

**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
LOYALTYONE, CO.**

**AIDE MEMOIRE OF
BREAD FINANCIAL HOLDINGS, INC.**

Motion for Stay Extension

November 21, 2025

STIKEMAN ELLIOTT LLP
Barristers and Solicitors
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 2B9

Eliot Kolers LSO #38304R
Tel: (416) 869-5637
ekolers@stikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
mkonyukhova@stikeman.com

Lesley Mercer LSO#: 54491E
Tel: (416) 869-6859
lmercer@stikeman.com

RJ Reid LSO#: 88760P
Tel: (416) 869-5614
rreid@stikeman.com

Lawyers for Bread Financial Holdings, Inc.

TO: THE SERVICE LIST

1. On November 13, 2025, Bread learned that LoyaltyOne's secured lenders now take the position that adjudication of the sole remaining undecided issue in the TMA Motions should not proceed in light of "supervening developments" in the Texas Litigation, namely, the court's denial of Bread's motion to dismiss the Texas Litigation.¹ This position is directly contrary to LoyaltyOne and the Monitor's prior position that the matters should proceed in parallel and is a transparent attempt to delay adjudication of a matter brought to, and partially already decided by, this Court with the secured lenders' support. Bread delivers this aide memoire in response to paragraphs 'ss' to 'vv' of LoyaltyOne's Notice of Motion and to request that a hearing of the sole remaining undecided issue in the TMA Motions be scheduled without delay.

A. Background to the TMA Motions and the Entitlement Issue

2. The two motions comprising the TMA Motions were commenced in this Court in November 2023. LoyaltyOne and the Monitor jointly brought a motion seeking a declaration that the TMA was not binding on LoyaltyOne, constituted a transfer at undervalue, or alternatively that Bread's only resulting entitlement from the TMA was an unsecured claim within LoyaltyOne's insolvency proceeding (the "**Entitlement Issue**").² LoyaltyOne also delivered a notice of disclaimer to Bread and, in response, Bread brought a motion opposing the disclaimer.

3. In February 2024, three months after the TMA Motions were commenced, the Liquidating Trustee for LVI commenced the Texas Litigation. In the Texas Litigation, among other things, the Liquidating Trustee alleges that the TMA and its "Tax Litigation Proceeds Transfer Obligation" (i.e., the remittance of the tax refunds to Bread) constitutes an actual fraudulent transfer for which LVI received inadequate consideration. As LoyaltyOne was a guarantor of LVI's debt, the secured lenders of the two companies — i.e., the predominant beneficiaries of their respective legal

¹ See, Notice of Motion of LoyaltyOne dated November 17, 2025 (the "**Stay Extension NoM**"), para 'ss'. Capitalized terms in this aide memoire are as defined in the Stay Extension NoM..

² Tab 1 – Notice of Motion of LoyaltyOne and the Monitor dated November 8, 2023.

proceedings — are the same. Following commencement of the Texas Litigation, Bread wrote to LoyaltyOne and the Monitor stating that the Texas Litigation appeared to make the TMA Motions an abuse of process given the overlapping nature of the claims in respect of the Canadian tax refund. Counsel for LoyaltyOne stated that they did not understand Bread's concern.³

4. In March 2024, Bread informed LoyaltyOne that it intended to bring a motion to stay the TMA Motions pending adjudication of the Texas Litigation. In response, LoyaltyOne delivered an Aide Memoire to this Court in advance of a scheduling conference that stated, in part:

Bread has been sued in the U.S. The U.S. lawsuits had been commenced or were being prepared and were known to Bread before it negotiated the Court-ordered timetable. **They are not a basis to stay any aspect of this CCAA proceeding. There is no unfairness in this CCAA Court adjudicating interests in the tax asset at on [sic] the pending motions even if Bread is facing other legal claims in the U.S.**⁴ [emphasis added]

5. At the time, Bread's primary concern in respect of the parallel proceedings was that the TMA Motions would proceed first on a more limited record than would be available in the Texas Litigation. To address this concern, Bread and LoyaltyOne agreed to a document production process within the TMA Motions and modified the timetable in exchange for Bread not pursuing a stay of the proceedings. It was only after Bread and LoyaltyOne agreed to the new timetable for the TMA Motions that Bread on May 20, 2024, brought its motion to dismiss the Texas Litigation.

6. The TMA Motions proceeded in June 2024. The secured lenders were represented by two sets of counsel at the hearing: one for the Term A lenders and one for the Term B lenders. Counsel for the Term B lenders delivered a factum in advance of the hearing and made oral submissions.

7. This Court's subsequent endorsement, released on July 23, 2024, held that the TMA was a binding and enforceable agreement that did not constitute a transfer at undervalue and should not be disclaimed. In respect of the Entitlement Issue, this Court held that it was premature to

³ Tab 2 – Email exchange between R Reid, E Kolers and T Pinos, February 14-19, 2024.

⁴ Tab 3 – Aide memoire of LoyaltyOne dated March 26, 2024 at para 13(a).

decide the issue and declined to consider the consequence of a prospective failure of LoyaltyOne to remit the tax refunds to Bread.⁵ The decision specifically noted that LVI had commenced actions in Texas and Delaware seeking recovery of the tax refunds.⁶ LoyaltyOne and the Monitor were denied leave to appeal.

B. Events Following the TMA Motions Decision

8. As set out in LoyaltyOne's Notice of Motion, following the release of the TMA Motions decision, the CRA agreed to settle the tax refund dispute entirely in favour of LoyaltyOne with payment from the CRA now forthcoming. LoyaltyOne has informed Bread that it does not intend to comply with the TMA and will not remit the tax refund to Bread upon its receipt.

9. On February 25, 2025, the Monitor delivered to this Court the cost submissions of the parties in respect of the TMA Motions. In their reply costs submissions, LoyaltyOne and the Monitor sought to delay the determination of the costs issue and sought a case conference to "seek directions on the appropriate process to have Bread's Entitlement Claim decided" as owing to the settlement with the CRA, the Entitlement Issue was "no longer premature."⁷ A case conference date was set for "(s)etting and timetabling a process for the determination of the Entitlement Claim" was set for March 13, 2025 at the request of LoyaltyOne and the Monitor.⁸ On March 10, 2025, the Monitor asked this Court to vacate the case conference and withhold any decision on costs while the parties mediated. The mediation proceeded earlier this month and was unsuccessful.

10. On June 10, 2025, the Texas court denied Bread's motion to dismiss in respect of certain of the Liquidating Trustee's claims in the Texas Litigation. That decision placed these claims back

⁵ *LoyaltyOne, Co. (Re)*, 2024 ONSC 3866 at [para 64](#).

⁶ *LoyaltyOne, Co. (Re)*, 2024 ONSC 3866 at [para 16](#).

⁷ Tab 4 – Reply Costs Submissions of LoyaltyOne and the Monitor dated February 24, 2025 at para 3.

⁸ Copy of the Request Form attached as Tab 5

in the same spot they were in in early 2024, when LoyaltyOne pushed for the adjudication of the TMA Motions despite the pending Texas Litigation.

C. This Court Should Schedule the Hearing on the Remaining Entitlement Issue

11. The secured lenders directed the commencement of actions in Ontario and Texas hoping to maximize their attempts at recovery. Bread's argument that this duplicative litigation was an abuse of process was rebuffed and the TMA Motions proceeded. It is only after a substantial loss in the TMA Motions that the secured lenders raise their own overlapping proceedings as a reason to delay the Canadian Court's adjudication of this matter. Their attempt to stay the remainder of the Canadian tax refund dispute with Bread is a transparent attempt to forum shop after the Court ruled in Bread's favor in the TMA Motions and should not be permitted by this Court. The fact the motion to dismiss in the Texas Litigation was denied in part in June 2025 is not a "supervening development," since it does not change the fact that the secured lenders had their opportunity to object to the hearing of the TMA Motions back in 2024 and chose not to. The secured lenders' argument does not withstand scrutiny.

12. This Court should not allow the secured lenders to delay the adjudication of the Entitlement Issue. After the unsuccessful mediation earlier this month, Bread is ready to proceed with adjudication of the Entitlement Issue without delay. This Court should not allow the secured lenders to exploit their commencement of multiple proceedings in different jurisdictions.

13. Bread's proposed litigation timetable in respect of the Entitlement Issue is attached at **Schedule "A"** hereto.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of November, 2025.



Eliot Kolers/Maria Konyukhova/Lesley Mercer/RJ Reid

STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Eliot Kolers LSO #38304R
Tel: (416) 869-5637
ekolers@sikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
mkonyukhova@stikeman.com

Lesley Mercer LSO#: 54491E
Tel: (416) 869-6859
lm Mercer@stikeman.com

RJ Reid LSO#: 88760P
Tel: (416) 869-5614
rreid@stikeman.com

Lawyers for Bread Financial Holdings, Inc.

SCHEDULE "A"
PROPOSED TIMETABLE

Event	Date
Delivery of Materials	N/A (Motion to proceed on existing record)
Bread to deliver factum	January 21, 2026
Any party opposing Bread's claim for the tax refund to deliver factum	February 6, 2026
Bread reply factum	February 13, 2026
Hearing date	Week of February 23, 2026

TAB 1

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

**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 LOYALTYONE, CO.

Applicant

**NOTICE OF MOTION
(ENFORCEABILITY OF TAX MATTERS AGREEMENT)**

The Applicant LoyaltyOne, Co. and KSV Restructuring Inc. in its capacity as Monitor of the Applicant (the “**Monitor**”) will make a motion jointly to Justice Conway or another judge presiding over the Commercial List on a date and at a time to be fixed at a case conference at the courthouse at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THE MOTION IS FOR:

- (a) a declaration, sought by the Applicant, that the Tax Matters Agreement between Alliance Data Systems Corporation (now known as Bread Financial Holdings, Inc.) (“**Bread**”) and Loyalty Ventures Inc. (“**LVI**”) dated November 5, 2021 (the “**TMA**”) is not and was never binding on the Applicant;
- (b) in the alternative, if the TMA is found to have been binding on the Applicant:
 - (i) a determination, sought by the Applicant and the Monitor, pursuant to section 5 of the Third Schedule of the *Companies Act*, R.S.N.S. 1989, c.

81, as amended (the “**NSCA**”), that the provisions in the TMA requiring the Applicant to pay to Bread an amount equivalent to the proceeds received in respect of certain disputed tax amounts (the “**Proceeds Payment Provisions**”) are oppressive and unenforceable against the Applicant (the “**Oppression Proceeding**”);

- (ii) a declaration, sought by the Applicant, that the TMA is unconscionable and void with respect to the Applicant; and
- (iii) a determination, sought by the Monitor, pursuant to section 96 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), as incorporated into section 36.1 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), that the Proceeds Payment Provisions are a transfer at undervalue and void and unenforceable by Bread (the “**TUV Proceeding**”);
- (c) in the further alternative, if (i) the TMA is found to have been binding on the Applicant and (ii) the Proceeds Payment Provisions are not found to be void by reason of being oppressive or a transfer at undervalue, a determination, sought by the Applicant, that Bread’s only entitlement with respect to its claims for payment under the Proceeds Payment Provisions of the TMA (as disclaimed by the Applicant) is as an unsecured claim in an amount to be determined, if necessary;
- (d) an Order, substantially in the form included in the motion record, *inter alia*, authorizing the Monitor to commence and continue the Oppression Proceeding and the TUV Proceeding, indemnifying the Monitor for any costs award against it in connection with the Oppression Proceeding or the TUV Proceeding, securing

such indemnity claim by the Administration Charge (as defined in the Initial Order, as defined below) granted in the Initial Order and increasing the maximum aggregate amount of the Administration Charge accordingly;

- (e) costs of this motion, if it is opposed; and
- (f) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- (g) the Applicant, a Nova Scotia unlimited liability company, historically operated the marketing program known as the AIR MILES® Reward Program;
- (h) on March 10, 2023, the Applicant was granted protection under the CCAA pursuant to an initial order of the Court (as amended and restated, the “**Initial Order**”) in this proceeding (the “**CCAA Proceeding**”);
- (i) pursuant to the Initial Order, the Monitor was appointed as monitor of the Applicant;
- (j) also on March 10, 2023, the Applicant’s ultimate parent, LVI, and three of its affiliates, commenced proceedings under chapter 11 of title 11 of the United States Code before the United States Bankruptcy Court for the Southern District of Texas;
- (k) substantially all of the operating assets of the Applicant have been realized upon, and the Applicant’s assets now consist of the following, which will not be sufficient to repay its secured lenders in full:

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- (i) undistributed remaining net proceeds from the Sale Transaction (defined below) and cash on hand (collectively with the net sale proceeds, the “**Cash**”), all of which is subject to a security interest in favour of the administrative agent (the “**Credit Facility Agent**”) for the Applicant’s secured lenders; and
 - (ii) contingent claims including a claim against the Canada Revenue Agency (“**CRA**”) for reimbursement of approximately \$96 million paid to CRA, without admission of liability, in respect of the disputed assessment of taxes for the Applicant’s 2013 tax year, as described below (the “**Tax Dispute**”, and such amount the “**Disputed Amount**”);
- (l) the Applicant must take material (and expensive) steps in early 2024 to prepare for a trial in the Tax Dispute litigation scheduled later that year;
 - (m) Bread has asserted that it is entitled to payment by the Applicant of an amount equal to the proceeds (if any) of the Tax Dispute pursuant to the Proceeds Payment Provisions of the TMA;
 - (n) if Bread is correct that the Tax Dispute is ultimately for its own benefit, then the Credit Facility Agent will not permit the Applicant to use the Cash to pursue this litigation with the CRA because, among other things, the Applicant’s secured lenders would not benefit from any potential recovery;
 - (o) on the other hand, if the Applicant is entitled to retain the proceeds of the Tax Dispute, then the Credit Facility Agent will permit the Applicant to use a portion of the Cash to prepare for and pursue that claim because the Applicant’s secured lenders would benefit from any potential recovery;

- (p) to ensure that the Applicant has sufficient time (and funding) to prepare to litigate the Tax Dispute in 2024, a timely determination regarding whether the Applicant is entitled to retain the proceeds of that litigation, free and clear of any claims asserted by Bread, is necessary;

Status of this CCAA Proceeding

- (q) the Applicant has sold substantially all of its operating assets to two affiliates of Bank of Montreal pursuant to an asset purchase agreement approved by this Court on May 12, 2023 which closed on June 1, 2023 (the “**Sale Transaction**”);
- (r) pursuant to an order of this Court (the “**Ancillary Relief Order**”), upon closing of the Sale Transaction, the Applicant’s directors and officers were deemed to have resigned (subject to certain limited exceptions) and the Monitor was authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Applicant to cause the Applicant, (through its assistants then engaged, if any), to take the actions described in the Ancillary Relief Order;
- (s) certain assets of the Applicant were excluded from the Sale Transaction, including the proceeds of the Tax Dispute;
- (t) on July 5, 2023, this Court granted an Order (the “**Stay Extension and Distribution Order**”) authorizing the Applicant to make distributions of Cash to the Credit Facility Agent up to the full amount of the Applicant’s “Obligations” (as that term is defined in the credit agreement entered into between LVI, Brand Loyalty Group B.V., Brand Loyalty Holding B.V. and Brand Loyalty International B.V., as borrowers, the Applicant and certain other subsidiaries of LVI, as

guarantors, the lenders party thereto, and the Credit Facility Agent dated as of November 3, 2021, as amended, the “**Credit Agreement**”);

- (u) as of March 9, 2023, the day prior to the commencement of this CCAA Proceeding, there was approximately US\$656 million of principal estimated to be outstanding under the credit facilities established under the Credit Agreement;
- (v) interest and costs have continued to accrue since that date;
- (w) the purchase price under the Sale Transaction was US\$160,259,861.40, subject to certain downwards adjustments of up to US\$10 million and, accordingly, it is anticipated that the lenders under the Credit Agreement will incur a significant shortfall as the total distributions to the Credit Facility Agent will not be sufficient to provide them recovery in full;
- (x) an initial distribution was made by the Applicant to the Credit Facility Agent in July of 2023 pursuant to the Stay Extension and Distribution Order;
- (y) the Applicant is holding the remaining portion of the Cash subject to the terms of the Stay Extension and Distribution Order;

Tax Dispute

- (z) the Applicant has an outstanding dispute with CRA regarding certain corporate income taxes – in 2015, the CRA began an audit of the Applicant’s 2013 income tax return and in December 2019, the CRA issued an assessment denying the Applicant’s deduction of a “reasonable reserve” in connection with the provision of services to be rendered and provided after the end of the year;

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- (aa) the denial of the Applicant's deduction in the amount of approximately \$349 million resulted in the assessment of approximately \$110 million owing (inclusive of interest and penalties) in respect of the 2013 tax year;
- (bb) in July 2020, the Applicant filed an appeal with the Tax Court of Canada to have the 2013 assessment overturned;
- (cc) to date, the Applicant has paid to CRA approximately \$96 million of the amounts assessed and it continues to dispute the 2013 assessment;
- (dd) to the extent that the Applicant is successful in the Tax Dispute litigation, it may be entitled to a repayment of the \$96 million Disputed Amount;
- (ee) the Tax Dispute is scheduled for trial in fall 2024;

Bread Asserts Entitlement to the Disputed Amount

- (ff) the Applicant is an indirect subsidiary of LVI, a Delaware corporation;
- (gg) LVI is a holding company that was formed as part of a 'spin-off' from Bread in November 2021 (the "**Spin-off Transaction**"), which involved LVI and Bread entering into a series of transactions to, among other things:
 - (i) spin-off LVI from Bread's business; and
 - (ii) transfer direct ownership of certain subsidiaries, including the Applicant, to LVI;
- (hh) as part of the Spin-off Transaction:

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- (i) on October 21, 2021, Joseph L. Motes III, one of Bread's senior executives and the only director of the Applicant at that time, caused the Applicant to pay a dividend of US\$68 million (the "**Dividend**"), which was ultimately received by Bread as a dividend;
- (ii) on November 3, 2021, Bread required LVI to borrow, and the Applicant to guarantee, US\$675 million pursuant to the Credit Agreement and then caused LVI to transfer certain proceeds of the Credit Agreement to Bread; and
- (iii) a number of agreements were entered into between Bread and LVI, including the TMA;
- (ii) the Proceeds Payment Provisions of the TMA purport to require that any member of the Loyalty Ventures Group (as defined in the TMA, which includes the Applicant) pay to Bread the proceeds of certain tax disputes, including interest but net of certain costs, to Bread within 30 days of receipt thereof;
- (jj) Bread asserts that the Proceeds Payment Provisions apply to the proceeds of the Tax Dispute, if any;

Bread is Not Entitled to the Proceeds of the Tax Dispute – the TMA was Never Binding on the Applicant

- (kk) although the TMA was executed by LVI purportedly "on behalf of itself and the members of the Loyalty Ventures Group", which was defined to include the Applicant, the Applicant is not a signatory to the TMA;

- (ll) neither LVI nor Bread had any corporate or other legal authority to execute the TMA on behalf of the Applicant;
- (mm) the Applicant did not pass any corporate resolutions or take any other actions to validate, confirm, or assent to the TMA;
- (nn) the Applicant's direct acceptance and execution, which was not obtained, was required for the TMA to have any binding effect on the Applicant;
- (oo) the Applicant received no consideration in exchange for its inclusion in the TMA and the Proceeds Payment Provisions of the TMA;

The Proceeds Payment Provisions are Oppressive and Unconscionable

- (pp) the entirety of the Spin-off Transaction (including the Dividend and the Proceeds Payment Provisions), was for the sole benefit of Bread, without any economic purpose or benefit whatsoever to LVI or the Applicant, and ultimately caused their insolvencies;
- (qq) in the alternative, to the extent that the TMA could be found to be binding on the Applicant, which it is not, the requirement to pay an amount equivalent to the proceeds of any return of the Disputed Amount received violates the Applicant's securityholders' and other stakeholders' reasonable expectations that the proceeds of the Tax Dispute would not be paid to Bread, or any other party, for no consideration;
- (rr) accordingly, that requirement, if applicable, is oppressive or unfairly prejudicial to or unfairly disregards the interests of the Applicant's securityholders and other stakeholders;

- (ss) in the further alternative, to the extent that the TMA could be found to be binding on the Applicant, which it is not, the requirement to pay an amount equivalent to the proceeds of any tax disputes received was unconscionable and void with respect to the Applicant because it was a wholly improvident bargain imposed on the Applicant by Bread, which in the circumstances had no bargaining power whatsoever;

The Proceeds Payment Provisions are a Transfer at Undervalue

- (tt) the purported requirement under the Proceeds Payment Provisions of the TMA that the Applicant pay to Bread for no or little consideration an amount equivalent to the proceeds of tax disputes received was a transfer at undervalue because:
- (i) at the time the TMA was entered into, Bread, LVI, and the Applicant were not operating at arm's length;
 - (ii) the purported transfer under the Proceeds Payment Provisions occurred less than five years prior to the commencement of this CCAA Proceeding; and
 - (iii) the Applicant was insolvent at the relevant time or was rendered insolvent by the purported transfer;
- (uu) to the extent that the TMA could be found to be binding on the Applicant, which it is not, as a result of the transfer at undervalue, the Proceeds Payment Provisions should be found to be void and not enforceable by Bread;

A Notice to Disclaim the TMA has Already been Delivered in any Event

- (vv) on October 27, 2023, the Applicant delivered to Bread a notice to disclaim or resiliate the TMA pursuant to section 32 of the CCAA without prejudice to the Applicant's position that the TMA does not bind the Applicant and/or is otherwise unenforceable and void as against the Applicant, in whole or in part;
- (ww) Bread has advised that it will be objecting to the disclaimer;
- (xx) pursuant to section 32(7) of the CCAA, any loss suffered by Bread as a result of disclaimer is to be a provable claim;

Other Grounds

- (yy) the provisions of the CCAA, including sections 32 and 36.1;
- (zz) the provisions of the BIA;
- (aaa) the provisions of the NSCA, including the Third Schedule, section 5; and
- (bbb) such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (ccc) the affidavit of Cynthia Hageman, to be sworn;
- (ddd) the affidavit of Jeffrey Fair, to be sworn;
- (eee) the fifth report of the Monitor, to be filed; and

(fff) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 8, 2023

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U
Tel: 416.869.5784
tpinos@cassels.com

Alan Merskey LSO #: 41377I
Tel: 416.860.2948
amerskey@cassels.com

John M. Picone LSO #: 58406N
Tel: 416.640.6041
jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO#: 43331J
Tel: 416.849.6017
boneill@goodmans.ca

Peter Ruby LSO#: 38439P
Tel: 416.597.4184
pruby@goodmans.ca

Chris Armstrong LSO#: 55148B
Tel : 416.849.6013
carmstrong@goodmans.ca

Lawyers for the Monitor, KSV Restructuring Inc.

TO: **STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Ashley Taylor
Tel: 416.869.5236
ataylor@stikeman.com

Maria Konyukhova
Tel: 416.869.5230
mkonyukhova@stikeman.com

Lawyers for Bread Financial Holdings Inc.

AND TO: **THE SERVICE 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 LOYALTONE, CO.

**ONTARIO
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PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(ENFORCEABILITY OF TAX MATTERS AGREEMENT)**

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U

Tel: 416.869.5784 / tpinos@cassels.com

Alan Merskey LSO #: 41377I

Tel: 416.860.2948 / amerskey@cassels.com

John M. Picone LSO #: 58406N

Tel: 416.640.6041 / jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO#: 43331J

Tel: 416.849.6017 / boneill@goodmans.ca

Peter Ruby LSO#: 38439P

Tel: 416.597.4184 / pruby@goodmans.ca

Chris Armstrong LSO#: 55148B

Tel : 416.849.6013 / carmstrong@goodmans.ca

Lawyers for the Monitor, KSV Restructuring Inc.

TAB 2

From: [Pinos, Timothy](#)
To: [Eliot Kolers](#); [Merskey, Alan](#); [Picone, John M.](#); [O'Neill, Brendan](#); [Ruby, Peter](#); [Armstrong, Christopher](#); [Jacobs, Ryan](#); [Jamal, Kiyan](#)
Cc: [Maria Konyukhova](#); [Lesley Mercer](#); [Ashley Taylor](#); [RJ Reid](#)
Subject: RE: LoyaltyOne Co. - Motions re Tax Matters Agreement [IWOV-LEGAL.FID4058681]
Date: Thursday, February 29, 2024 11:13:34 AM
Attachments: [image001.png](#)

Eliot:

Thank you for your email.

You will recall that, in advance of serving its evidence, Bread requested from LoyaltyOne specific documents outside the strict litigation process. LoyaltyOne honoured that request and notes that it expected Bread would do the same. I note that this type of request and response is typical in the CCAA process.

The existence of the US protective orders cannot preclude Bread providing its own documents to us in the context of the pending Tax Matters Agreement motions. It is consistent with Commercial List three-Cs practice to provide the requested documents now, before our next set of evidence is due, instead of inefficiently seeking to wait for cross-examinations. If Bread continues its refusal to provide the requested documents, we will bring this matter before the CCAA court. Undoubtedly you recognize the materiality of the documents we have requested and that, now or later, Bread will need to provide them.

We do not understand your comment about an “abuse of process”, but from your note that Bread is reserving its rights in this regard, we take it that this point is not the basis for refusing our request for documents. Nor could it be.

We urge Bread to reconsider its position and to provide the documents by March 3. I also confirm that the Monitor supports this position.

Cheers

	Timothy Pinos Partner t: +1 416 869 5784 e: tpinos@cassels.com
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Cassels Brock & Blackwell LLP | cassels.com
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4 Canada

From: Eliot Kolers

Sent: Monday, February 26, 2024 6:18 PM

To: Pinos, Timothy ; Merskey, Alan ; Picone, John M. ; O'Neill, Brendan ; Ruby, Peter ; Armstrong, Christopher ; Jacobs, Ryan ; Jamal, Kiyan

Cc: Maria Konyukhova ; Lesley Mercer ; Ashley Taylor ; RJ Reid

Subject: Re: LoyaltyOne Co. - Motions re Tax Matters Agreement [IWOV-LEGAL.FID4058681]

CAUTION: External Email

Tim,

We have reviewed the Texas and Delaware Complaints that you forwarded with interest. We are uncertain as to how Bread can face overlapping proceedings from LVI/Loyalty One in different jurisdictions that appear to be based on the same set of facts. Indeed, Counts 13 through 18 of these U.S. proceedings appear to duplicate the relief being sought by Loyalty One in your client's

proceeding so as to constitute an abuse of process. Bread reserves all of its rights in this regard. In any event, we have inquired about the status of the documentary production process in the U.S. and understand that the documents you have requested were all produced in the U.S. litigation subject to a protective order that limits their use to the proceedings in the U.S. In any event, your client does not have a discovery right in the present CCAA process that your client has commenced.

Regards,

Eliot

Eliot Kolers

Direct: +1 416 869 5637

Email: ekolers@stikeman.com

From: Pinos, Timothy <tpinos@cassels.com>

Sent: Friday, February 23, 2024 10:52 AM

To: RJ Reid <RReid@stikeman.com>; Merskey, Alan <amerskey@cassels.com>; Picone, John M. <jpicone@cassels.com>; O'Neill, Brendan <boneill@goodmans.ca>; Ruby, Peter <pruby@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Jacobs, Ryan <rjacobs@cassels.com>; Jamal, Kiyan <kjamal@cassels.com>

Cc: Eliot Kolers <EKolers@stikeman.com>; Maria Konyukhova <MKonyukhova@stikeman.com>;

Lesley Mercer <LMercer@stikeman.com>; Ashley Taylor <ATAYLOR@stikeman.com>

Subject: RE: LoyaltyOne Co. - Motions re Tax Matters Agreement [IWOV-LEGAL.FID4058681]

Eliot/Maria:

This week we became aware of two complaints filed by Pirinate Consulting as trustee for the Loyalty Ventures Liquidating Trust, against Bread and other defendants. They are attached. We understand that prior to those filings, Bread produced a number of documents to Pirinate in the course of proceedings in the United States.

I would ask that you provide us with copies of all documents produced by Bread to Pirinate, including but not limited to the documents referenced in the complaints. For your convenience, I attach a list of the Bread documents referenced in the Texas complaint.

We would appreciate receiving these by Monday.

Cheers



Timothy Pinos

Partner

t: +1 416 869 5784

e: tpinos@cassels.com

Cassels Brock & Blackwell LLP | cassels.com

Suite 3200, Bay Adelaide Centre – North Tower

40 Temperance St.

Toronto, ON M5H 0B4 Canada

From: RJ Reid <RReid@stikeman.com>

Sent: Wednesday, February 14, 2024 6:05 PM

To: Pinos, Timothy <tpinos@cassels.com>; Merskey, Alan <amerskey@cassels.com>; Picone, John M. <jpicone@cassels.com>; O'Neill, Brendan <boneill@goodmans.ca>; Ruby, Peter <pruby@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>

Cc: Eliot Kolers <EKolers@stikeman.com>; Maria Konyukhova <MKonyukhova@stikeman.com>;

Lesley Mercer <LMercer@stikeman.com>; Ashley Taylor <ATAYLOR@stikeman.com>

Subject: LoyaltyOne Co. - Motions re Tax Matters Agreement

CAUTION: External Email

All,

The motion record of Bread Financial Holdings Inc., in support of Bread's motion opposing the disclaimer of the Tax Matters Agreement and in response to LoyaltyOne's motion regarding the enforceability of the Tax Matters Agreement, can be accessed at the following link and is hereby served upon you in accordance with the *Rules*:

<https://stikeman.sharefile.com/public/share/web-se15829ccb73d4b93997338875963a07b>

Please note that we have redacted the names of the Project Angus bidders from Exhibit B of the affidavit of Joseph Motes. As these names are not material to the Tax Matters Agreement dispute, we ask that you destroy the copy of Mr. Motes's affidavit sent to you on Friday and that we use the redacted version in this matter. Please confirm once you have done so. We will serve this motion record on the service list shortly.

Sincerely,

RJ Reid (he/him)

Direct: +1 416 869 5614

Mobile: +1 778 875 6242

Email: rreid@stikeman.com

Follow us: [LinkedIn](#) / [Twitter](#) / stikeman.com

Stikeman Elliott LLP Barristers & Solicitors

[5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada](#)

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Stikeman Elliott LLP Barristers & Solicitors

[5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 Canada](#)

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TAB 3

**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 LOYALTYONE, CO.

Applicant

**JOINT AIDE MEMOIRE OF THE APPLICANT AND THE MONITOR
(ADHERENCE TO COURT-ORDERED TIMETABLE)**

March 26, 2024

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U
Tel: 416.869.5784 / tpinos@cassels.com
Alan Merskey LSO #: 41377I
Tel: 416.860.2948 / amerskey@cassels.com
John M. Picone LSO #: 58406N
Tel: 416.640.6041 / jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO#: 43331J
Tel: 416.849.6017 / boneill@goodmans.ca
Peter Ruby LSO#: 38439P
Tel: 416.597.4184 / pruby@goodmans.ca
Chris Armstrong LSO#: 55148B
Tel: 416.849.6013 / carmstrong@goodmans.ca

Lawyers for the Monitor

Endorsement Sought by the Applicant and the Monitor

1. The Applicant LoyaltyOne and the Monitor requested this case conference to address a single, time-sensitive issue: an attempt by Bread to unilaterally vacate the April 29 and 30 Court-ordered motion hearing dates by refusing to produce its affiants for cross-examination as and when required by a Court-ordered timetable.

2. The only endorsement sought by LoyaltyOne and the Monitor today is that the parties be directed to adhere to the Court-ordered timetable.

Bread's Refusal to Adhere to the Court-Ordered Timetable

3. In early November 2023, LoyaltyOne and the Monitor brought a motion for certain relief relating to a Tax Matters Agreement. Shortly thereafter, Bread brought its own related motion. In late November 2023, the parties attended a case conference following which this Court ordered a timetable leading up to a two-day hearing of the motions on April 29 and 30. That timetable has been substantially observed, as follows:

STEP	DEADLINE	STATUS
<i>Pre-timetable:</i> Delivery of LoyaltyOne's and Monitor's Motion Record	November 9	Completed: Hageman and Fair Fact Affidavits
<i>Pre-timetable:</i> Monitor's Report	November 23	Completed
Delivery of Amended Notice of Motion	December 6	Completed
Amended Monitor Authorization Order and Schedule Settlement Order	December 15	Completed
Bread's Responding Record / Disclaimer Motion Record	February 9	Completed: Motes Fact Affidavit and Delaware Law Report <u>Late:</u> Kroll TUV/Valuation Delivered February 14

STEP	DEADLINE	STATUS
LoyaltyOne and Monitor Reply Records and Responses to Disclaimer Motion and Supplemental Monitor's Report	March 8	Completed: Hageman Fact Affidavit and Delaware Law Reports <u>Adjusted</u> : Brattle Reply Valuation Report Delivered March 13 to Account for Kroll Delay
Bread Reply Record (if any) on Disclaimer Motion only	March 22	<u>Completed</u> : Delaware Law Report <u>Late</u> : Motes Fact Affidavit Delivered March 25 <u>Proposed</u> : Sur-Reply Kroll Valuation Report
Examinations	Week of April 1	
LoyaltyOne, Monitor and any Supporting Parties Omnibus Factums	April 8	
Bread Omnibus Responding Factum	April 18	
LoyaltyOne and Monitor Omnibus Reply Factums	April 24	
Hearing	April 29 and 30	

4. The Court's Endorsement of December 15 specifically permitted the parties to "seek the assistance of this Court should any of Bread, LoyaltyOne or the Monitor not comply with the terms of this Endorsement." That Endorsement is enclosed.

5. Under the Court-ordered timetable, cross-examinations must be completed during the week of April 1. If cross-examinations are not completed during that week, it will not be possible to proceed to a hearing as scheduled on April 29 and 30.

6. On March 19, LoyaltyOne made inquiries of Bread with respect to witness availability for cross-examinations. The following day, Bread baldly advised that it did not believe the Court-ordered timetable was “realistic” and that the matter would require judicial intervention.

7. On March 21, LoyaltyOne, with the support of the Monitor, repeated its request for availability of Bread’s affiants during the week of April 1 and again asked which of LoyaltyOne’s witnesses Bread intended to examine. The following day, Bread refused to provide witness availability and refused to indicate which of LoyaltyOne’s witnesses it intended to cross-examine. Instead, Bread claimed that it would “not be in a position to proceed with cross-examinations in the week of April 1.”

8. On March 25, LoyaltyOne advised Bread that it would seek this case conference urgently given Bread’s refusal to comply with the Court-ordered timetable.

No Valid Reasons to Delay

9. There are no valid reasons to disturb the Court-ordered timetable.

10. The timetable already reflects a compromise by LoyaltyOne and the Monitor in favour of Bread in connection with the funding agreement reached in respect of the Tax Matters Agreement litigation. As reflected in this Court’s Endorsement of December 15, 2023, the Court-ordered timetable is specifically part of the “consideration” for that agreement:

8. In consideration of the foregoing and upon receipt by the Monitor of the Initial Amount, Bread, LoyaltyOne and the Monitor have agreed to the attached schedule for the Motions.

11. LoyaltyOne and the Monitor ask only that the parties do what they are already required to do by agreement and by Court order, which is to proceed with cross-examinations as scheduled.

12. Bread is well aware that the trial in the Tax Matters Agreement litigation is scheduled for September 2024 and that any settlement discussions with CRA will take place immediately prior to the hearing. It is critical that the ultimate beneficiary be determined so that they can direct and instruct counsel with respect to settlement negotiations and the conduct of the trial.

13. Although Bread has asserted to LoyaltyOne and the Monitor that there are matters that must be addressed before cross-examinations, those “matters” do not justify any further delay:

- (a) **Bread’s Motion to “Stay” the Motions:** Bread advised LoyaltyOne and the Monitor last week that it “expects to receive instructions” to bring a motion to stay the pending motions. Bread has not specified the duration of such stay (if it seeks one at all). Bread has been sued in the U.S. The U.S. lawsuits had been commenced or were being prepared and were known to Bread before it negotiated the Court-ordered timetable. They are not a basis to stay any aspect of this CCAA proceeding. There is no unfairness in this CCAA Court adjudicating interests in the tax asset at on the pending motions even if Bread is facing other legal claims in the U.S.
- (b) **Bread Says Even More Evidence is Required:** Bread advised LoyaltyOne and the Monitor that, despite the fact its March 22 reply is limited to the disclaimer motion, it intends to file further expert valuation evidence without committing to when it will do so. In any event, the Court-ordered timetable does not entitle Bread to file further sur-reply expert evidence.
- (c) **Rule 39.03 Examinations are Required:** Bread advised LoyaltyOne and the Monitor on March 22 that rule 39.03 examinations “may” be necessary. However, Bread has not identified which witnesses it may examine or taken any steps to organize such examinations.

- (d) **Discovery is Required:** Bread has asserted that “discovery” is required before the motions can proceed. Leaving aside that Bread is not entitled to discovery in this proceeding or on the pending motions, it has not indicated the scope of any such discovery. In addition, Bread’s claim to be entitled to discovery is belied by the fact that when LoyaltyOne and the Monitor requested production of a narrow and targeted set of 35 documents produced by Bread in the parallel U.S. insolvency proceeding that were plainly relevant, Bread flatly refused to produce them.

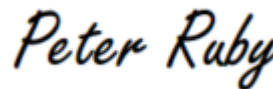
14. None of the foregoing claims by Bread warrant negating the parties’ agreement or this Court’s order regarding the steps leading up to the pending motions. Bread makes general and ill-founded assertions, that could have been made much earlier and with specificity, about delaying the hearing of the TMA Motion in the CCAA proceeding.

15. All that LoyaltyOne and the Monitor request is an endorsement directing that the parties do what they are already required to do: produce their witnesses for cross-examination during the week of April 1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2024.



CASSELS BROCK & BLACKWELL LLP



GOODMANS LLP

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 LOYALTONE, CO.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**JOINT AIDE MEMOIRE OF THE APPLICANT AND THE MONITOR
(ADHERENCE TO COURT-ORDERED TIMETABLE)**

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street,
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U

Tel: 416.869.5784 / tpinos@cassels.com

Alan Merskey LSO #: 41377I

Tel: 416.860.2948 / amerskey@cassels.com

John M. Picone LSO #: 58406N

Tel: 416.640.6041 / jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO#: 43331J

Tel: 416.849.6017 / boneill@goodmans.ca

Peter Ruby LSO#: 38439P

Tel: 416.597.4184 / pruby@goodmans.ca

Chris Armstrong LSO#: 55148B

Tel : 416.849.6013 / carmstrong@goodmans.ca

Lawyers for the Monitor

TAB 4

**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 LOYALTYONE, CO.

Applicant

**REPLY COSTS SUBMISSIONS
OF THE APPLICANT AND THE MONITOR**

February 24, 2025

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U
Tel: 416.869.5784 / tpinos@cassels.com
Alan Merskey LSO #: 41377I
Tel: 416.860.2948 / amerskey@cassels.com
John M. Picone LSO #: 58406N
Tel: 416.640.6041 / jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO#: 43331J
Tel: 416.849.6017 / boneill@goodmans.ca
Peter Ruby LSO#: 38439P
Tel: 416.597.4184 / pruby@goodmans.ca
Chris Armstrong LSO#: 55148B
Tel: 416.849.6013 / carmstrong@goodmans.ca

Lawyers for the Monitor

1. This Court directed costs submissions of 10 pages each.¹ Bread has gone over that limit, with content requiring this reply. Since the Applicant and Monitor delivered their submission (which was under the page limit), there has been a material development regarding the Tax Proceeds.

A. The Entitlement Claim is Ripe for Determination: Costs should be Decided Thereafter

2. The sole focus of the TMA motions, as confirmed in this Court’s Endorsement of December 15, 2023, was whether Bread is “entitled to the benefit of the Tax Dispute Litigation”.² The disclaimer and TUV arguments were raised in good faith as defenses to that claim.³ In July 2024, this Court held that it was “premature” to decide Bread’s Entitlement Claim.

3. It is no longer premature. The CRA has confirmed that “the Refund Cheque” in the amount of approximately \$87M “will be mailed to the KSV address”. Bread is aware of that.⁴ Accordingly, the Applicant and Monitor request a case conference to seek directions on the appropriate process to have Bread’s Entitlement Claim decided. Costs should be addressed following that decision.

4. This approach is sensible and efficient, and consistent with the clear Court of Appeal jurisprudence on awarding costs on a partial or issue-by-issue basis: “[c]osts are not to be determined by considering success on an issue by issue basis” and “they are to be based on the overall success achieved by a party.”⁵ Bread has failed to articulate any prejudice it could suffer in having costs determined once the TMA motions are fully adjudicated.

B. This Is Not Ordinary Civil Litigation; Different Considerations Apply in CCAA

5. Bread complains that the costs submissions of the Applicant and the Monitor do not track “traditional” submissions made in ordinary civil litigation. The TMA motions were not ordinary civil

¹ Endorsement of Justice Conway dated December 5, 2024, para. 4. In accordance with that Endorsement, the Applicant and Monitor’s main submission is 7 pages and this reply submission is 3 pages.

² Endorsement of Justice Conway dated December 15, 2023, paras. 1, 4, 5, 8. This Court also directed that funds deposited by Bread into escrow for the Tax Appeal cannot be released until Bread’s Entitlement Claim (and not other issues) has been decided.

³ Endorsement of Justice Conway dated June 13, 2024, para. 3.

⁴ Email from CRA dated February 13, 2025, Reply Costs Submissions, Tab 1; Email from Z. Nurmohamed dated February 19, 2025, Reply Costs Submissions, Tab 2.

⁵ *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited*, [2021 ONCA 381](#), para. 10.

litigation. They were brought in a CCAA proceeding and in very unique circumstances, including the fact that the outcome of these motions will affect numerous stakeholders beyond the parties.

C. Bread Set the Dispute in Motion, then Forced the Dispute to be Heard

6. Bread's assertion that the Applicant precipitated the TMA motions is wrong. The sequence was as follows: (i) Bread demanded the Tax Proceeds; (ii) faced with that demand, the lenders – whose consent was necessary pursuant to this Court's order – refused to permit continued use of their collateral to fund the Tax Appeal subject to resolution of the dispute; (iii) the Applicant and Monitor had no choice but to issue the disclaimer and bring a motion; (iv) Bread responded with its own motion; (v) the Applicant and Monitor requested that Bread fund the Tax Appeal and defer the motions until its Entitlement Claim was ripe; (vi) Bread refused, but agreed to fund the Tax Appeal on the condition that the TMA motions proceeded on a timetable acceptable to Bread.⁶

7. Bread's chronology relating to deferring the TMA motions is also wrong. Unlike the Applicants, Bread never sought to defer the motions until after the Tax Appeal had been completed. What Bread sought was a brief delay of the hearing to improve its evidence. On November 17, 2023, the Applicant offered to defer adjudication of Bread's Entitlement Claim "until after we have the result of the Tax Appeal, at which time there may or may not be something to fight over" if "an agreement on the costs of prosecuting the appeal and any potential adverse costs award" could be reached.⁷ On March 26, 2024, in response to Bread's request for a **brief temporary** stay or adjournment of the TMA motions – which were being suggested by Bread to allow it more time to file significantly more evidence than initially contemplated – the Applicant advised Bread that it needed to proceed expeditiously because settlement discussions in the Tax Appeal were imminent.⁸

⁶ Letter from A. Taylor to R. Jacobs dated April 20, 2023, Responding Costs Submissions, Tab 1; Joint Aide Memoire of the Applicant and the Monitor dated November 29, 2023, para. 6, Reply Costs Submissions, Tab 3; Order of Justice Steele dated July 5, 2023, para. 4; Email from T. Pinos dated November 17, 2023, Responding Costs Submissions, Tab 5; Email from E. Kolers dated November 27, 2023, Responding Costs Submissions, Tab 3; Timetable from Bread Aide Memoire dated November 30, 2023, Responding Costs Submissions, Tab 4; Endorsement of Justice Conway dated December 15, 2023, para. 8.

⁷ Email from T. Pinos dated November 17, 2023, Responding Costs Submissions, Tab 5.

⁸ Joint Aide Memoire of the Applicant and the Monitor dated March 26, 2024, para. 12, Reply Costs Submissions, Tab 4.

D. Bread's Expert Costs Were Unnecessary and Disproportionate

8. The lion's share of Bread's claim for costs relates to experts that it introduced into these motions. Even if this Court concludes that experts were needed (which the Applicant and Monitor dispute), it was incumbent on Bread to approach that proportionately. Bread obtained two unnecessary expert reports on Delaware law, forcing the Applicant and Monitor to respond. None of these reports played any part in this Court's analysis.⁹ The Applicant and Monitor also spent only one-third of what Bread spent responding to Bread's TUV expert evidence.¹⁰

E. A Costs Award in CCAA is the Exception rather than the Rule

9. For clarity, the Applicant and Monitor do not, as Bread claims, argue that as a general rule no costs should be awarded in CCAA. They argue, citing recent jurisprudence of this Court, that "a costs award in CCAA is in practice the exception rather than the rule."¹¹ Bread focusses on *Urbancorp* and *Return on Innovation*,¹² despite neither of those two cases, or any case, even remotely supporting a costs award in an amount resembling what Bread seeks here – especially given that Bread's Entitlement Claim remains undecided. The point is that partial indemnity of unreasonable still equals unreasonable.

F. Outcome Sought

10. The Applicant and Monitor request a case conference to seek directions on a process for the determination of Bread's Entitlement Claim, with costs of the TMA motions determined thereafter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of February, 2025.



CASSELS BROCK & BLACKWELL LLP



GOODMANS LLP

⁹ *LoyaltyOne, Co. (Re)*, [2024 ONSC 3866](#), para. 33.

¹⁰ The total fees (all inclusive) incurred for the reports prepared by Andrew Harington (TUV) were \$640,502.36.

¹¹ Endorsement of Justice Black dated November 29, 2024, para. 12, Responding Costs Submissions, Tab 7.

¹² *Urbancorp Toronto Management Inc. (Re)*, [2019 ONCA 757](#); *Return on Innovation Capital Ltd. v. Gandhi Innovations Ltd.*, [2011 ONSC 7465](#).

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 LOYALTONE, CO.

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

PROCEEDING COMMENCED AT
TORONTO

**REPLY COSTS SUBMISSIONS
OF THE APPLICANT AND THE MONITOR**

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre - North Tower
40 Temperance Street
Toronto, ON M5H 0B4

Timothy Pinos LSO #: 20027U

Tel: 416.869.5784 / tpinos@cassels.com

Alan Merskey LSO #: 41377I

Tel: 416.860.2948 / amerskey@cassels.com

John M. Picone LSO #: 58406N

Tel: 416.640.6041 / jpicone@cassels.com

Lawyers for the Applicant

GOODMANS LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Brendan O'Neill LSO #: 43331J

Tel: 416.849.6017 / boneill@goodmans.ca

Peter Ruby LSO #: 38439P

Tel: 416.597.4184 / pruby@goodmans.ca

Chris Armstrong LSO #: 55148B

Tel: 416.849.6013 / carmstrong@goodmans.ca

Lawyers for the Monitor


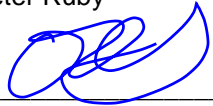
TAB 5

Commercial List File Number: CV-23-00696017-00CL

Date Filed: February 27, 2025

SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST
REQUEST FORM CONTINUING MATTER

A	Short Title of Proceeding: LOYALTYONE, CO.		
B	The estimated time for the hearing of this matter is		
	#MINUTES(S)	1	#HOURS(S) DAY(S)
C	If hearing is to be 1 day or more in duration, please provide an estimate of reading time required for judge to prepare for hearing		
	# MINUTE(S)	# HOUR(S)	DAY(S)
D	The nature of this hearing in this continuing matter is: Setting and timetabling a process for the determination of the Entitlement Claim		
E	State the date(s) and time(s) for hearing the matter that has (have) been arranged with other counsel.		
	(1) March 13, 2025 at noon	(2)	(3)
F	Specify if this matter is already being dealt with in the court system (giving particulars as court number and office, when and by what judge or other judicial official). Advise of any known judicial conflicts or if any judge is seized of this matter. The Honourable Justice Barbara A. Conway is seized of this matter.		
G	The following materials will be necessary for the matter to be considered. (It is the responsibility of counsel to confirm that the proper materials are available for the Court.) None		

COUNSEL FOR THE APPLICANT		COUNSEL FOR THE MONITOR	
Party	LoyaltyOne, Co	Party	KSV Restructuring Inc.
Counsel	John Picone  PRINT AND SIGN OR INITIAL	Counsel	Peter Ruby  PRINT AND SIGN OR INITIAL
Address	CASSELS BROCK & BLACKWELL LLP Bay Adelaide Centre - North Tower 40 Temperance Street, Suite 3200 Toronto, ON M5H 0B4	Address	GOODMANS LLP Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7
Phone	416-640-6041	Phone	416-597-4184
E-Mail	jpicone@cassels.com	E-Mail	pruby@goodmans.ca

COUNSEL FOR OTHER PARTY	
Party	Bread Financial Holdings
Counsel	Eliot Kolers <i>PR for EK</i> _____ PRINT AND SIGN OR INITIAL
Address	STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West, 199 Bay Street Toronto, ON M5L 1B9
Phone	416-869-5637
E-Mail	ekolders@stikeman.com

(IF MORE THAN 2 PARTIES INVOLVED, ADD ADDITIONAL SIGNATURES AND PARTICULARS ON REVERSE OR SEPARATE PAGE)

To be submitted to: Commercial List Office, 330 University Avenue, 7th Floor, Toronto Ontario **Fax to: (416) 327-6228**
You may also convert to PDF and email to Toronto.Commerciallist@jus.gov.on.ca

Endorsement/Disposition <input type="checkbox"/> See attached Yellow Endorsement Form

Commercial Form C

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AIDE MEMOIRE OF
BREAD FINANCIAL HOLDINGS LTD.
(Stay Extension Motion)**

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9

Eliot Kolers LSO #38304R
Tel: (416) 869-5637
ekolers@stikeman.com

Maria Konyukhova LSO#: 52880V
Tel: (416) 869-5230
mkonyukhova@stikeman.com

Lesley Mercer LSO#: 54491E
Tel: (416) 869-6859
lmercer@stikeman.com

RJ Reid LSO#: 88760P
Tel: (416) 869-5614
rreid@stikeman.com

Lawyers for Bread Financial Holdings, Inc.