

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) WEDNESDAY, THE 5th
)
JUSTICE STEELE) DAY OF JULY, 2023
)

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 LOYALTYONE, CO.

(the "**Applicant**")

STAY EXTENSION AND DISTRIBUTION ORDER

THIS MOTION made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, for an order, *inter alia*: (i) approving an extension of the Stay Period; (ii) authorizing and empowering the Applicant to make one or more distributions to the Credit Facility Agent; (iii) reducing the Directors' Charge and terminating the Employee Retention Plans Charge; (iv) approving certain reports filed in this CCAA Proceeding by KSV Restructuring Inc., in its capacity as Monitor of the Applicant (in such capacity, the "**Monitor**"), and the activities and conduct of the Monitor described therein; (v) approving the fees and disbursements of the Monitor and its counsel, as described in the Fourth Report of the Monitor dated June 27, 2023 (the "**Fourth Report**"), and the affidavits attached thereto sworn in support thereof; and (vi) granting certain related relief, was heard this day by Zoom videoconference.

ON READING the Notice of Motion of the Applicant, the Fourth Report of the Monitor, filed, and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Consenting Stakeholders, and such other counsel as were present, no one else appearing although duly served as appears from the affidavit of service of Stephanie Fernandes sworn June 26, 2023, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that all terms not otherwise defined herein shall have the meaning ascribed to them in the Amended and Restated Initial Order dated March 20, 2023 or the Fourth Report, as applicable.

EXTENSION OF THE STAY PERIOD

3. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including June 28, 2024. During the Stay Period, as extended pursuant to this paragraph 3, the Monitor shall report to the Court and the Applicant's stakeholders no less frequently than every six months by preparing a report that will be served on the Service List, filed with this Court and posted on the Monitor's case website for this CCAA Proceeding.

DISTRIBUTIONS

4. **THIS COURT ORDERS** that the Applicant is hereby authorized, at such time or times as it determines appropriate, to make one or more distributions to the Credit Facility Agent of Cash and Proceeds held by the Applicant (or held by the Monitor on behalf of the Applicant) from time to time, provided that (i) the aggregate of all such distributions, together with any other recoveries received by the Credit Facility Agent or the Credit Agreement Lenders, at the date of such distribution, shall not exceed the full amount of the Applicant's "Obligations" (as that term is defined in the Credit Agreement); and (ii) the Applicant shall retain sufficient funds to satisfy any Priority Amounts and such other amounts as the Applicant, with the consent of the Requisite Consenting Lenders or further Order of this Court, determines necessary, including to facilitate the ongoing administration of this CCAA Proceeding and the activities of the Applicant. Such distributions shall be free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any

encumbrances or charges created by the Initial Order, the ARIO, the SISP Approval Order of this Court dated March 20, 2023, or any other orders made in this CCAA proceeding; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system in any province or territory in Canada or the Civil Code of Quebec.

5. **THIS COURT ORDERS** that distributions on account of claims arising under the Credit Agreement shall be made by the Applicant to the Credit Facility Agent for application by the Credit Facility Agent (i) in accordance with the provisions of the Credit Agreement (including the payment of all fees, expenses, charges, and all other amounts payable to the Credit Facility Agent in its capacity as such) and applicable law and (ii) following authorization and direction from the Required Lenders (as defined in the Credit Agreement), in order to enable the Credit Facility Agent to provide the necessary funding to fund the LVI Chapter 11 Litigation Trust as is contemplated by, and in accordance with, the LVI Chapter 11 Plan.

6. **THIS COURT ORDERS AND DECLARES** that the Credit Facility Agent be and is hereby authorized to make the distributions contemplated in paragraph 5 hereof, and that no further order, or other direction or authorization shall be required in order to effect such distributions from any funds received by the Credit Facility Agent, and the Credit Facility Agent is authorized to take any further steps that it deems necessary or desirable to make the distributions contemplated in paragraph 5 hereof.

7. **THIS COURT ORDERS** that all distributions by the Applicant to the Credit Facility Agent pursuant to paragraph 4 hereof shall be made in U.S. dollars or Canadian dollars to the extent requested by the Credit Facility Agent.

8. **THIS COURT ORDERS** that the Applicant shall be entitled to deduct and withhold from any such distribution to the Credit Facility Agent such amounts as may be required to be deducted or withheld under any applicable law, and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the distribution in respect of which such withholding or deduction was made.

9. **THIS COURT ORDERS** that the Monitor is hereby authorized and empowered to cause the Applicant to make the distributions contemplated hereby and take any further steps that it deems necessary or desirable to complete the distributions described in this Order.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of this proceeding or the termination of this proceeding;
- (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act (Canada)*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) in respect of the Applicant or its Property and any bankruptcy or receivership order issued pursuant to any such application; or;
- (c) any assignment in bankruptcy made in respect of the Applicant,

any distributions made pursuant to this Order are final and irreversible and shall be binding upon any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its Property, and shall not be void or voidable by creditors of the Applicant, nor shall any such distributions constitute or be deemed to be fraudulent preferences, assignments, fraudulent conveyances, transfers-at-undervalue or other reviewable transactions under the BIA or any other applicable federal or provincial law, nor shall they constitute conduct which is oppressive, unfairly prejudicial to or which unfairly disregards the interests of any person, and shall, upon the receipt thereof, be free of all claims, liens, security interests, charges or other encumbrances granted by or relating to the Applicant or its Property.

CHARGES

11. **THIS COURT ORDERS** that the Directors’ Charge shall be and is hereby reduced to the amount of \$2 million.

12. **THIS COURT ORDERS** that the Employee Retention Plans Charge shall be and is hereby terminated, released and discharged.

THE MONITOR

13. **THIS COURT ORDERS** that the Monitor shall not incur any liability in connection with the distributions contemplated herein, whether in its personal capacity or in its capacity as the Monitor.

14. **THIS COURT ORDERS** that in carrying out the terms of this Order, the Monitor, whether in its personal capacity or in its capacity as the Monitor:

- (a) shall have all the protections provided to it as an officer of this Court or otherwise at law, including the protections granted pursuant to the CCAA and other orders granted in this CCAA Proceeding, including the stay of proceedings; and
- (b) shall incur no liability or obligation as a result of carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part.

15. **THIS COURT ORDERS AND DECLARES** that the distributions contemplated herein shall not constitute a “distribution” by the Monitor and the Monitor shall not constitute a “legal representative”, “representative” or “responsible representative” of the Applicant or “other person” for the purposes of Section 159 of the *Income Tax Act* (Canada), section 117 of the *Taxation Act, 2007* (Ontario), Section 270 of the *Excise Tax Act* (Canada), Sections 46 and 86 of the *Employment Insurance Act* (Canada), Section 22 of the *Retail Sales Tax Act* (Ontario), Section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Statutes**”), and the Monitor in causing or assisting the Applicant to make any distribution in accordance with this Order is not “distributing”, nor shall it be considered to have “distributed”, such funds for the purposes of the Statutes.

APPROVAL OF MONITOR’S ACTIVITIES

16. **THIS COURT ORDERS** that the Pre-Filing Report of the Proposed Monitor dated March 10, 2023, the First Report of the Monitor dated March 16, 2023, the Second Report of the Monitor dated April 27, 2023, the Third Report of the Monitor dated May 8, 2023, and the Fourth Report are each hereby approved, and the activities and conduct of the Monitor prior to or on the date hereof in relation to the Applicant and this CCAA Proceeding (including as described in each of the foregoing reports) are hereby ratified and approved; provided, however, that only the Monitor,

in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

APPROVAL OF FEES AND DISBURSEMENTS OF THE MONITOR AND ITS COUNSEL

17. **THIS COURT ORDERS** that the fees and disbursements of the Monitor for the period from March 10, 2023 to May 31, 2023, all as set out in the affidavit of Noah Goldstein sworn June 27, 2023, are hereby approved.

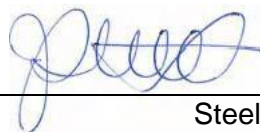
18. **THIS COURT ORDERS** that the fees and disbursements of Goodmans LLP, in its capacity as counsel to the Monitor, for the period from March 10, 2023 to June 6, 2023, all as set out in the affidavit of Christopher Armstrong sworn June 27, 2023, are hereby approved.

GENERAL

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are each hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto time on the date of this Order.



Steele, J.

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 LOYALTYONE, CO.

Court File No. CV-23-00696017-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

STAY EXTENSION AND DISTRIBUTION ORDER

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