the Applicant provides services to Partners and Collectors, including marketing, analytics, customer services, and redemption management. The Applicant uses the information gathered through the Program to help Partners design and implement effective marketing programs.

[6] BMO is the Applicant's most significant Partner. In 2022, BMO issued approximately 50% of all Reward Miles issued. BMO has been working with the Applicant and LVI to develop a path forward to ensure that the Program continues to operate as a going concern. Although the Applicant does not seek any relief in that regard today, BMO has agreed to provide DIP financing and to act as a stalking horse bidder as part of a proposed SISP designed to seek the maximum value for stakeholders.

[7] Reward Miles are divided into two categories based on the type of rewards for which Collectors can redeem them: (i) miles that can be instantly redeemed toward in-store purchases at participating Partners ("**AIR MILES[®] Cash Miles**"); and (ii) miles that can be redeemed for travel, merchandise, donations, or other rewards ("**AIR MILES[®] Dream Miles**").

[8] Collectors can redeem AIR MILES[®] Dream Miles when booking travel-related services through Travel Services. The Applicant's largest travel Reward Suppliers include Air Canada, West Jet, and various tour operators. Collectors can also redeem AIR MILES[®] Dream Miles for electronics and other consumer goods. The Applicant contracts with other Reward Suppliers, third-party vendors and logistics providers, to purchase, warehouse, and ship most of these items to Collectors.

[9] Over 10 million Canadians participate in the Program. Some Collectors redeem for once in a lifetime experiences or luxury goods. Collectors who redeem their AIR MILES[®] Dream Miles do so typically within 38 months of issuance (approximately 7 months for AIR MILES[®] Cash Miles). Approximately 473,000 Specified Collectors currently hold Reward Miles entitling them to redeem for rewards valued at over \$1,000.

[10] In 2001, to assure the Collectors and Partners that funds would be available to satisfy its obligations to Collectors, the Applicant's predecessor established the Reserve Account, which holds a significant portion of the funds received by the Applicant from its Partners. As at March 2, 2023, the Reserve Account had a balance of approximately US\$566 million. The Reserve Security grants the Reserve Trustee a pledge of the Reserve Account as security for the Applicant's obligations to Collectors in respect of "Immediately Redeemable" Reward Miles and the performance by the Applicant of its obligations under the Reserve Agreement and Reserve Security.

[11] The Applicant employs 750 people across Canada. Approximately 700 of the employees are in Ontario and the others work remotely in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, and Nova Scotia. The Applicant leases four office locations in Toronto, Montreal, Calgary, and Vancouver, but it sublets the Montreal and Calgary locations. None of the employees are unionized. The Applicant does not sponsor any registered pension plans.

The Financial Position of the LoyaltyOne Entities

[12] With respect to secured debt, the Applicant and other LVI subsidiaries have guaranteed the obligations of LVI and the other Borrowers to the Credit Agreement Lenders. The Credit Facilities consist of a US\$175 million Term Loan A facility; a US\$500 million Term Loan B facility; and a revolving credit facility in the maximum amount of US\$150 million. As of March 9, 2023, the principal amount outstanding under the Credit Agreement is estimated to be US\$656 million (plus approximately \$8 million in letters of credit). The obligations under the

Credit Agreement are secured by, among other things, a first priority security interest in the Credit Agreement Collateral, being all personal property of the Borrowers and the Guarantors, including the Applicant. The Credit Agreement Collateral excludes the Reserve Account. The Credit Agreement is in default as a result of the U.S. Proceedings and this proceeding, and the Applicant cannot repay the amounts owing under the Credit Agreement.

[13] The Applicant has obligations to provide rewards to Collectors when they redeem Reward Miles. The Applicant has granted the Reserve Trustee security over the Reserve Account to secure the obligations of the Applicant to the Collectors.

[14] The Applicant also has significant unsecured obligations, including:

- a. Employee Liabilities. The Applicant's gross bi-weekly payroll obligation is approximately \$3 million. The Applicant has funded payroll for the March 10, 2023 payroll. As of March 9, 2023, the Applicant estimates it will also have approximately \$2 million in accrued vacation pay liability;
- b. Taxes. As of February 28, 2023, the Applicant owed approximately \$2.2 million in federal and provincial goods and services taxes. The Applicant has remitted \$33.9 million in tax instalments for 2022. It may also owe further amounts as its 2022 tax returns are due on June 30, 2023 and have not yet been prepared;
- c. Reward Suppliers. As of March 8, 2023, the Applicant owed approximately \$7.7 million to Reward Suppliers for redemptions by Collectors (which amount includes services booked by Travel Services);
- d. Related Companies. On a monthly basis, the Applicant remits approximately \$500,000 to LVI for Intercompany Services, historically inclusive of amounts paid to Bread (the Applicant's former parent) by LVI under the Transition Services Agreement (TSA). The amount to be paid to LVI will not include the amounts for TSA services going forward;
- e. Corporate Vendors. As of March 8, 2023, the Applicant has been invoiced by Corporate Vendors for the aggregate amount of approximately \$18.1 million for the provision of services by them. Additional amounts have been accrued but are not yet invoiced;
- f. Landlords. The Applicant owes approximately \$960,000 in rent obligations for March 2023 in respect of the Toronto Lease; and
- g. Litigation. The Applicant is named as a defendant in five class action lawsuits as well as certain small claims actions.

FINANCIAL DIFFICULTIES

[15] According to Mr. Stewart, the Applicant is insolvent. It does not have adequate liquidity to operate its business in the ordinary course and, without the protection of the CCAA, it will not be able to complete a going concern transaction for the benefit of stakeholders. LVI and its subsidiaries are unable to satisfy the obligations under the Credit Agreement. He explains that in 2021, the Applicant's former parent company, Bread Financial Holdings, Inc. ("**Bread**"), undertook the Spinoff Transaction that moved its loyalty programs businesses, including AIR MILES[®], to a newly created public parent company, LVI. According to Mr. Stewart, to effect the Spinoff Transaction, Bread required LVI to borrow and the Applicant and others to guarantee US\$675 million pursuant to the Credit Agreement, and to transfer the proceeds to Bread. He states that Bread extracted US\$100 million of cash from the balance sheets of the Applicant and other LVI subsidiaries. He also states that Bread caused LVI to enter into significant operational agreements, including a tax matters agreement, a Transition Services Agreement and an Employee Matters Agreement.

[16] According to Mr. Stewart, these obligations have created challenges for LVI and its subsidiaries. On January 20, 2023, LVI notified the Applicant that it lacked sufficient funds to make a required payment on account of the Swing Line Loans in the amount of US\$3 million. LVI sent similar notices to the Applicant on January 25 and 27, 2023 with respect to amounts owing under the Credit Agreement. The Applicant paid approximately US\$7 million directly to the Credit Facility Agent pursuant to the guarantee provisions of the Credit Agreement.

[17] According to Mr. Stewart, LVI's cash constraints created serious risks for the Applicant as it required administrative and operational support from LVI. If LVI had ceased to pay its liabilities, LVI could not have continued to provide key functions, which would have had a deleterious impact on the Applicant's ability to operate the AIR MILES[®] business and to explore a going-concern solution. Therefore, on February 28, 2023, the Applicant made an intercompany loan to LVI in the amount of \$18 million to permit LVI to pay fees, costs, and expenses that it incurred or will incur to develop and implement the Global Transactions.

Cash Flow Statement

[18] The Cash Flow Statement was prepared with the assistance of the Restructuring Advisor in consultation with the Proposed Monitor. It shows the Applicant has sufficient liquidity to fund its obligations during the Initial Stay Period but will require access to funds under the DIP Financing Facility to satisfy obligations after that time.

Response to Financial Difficulties

[19] According to Mr. Stewart, since the spring of 2022, the Applicant made significant efforts to strengthen the business. The Applicant's new executive team expanded the focus of the AIR MILES[®] business and sought ways to strengthen Collector engagement. However, the Applicant and LVI realized in the summer of 2022 that without improved performance in all aspects of the business, they would be unable to comply with the covenants set out in the Credit Agreement. As a result, LVI and the Applicant, with the assistance of advisors, entered into negotiations with certain *ad hoc* groups of Credit Agreement Lenders.

[20] In addition, the Applicant approached BMO to discuss the Applicant's liquidity challenges and a potential recapitalization transaction. Following negotiations, the Applicant determined that a CCAA proceeding, with BMO acting as stalking horse purchaser and DIP lender, provides the best path forward by allowing the Applicant to test the market while also being able to assure its stakeholders, including millions of Collectors, that a transaction for a going concern sale will be completed and their Reward Miles will remain secure.

[21] At the same time, LVI worked with the Credit Agreement Lenders to develop a plan for the U.S. Proceedings, including the establishment by LVI of a liquidating trust.

[22] There is considerable support for this CCAA Application from those that attended the hearing today. Counsel for the Proposed Monitor, BMO, and the various Credit Agreement Lenders in attendance expressed their support for the Application and the plans that have been developed for a path forward in the form of the Global Transactions.

APPLICATION FOR AN INITIAL ORDER

The CCAA Applies

[23] The CCAA applies to a "debtor company" if the total claims against it exceed \$5 million. The Applicant is incorporated under Nova Scotia's *Companies Act*, RSNS 1989, c. 81. The Applicant is insolvent and the claims against it, including its secured guarantee obligations in excess of US\$656 million, exceed the \$5 million statutory requirement. The Applicant is a "debtor company" under the CCAA.

[24] A debtor company may bring an application under the CCAA in the province within which its head office or chief place of business is located (s. 9). The Applicant maintains its head office and a majority of its employees in Ontario. This court is the appropriate forum.

The Stay of Proceedings is Appropriate

[25] This court may grant a stay of proceedings of up to 10 days on an initial application, provided it is satisfied that: (i) such a stay is appropriate; and (ii) the Applicant has acted in good faith and with due diligence (s. 11.02(1), (3)). The threshold for a stay is low and a debtor company only has to satisfy this court that a stay of proceedings would “usefully further” its efforts to reorganize.¹ A sale under the CCAA is considered an appropriate use of the CCAA.²

[26] I am satisfied that the Stay of Proceedings sought by the Applicant is necessary for the Applicant to pursue a going-concern transaction for the benefit of its stakeholders.

[27] This Court’s inherent jurisdiction also empowers it to extend a stay to a non-applicant.³ Courts often do so where the debtor company’s business is so intertwined with another entity that not extending it to the other entity would significantly impair the effectiveness of the stay for the debtor company.⁴

[28] I am satisfied that Travel Services is a necessary part of the AIR MILES® business. Travel Services meets the statutory and insurance requirements to arrange travel services for the Collectors. The Applicant itself does not meet the regulatory requirements. Further, Travel Services’ shares are pledged as security for the obligations under the Credit Agreement. If actions are taken against Travel Services either to enforce obligations related to Reward Suppliers or otherwise, the AIR MILES® business will be impaired. I am therefore extending the stay to Travel Services.

Continuation of the Business and Payment of Pre-Filing Obligations

[29] The purpose of the CCAA is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets.⁵ To meet this purpose, this Court has allowed debtor companies to pay pre-filing obligations where appropriate, particularly where failure to do so could frustrate the debtor company’s ongoing operations.⁶

[30] The Applicant submits that the continued operation of the Program is predicated on the continued active participation of Collectors, Partners, and Reward Suppliers. Any disruption in Collectors’ abilities to redeem the Reward Miles, including those earned prior to the commencement of this CCAA proceeding, creates a significant risk that Collectors will lose confidence and cease participating in the Program to the detriment of the Applicant’s business and its stakeholders.

[31] The Applicant requests the authority to continue to comply with the terms of the Reserve Agreement, including funding any deficit amounts. The Applicant believes that such funding is necessary to assure Collectors that their Reward Miles are available and that they will continue to enjoy the benefits of the Program. Further, the Applicant has identified Corporate Vendors who are critical to maintaining Collector confidence and who

¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 70; *Industrial Properties Regina Limited v. Copper Sands Land Corp.*, 2018 SKCA 36 at para. 21.

² *9354-9186 Quebec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. 42, 43; *First Leaside Wealth Management Inc. (Re)*, 2012 ONSC 1299 at para. 32. See also *North American Tungsten Corporation Ltd., Re*, 2015 BCSC 1376 at paras. 27, 30.

³ *Air Canada, Re* (2003), 28 C.B.R. (5th) 52, 2003 CarswellOnt 9109 at para. 17.

⁴ See *Nordstrom Canada Retail Inc.*, 2023 ONSC 1422 at paras. 30 – 32. *4519922 Canada Inc., Re*, 2015 ONSC 124 at para. 37; see also *Lehndorff General Partner Ltd., Re* (1993), 9 B.L.R. (2d) 275, 1993 CarswellOnt 183 at para. 21.

⁵ *Century Services* at paras. 15, 59.

⁶ See *Cinram International Inc., Re*, 2012 ONSC 3767 at para. 37. See also *McEwan Enterprises Inc.*, 2021 ONSC 6453 at paras. 32 – 33; *Clover Leaf Holdings Company, Re*, 2019 ONSC 6966 at para. 25.

cannot be easily replaced with other providers. It submits that any limitations on the Applicant's ability to respond to Collectors' needs because of operational disruption could harm the business.

[32] The Applicant seeks: (i) authorization to honour its obligations to make pre-filing payments in respect of the Program (including honouring Reward Miles and Reward Supplier obligations); and (ii) authorization (but not a requirement) to make additional pre-filing payments with the oversight and consent of the Monitor (collectively, the "**Pre-Filing Payment Relief**").

[33] The Proposed Monitor supports the Pre-Filing Payment Relief. The Pre-Filing Payment Relief is also consistent with the relief granted by this Court to other companies in recent CCAA proceedings.⁷ I consider it acceptable under the circumstances and grant the Pre-Filing Payment Relief.

The Monitor

[34] The Proposed Monitor is a licensed trustee within the meaning of section 2 of the BIA and has signed a consent to act as the Monitor of the Applicant. The Proposed Monitor is qualified under section 11.7 of the CCAA. I appoint KSV Restructuring Inc. as Monitor.

[35] Section 23 of the CCAA requires the Monitor to, among other things, within 5 days of the initial order (i) provide notice to all creditors holding claims over \$1,000 in the prescribed form and (ii) prepare a list showing the names and addresses of those creditors and the estimated amount of those claims and make it publicly available, "except as otherwise ordered by the court". Where disclosure of individual creditors' names and addresses may be prejudicial, this Court has modified the s. 23 requirements and granted orders providing that, "the Monitor shall not make the names and addresses of individuals who are creditors publicly available."⁸ This Court's jurisdiction to grant such an order is supported by section 11 of the CCAA, which authorizes it to make any order it considers appropriate in the circumstance.

[36] In this case, a creditors' list that includes identifying information about the Specified Creditors would result in the publication of the names and addresses of approximately 473,000 individuals across Canada, compromising their privacy. Accordingly, and consistent with existing case law, I order that the identifiable information of individual creditors be withheld from the publicly available creditor list.

[37] The proposed Initial Order provides that the Applicant will send a notice containing the prescribed information to the Specified Collectors. For the approximately 60,000 of the Specified Collectors who have not provided an email address, the order relieves the Monitor of the obligation to mail the prescribed notice to such Collectors. I am satisfied that the publication notice required by s. 23 of the CCAA and a notice published on the the website for this CCAA will more efficiently communicate notice of the CCAA Proceeding in a timely manner.

The Charges

[38] The Applicant seeks an administration charge and a directors' charge. The charges are not proposed to rank in priority to any secured creditor who was not provided with notice of this proceeding; at this time the Applicant is seeking only to prime the security granted to the Credit Facility Agent.

[39] The CCAA authorizes this Court to grant a priority charge over a debtor company's assets for professional fees and disbursements on notice to affected secured creditors (s. 11.52). The factors to be considered are established in the caselaw.⁹

⁷ *Golf Town Canada Inc. et al., Re*, (September 14, 2016), ONSC (Commercial List), Court File No. CV-16-11627-00CL at para. 7 (Ont. Sup. Ct. J. [Commercial List]); *Target Canada Co., Re*, 2015 ONSC 303 at paras. 62-65

⁸ *Target (Re)*, (January 15, 2015), ONSC (Commercial List), Court File No. CV-15-10832-00CL at para 69; see also *BBB Canada LTD. (Re)*, (February 10, 2023), ONSC (Commercial List), Court File No. CV-23-00694493-00CL at para. 39.
Canwest Publishing Inc. / Publications Canwest Inc., Re, 2010 ONSC 222 at para. 54

[40] The Applicant seeks the Administration Charge against the Property in the maximum amount of \$2 million to secure the fees and disbursements incurred both before and after the commencement of these proceedings by legal counsel for the Applicant, the Proposed Monitor, and legal counsel for the Proposed Monitor.

[41] The amount of the Administration Charge has been determined with guidance from the Proposed Monitor and is limited to what is necessary for the Initial Stay Period. The proposed DIP Lender and the Proposed Monitor support the Administration Charge. The Administration Charge is further acceptable to me given the number of beneficiaries, the size and complexity of the Applicant's business, and the complexity of the restructuring proposed in this CCAA proceeding.

[42] The CCAA also authorizes this Court to grant a priority charge to indemnify a debtor company's directors and officers on notice to its secured creditors (s. 11.51). In deciding whether to grant a director's charge, Courts must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the Applicant could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.¹⁰

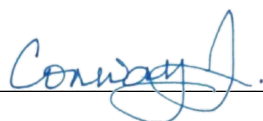
[43] The Applicant seeks the Directors' Charge in the amount of \$10.521 million against the Applicant's property to protect the Directors and Officers from the risk of significant personal exposure, as set out in the Pre-Filing Report. The only director of Travel Services is Mr. Stewart, who is also the president of the Applicant.

[44] The Applicant has worked with the Restructuring Advisor to calculate the quantum of the Directors' Charge in light of that significant exposure. The proposed DIP Lender and the Proposed Monitor support the Directors' Charge. It is acceptable to me.

Initial Order Granted; Comeback Hearing

[45] At the conclusion of the hearing, I said that I would sign the Initial Order. I have now done so. Order to go as signed by me and sent to counsel. This order is effective from today's date and is enforceable without the need for entry and filing. I am satisfied that the relief granted in the order for the 10 day period is limited to relief that is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period", as required by s. 11.001 of the CCAA.

[46] The comeback hearing is scheduled before me for **March 20, 2023 at 9:30 a.m. for 90 minutes**. At that time, the Applicant intends to seek additional relief respect to the Global Transactions, including approval of the DIP Financing, the SISF and the Stalking Horse Purchase Agreement. I direct that all materials for this hearing be uploaded to CaseLines forthwith and that the materials for the comeback hearing be uploaded to CaseLines as soon as they are ready.



¹⁰ *Jaguar Mining Inc., Re*, 2014 ONSC 494 at para. 45.

Participant Information Form

CASE AND EVENT INFORMATION

Court File Number	TBD
Court Location (e.g. Hamilton)	Toronto (393 University Avenue)
Case Name	In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.
Type of Hearing	Application Hearing
Date of Hearing	March 10, 2023 at 8:00 A.M.

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party	Phone Number	Email Address
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Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party	Phone Number	Email Address

For Other:

Name of Person Appearing (and how they wish to be addressed, e.g. pronouns and/or prefix; also, if they wish, the phonetic pronunciation of their name)	Name of Party/ Organization	Phone Number	Email Address
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