

**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 957855 ALBERTA LTD. (FORMERLY  
NEWSWEST INC.) AND ROSEBUD CREEK FINANCIAL  
CORP. IN RESPECT OF METRO 360 GENERAL  
PARTNERSHIP**

Applicants

**FACTUM OF THE APPLICANTS**

Motion for Meeting Order and Ancillary Order  
Returnable November 17, 2021

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- Schedule A List of Authorities**
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## PART I - INTRODUCTION

1. This factum is filed by 957855 Alberta Ltd. (formerly NewsWest Inc.) (“**Alberta HoldCo**”) and Rosebud Creek Financial Corp. (“**Rosebud HoldCo**” and, together with Alberta HoldCo, the “**Partners**”), as the partners of Metro 360 General Partnership (“**Metro 360**” and, together with the Partners, the “**CCAA Entities**”), in support of a motion by the CCAA Entities for the following Orders:

- (a) an Order (the “**Meeting Order**”), among other things, accepting the filing of the CCAA Entities’ proposed plan of compromise and arrangement (as it may be amended, modified, varied and/or supplemented in accordance with its terms, the “**Plan**”) and authorizing the CCAA Entities to convene a virtual meeting of the Affected Creditors (the “**Creditors’ Meeting**”) to consider and vote on a resolution to approve the Plan; and
- (b) an Order (the “**Ancillary Order**”), among other things, approving and giving effect to the Claims Agreement (as defined below), sealing the Claims Agreement until further order of the Court, approving the Sixth Report of the Monitor dated November 10, 2021 (the “**Sixth Report**”) and the activities and conduct of the Monitor as reported therein, approving certain fees and disbursements of the Monitor and its counsel, and extending the Stay Period (as defined below) from December 31, 2021 to and including February 28, 2022.<sup>1</sup>

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Affidavit of Daniel P. Shapiro sworn November 10, 2021 (the “**Shapiro Affidavit**”) or the Plan attached as Exhibit “A” to the Shapiro Affidavit. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

2. As discussed below, the CCAA Entities believe that the development and implementation of a restructuring plan that preserves the value of the CCAA Entities and their interests in the Subsidiaries is in the best interests of the CCAA Entities and their respective stakeholders. In this regard, the CCAA Entities have been working diligently throughout these proceedings with a view to developing a restructuring plan that provides for the possibility of full repayment to creditors over time.

Shapiro Affidavit at para. 6; Motion Record returnable November 17, 2021 (the “**Motion Record**”), Tab 2.

3. The CCAA Entities and the Monitor have substantially completed the Claims Process. Notably, following extensive discussions over several months with the Canada Revenue Agency (the “**CRA**”) regarding the CCAA Entities’ potential federal tax liabilities, the CCAA Entities executed the Claims Agreement with the CRA, which determines the nature and amount of the CRA’s claims against the CCAA Entities in the Claims Process and their treatment in the Plan. The CCAA Entities are thus now seeking to move forward with the proposed Plan.

Shapiro Affidavit at para. 8; Motion Record, Tab 2.

4. The Plan has been developed by the CCAA Entities, in consultation with the Monitor. If approved by the requisite majorities of Affected Creditors at the Creditors’ Meeting and sanctioned by this Court, the Plan will, among other things, provide for a significant initial cash distribution to Affected Creditors and enable Affected Creditors to potentially receive the remainder of their claims over time through the proceeds of an unsecured promissory note (the “**Promissory Note**”) to be issued by the CCAA Entities under the Plan, all in exchange for the full and final settlement of the Affected Claims.

Shapiro Affidavit at para. 9; Motion Record, Tab 2.

5. The CCAA Entities believe that all parties with an economic interest in these proceedings will derive a greater benefit from the Plan than would result from a bankruptcy/liquidation scenario.

Shapiro Affidavit at para. 29; Motion Record, Tab 2.

6. In particular, Metro 360 and Rosebud HoldCo own equity interests in the Subsidiaries, a number of which are early stage businesses with promising growth potential. The Plan is structured to enable the CCAA Entities to make an initial distribution to Affected Creditors, thereby allowing the CCAA Entities to complete a coordinated and efficient exit from protection under the CCAA so that they can continue to grow the Subsidiaries, and work towards repaying the remainder of creditors' claims over time by monetizing their interests in the Subsidiaries.

Shapiro Affidavit at para. 29; Motion Record, Tab 2.

7. In addition, the Intercompany Claims – which total approximately \$11 million, representing approximately 38% of all claims against the CCAA Entities – will not be entitled to share in the initial distribution, thereby significantly increasing the amount of cash that is to be distributed to third-party creditors in the initial distribution. Intercompany Creditors are, however, entitled to share *pro-rata* with Affected Creditors holding Promissory Note Entitlements in the Net Proceeds of any Transaction (as defined and discussed below) or any subsequent distribution to holders of Promissory Note Entitlements of funds from the Creditor Distribution Pool Account.

Shapiro Affidavit at para. 37; Motion Record, Tab 2.

8. For the reasons set out herein, the CCAA Entities respectfully submit that the relief requested is in the best interests of the CCAA Entities and their respective stakeholders and that it is fair, reasonable and appropriate for the Court to grant the requested Meeting Order and Ancillary Order.

## **PART II – FACTS**

### **A. BACKGROUND**

9. The Partners are holding companies that together hold 100% of the interests of Metro 360. Metro 360 operates a multi-faceted business that, before completing the TNG Transaction, was focused mainly on the wholesale distribution across Canada of books, magazines and newspapers (the “**Literature Business**”). Metro 360’s business is now focused on the distribution of consumer-packaged goods and various businesses in which it and Rosebud HoldCo have an equity interest, including Well Ventures, Handfuel, Swift Work Wellness, Spectral Agriventures, United Library Services Inc., Leankor and Recruiter (collectively, the “**Subsidiaries**”). A number of the Subsidiaries are early stage businesses with promising growth potential, and the CCAA Entities believe that preserving their interest in the Subsidiaries will maximize value for the benefit of the CCAA Entities and their respective stakeholders.

Shapiro Affidavit at paras. 1 and 5; Motion Record, Tab 2.

10. On April 6, 2020, the Partners initiated proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada) (the “**Proposal Proceedings**”) in order to implement the sale of the Literature Business in the TNG Transaction as quickly as possible. The Literature Business was particularly impacted by the onset of the COVID-19 pandemic and was in urgent need of

stabilization. The TNG Transaction was approved by this Court and subsequently completed on April 8, 2020.

Shapiro Affidavit at para. 6; Motion Record, Tab 2.

11. The Proposal Proceedings were continued under the CCAA pursuant to an Initial Order dated June 17, 2020 in order to provide the CCAA Entities with stability and the time and framework within which they could return Literature Business inventory for credit and advance a value-maximizing restructuring plan.

Shapiro Affidavit at paras. 8 and 14; Motion Record, Tab 2.

12. On September 16, 2020, this Court granted a Claims Procedure Order approving the Claims Process for the identification, quantification and resolution of claims against the CCAA Entities, as well as their present and former officers and directors. From late 2020 through early 2021, the CCAA Entities, in consultation with the Monitor, substantially completed the Claims Process – which entailed the review and reconciliation of over 1,100 creditor claims – and also developed the initial terms of a draft restructuring plan.

Shapiro Affidavit at paras. 5–7; Motion Record, Tab 2.

13. One of the claims filed in the Claims Process was a “placeholder” Proof of Claim filed by the CRA against the Partners and Metro 360 for an unspecified amount in respect of any type of tax liability potentially applicable to any of the CCAA Entities. The CRA then filed Proofs of Claim against the Partners and issued several reassessments to Metro 360 that made certain adjustments to Metro 360’s GST/HST liabilities, including assessments under Section 296(1)(b) of the *Excise Tax Act* (Canada) of almost \$4.5 million (the “**Section 296(1)(b) Assessments**”).

Metro 360 filed notices of objection with the CRA's appeals division objecting to each of the CRA reassessments made against it.

Shapiro Affidavit at para. 13; Motion Record, Tab 2.

14. Due to the significant amounts at issue with respect to the CRA's potential claims, the CCAA Entities could not finalize their draft restructuring plan and present same to creditors and this Court until matters with the CRA were resolved.

Shapiro Affidavit at para. 7; Motion Record, Tab 2.

**B. THE CLAIMS AGREEMENT**

15. The CCAA Entities, with the assistance of their counsel and the Monitor, engaged over several months in various discussions with the CRA to try to resolve the CRA reassessments so that the CRA's claim amounts against the CCAA Entities could be finally determined.

Shapiro Affidavit at para. 14; Motion Record, Tab 2.

16. On August 9, 2021, the CRA issued notices of reassessment or confirmation that resolved all of the matters at issue in the CRA reassessments to the satisfaction of the CCAA Entities and the Monitor, except for the Section 296(1)(b) Assessments.

Shapiro Affidavit at para. 14; Motion Record, Tab 2.

17. Following further discussions, the CCAA Entities and the CRA reached an agreement relating to the Section 296(1)(b) Assessments and all other tax related issues between the CCAA Entities and the CRA, including the amount and nature of CRA's claims to be accepted in the Claims Process and addressed under the proposed Plan, and entered into the Claims Agreement.



Shapiro Affidavit at para. 15; Motion Record, Tab 2.

18. The key terms of the Claims Agreement include, among other things, that the CCAA Entities agree to recognize the following claims of the CRA in the Claims Process: (a) an allowed claim for voting and distribution purposes in the amount of \$302,542 against Metro 360; (b) an allowed provisional claim in the amount of \$3,159,236.53 against Metro 360 in respect of the Section 296(1)(b) Assessments (the “**Section 296 Claim**”); (c) an allowed claim for voting and distribution purposes in the amount of \$373,901.35 against Rosebud HoldCo; and (d) an allowed claim for voting and distribution purposes in the amount of \$131,875.20 against Alberta HoldCo.

Shapiro Affidavit at para. 16; Motion Record, Tab 2.

19. The CRA will be entitled to vote on the proposed Plan and receive distributions in respect of all of the foregoing claims other than the Section 296 Claim, which is to be treated pursuant to the Claims Agreement as a provisional claim, the amount of which is reduced dollar for dollar to the extent, among other things, that Metro 360 makes payment of HST amounts to Affected Creditors by way of distributions under the Plan.

Shapiro Affidavit at paras. 17 and 18; Motion Record, Tab 2.

20. The Claims Agreement is conditional on it being approved by the Court pursuant to the proposed Ancillary Order. Further, as discussed in more detail below, the CCAA Entities are seeking that the Claims Agreement be sealed and kept confidential.

Shapiro Affidavit at para. 22; Motion Record, Tab 2.

**C. OVERVIEW OF THE PLAN**

21. The CCAA Entities, in consultation with the Monitor, have developed the proposed Plan, which provides for the payment of a significant initial cash distribution to Affected Creditors and will enable Affected Creditors to potentially receive payment in full over time through the proceeds of the Promissory Note, all in full and final settlement of their Affected Claims.

Shapiro Affidavit at para. 9; Motion Record, Tab 2.

22. The proposed Plan is elaborated on in the Shapiro Affidavit, which also attaches a copy of the Plan as Exhibit “A” thereto.

**D. THE PROPOSED MEETING ORDER**

23. The proposed Meeting Order provides that the CCAA Entities are authorized to file the Plan and to convene the Creditors’ Meeting of their Affected Creditors to consider and vote on the Plan.

Shapiro Affidavit at para. 63; Motion Record, Tab 2.

24. The proposed Meeting Order authorizes the CCAA Entities to convene a meeting of a single class of creditors (the “**Unsecured Creditors’ Class**”), comprised of the Affected Creditors, to consider and vote on the Plan.

Shapiro Affidavit at para. 63; Motion Record, Tab 2.

25. The Creditors’ Meeting would be held virtually by means of a telephonic or electronic facility using a third-party service provider, due to the ongoing COVID-19 pandemic, on December 16, 2021, at 1:00 p.m. (Toronto time).

Shapiro Affidavit at para. 64; Motion Record, Tab 2.

26. The Meeting Order provides for notification of the Creditors' Meeting to the Affected Creditors, and contemplates that the Monitor will, as soon as practicable after the granting of the Meeting Order:

- (a) cause notice of the Creditors' Meeting to be published for one business day in *The Globe and Mail* (National Edition);
- (b) send to each Affected Creditor a notice which provides a link to a copy of the Information Package (which includes the Electronic Meeting Protocol, the Notice of Meeting, the Proxy, the Convenience Class Claim Election and the form of Resolution), the Plan, the Sixth Report and the Monitor's Report on the Plan (the "**Plan Assessment Report**"). Such notice will, in each case, be sent via either e-mail or regular mail to the Affected Creditor's last known e-mail or mailing address which was provided to the CCAA Entities or the Monitor, or as set out in the Affected Creditor's Proof of Claim; and
- (c) cause a copy of the Information Package, the Plan and the Meeting Order to be posted on the Monitor's Website.

Shapiro Affidavit at para. 65; Motion Record, Tab 2.

27. The proposed Meeting Order also provides for, among other things:

- (a) procedures that will govern the conduct of the Creditors' Meeting;
- (b) procedures for the appointment of proxyholders by Affected Creditors;

- (c) procedures for Affected Creditors with one or more Proven Claims in an amount in excess of the Cash Election Amount to file a Convenience Class Claim Election;
- (d) procedures for voting at the Creditors' Meeting;
- (e) procedures for the tabulation by the Scrutineer of the Voting Claims and any votes cast by Affected Creditors holding Disputed Claims at the Creditors' Meeting;
- (f) the procedure for approval of the Plan at the Creditors' Meeting;
- (g) the process for any adjournments of the Creditors' Meeting; and
- (h) the process for any amendments to the Plan by the CCAA Entities.

Shapiro Affidavit at paras. 67 and 68; Motion Record, Tab 2.

28. If the Plan is approved by the Required Majority of the Unsecured Creditors' Class at the Creditors' Meeting, the proposed Meeting Order authorizes the CCAA Entities to bring a motion seeking the Sanction Order at the Sanction Hearing on such date as may be set by the Court.

Shapiro Affidavit at para. 71; Motion Record, Tab 2.

**E. THE PROPOSED ANCILLARY ORDER**

**(1) Claims Agreement**

29. As referenced above, the Claims Agreement is conditional on it being approved by the Court. The resolution of the Section 296(1)(b) Assessments and all other tax related issues

between the CCAA Entities and the CRA pursuant to the Claims Agreement is a vital step in advancing these proceedings and bringing the proposed Plan forward.

Shapiro Affidavit at para. 22; Motion Record, Tab 2.

**(2) Extension of the Stay Period**

30. The Stay Period currently expires on December 31, 2021. The CCAA Entities are seeking an extension of the Stay Period to and including February 28, 2022. The CCAA Entities require additional time to, among other things:

- (a) distribute the Plan and voting materials to the Affected Creditors pursuant to the Meeting Order (if granted); and
- (b) hold the Creditors' Meeting pursuant to the Meeting Order (if granted) and return before this Court to seek approval of the Plan (if approved at the Creditors' Meeting).

Shapiro Affidavit at para. 72; Motion Record, Tab 2.

31. During these CCAA proceedings, the CCAA Entities have continued to work in good faith and with due diligence to, among other things, complete the retrieval and return of unsold Literature Business inventory for a credit and reduction of Metro 360's payables, complete the Claims Process, work diligently with the CRA to finally determine the CRA's claim amounts against the CCAA Entities, and to develop and draft the proposed Plan and the materials related to the requested Meeting Order.

**F. FURTHER BACKGROUND FACTS**

32. The facts regarding the background to these proceedings, the activities of the CCAA Entities since the commencement of the Proposal Proceedings and the continuation thereof under the CCAA, and the relief requested in this motion, among other things, are more fully set out in the Shapiro Affidavit and the Sixth Report.

Shapiro Affidavit at paras. 1–12; Motion Record, Tab 2.

**PART III - ISSUES AND THE LAW**

33. The issues to be considered on this motion are whether:

- (a) it is appropriate to permit the CCAA Entities to file the Plan and authorize the Creditors' Meeting to proceed;
- (b) the proposed classification of creditors is appropriate;
- (c) the Claims Agreement and the related relief sought in respect of the Claims Agreement should be approved, including the sealing of the confidential appendix to the Sixth Report containing the Claims Agreement; and
- (d) the proposed extension of the Stay Period is appropriate.

**A. IT IS APPROPRIATE TO PERMIT THE CCAA ENTITIES TO FILE THE PLAN AND CALL THE CREDITORS' MEETING**

34. The Court has authority under Sections 4 and 5 of the CCAA to order a meeting of creditors or class of creditors to vote on a proposed plan of compromise or arrangement.

[CCAA](#), Sections [4](#) and [5](#).

35. Approval of the Meeting Order does not require an analysis of the substantive merits of the Plan by the Court, which is properly determined at the Sanction Hearing. The threshold for the Court to be satisfied for the filing of a plan and the calling of a meeting of creditors is low. The Court will generally order that the meeting be held where the plan is feasible or “not doomed to failure”. In *Elan Corp. v Comiskey*, the Ontario Court of Appeal held that:

I agree that the feasibility of the plan is a relevant and significant factor to be considered in determining whether to order a meeting of creditors: S.E. Edwards, “Reorganizations Under the *Companies’ Creditors Arrangement Act*,” at pp. 594-595. I would not, however, impose a heavy burden on the debtor company to establish the likelihood of ultimate success from the outset. As the Act will often be the last refuge for failing companies, it is to be expected that many of the proposed plans of reorganization will involve variables and contingencies which will make the plan’s ultimate acceptability to the creditors and the Court very uncertain at the time the initial application is made. [*emphasis added*]

[\*Elan Corp. v Comiskey\*](#) (1990), 1 OR (3d) 289 at p. 36–37 (CA).

[\*U.S. Steel Canada Inc. \(Re\)\*](#), 2017 ONSC 1967 at para. 12.

[\*Arrangement relatif à Bloom Lake\*](#), 2018 QCCS 1657 at para. 19.

36. The Court is not required to address the fairness and reasonableness of the Plan at this stage. Unless it is obvious that a plan would not be approved by the affected creditors, a debtor company should not be prevented from presenting a plan to its creditors at a meeting.

[\*ScoZinc Ltd. \(Re\)\*](#), 2009 NSSC 163 at para. 7.

37. As discussed above, the Plan was developed by the CCAA Entities, after significant consultation with the Monitor since late 2020. Given that the Partners are jointly liable for all debts and obligations of Metro 360 pursuant to the *Partnerships Act* (Ontario), a key focus of the

CCAA Entities and the Monitor in developing the proposed Plan has been to provide for the possibility of full repayment to creditors over time.

[\*Partnerships Act\*](#), R.S.O. 1990, c. P.5, [Section 10\(1\)](#).

Shapiro Affidavit at para. 7; Motion Record, Tab 2.

38. The threshold for the filing of the Plan and the calling of the Creditors' Meeting is satisfied in this case. There is no basis for concluding that the Plan is not feasible or doomed to fail. Moving forward with the proposed Plan is in the best interests of the CCAA Entities and their stakeholders, and will allow the CCAA Entities to restructure and work towards their stated goal in these CCAA proceedings of potentially repaying creditors in full over time.

Shapiro Affidavit at para. 8; Motion Record, Tab 2.

39. The CCAA Entities submit that the provisions of the Meeting Order governing the notice and conduct of the Creditors' Meeting are reasonable and appropriate in the circumstances, and the Monitor supports the requested Meeting Order.

[\*Ardenton Capital Corporation et al.\*](#), File No. S-211985 (B.C.S.C.), Meetings Order dated October 1, 2021.

[\*Yatsen Group of Companies Inc. et al.\*](#), Court File No. CV-21-00655505-00CL (Ont. S.C.J. [Commercial List]), Meeting Order dated August 4, 2021,

Shapiro Affidavit at para. 65; Motion Record, Tab 2.

Sixth Report at s. 6.5(1)-(3).

**B. THE PROPOSED CLASSIFICATION OF CREDITORS FOR VOTING PURPOSES IS APPROPRIATE**

40. Section 22(1) of the CCAA provides that:

A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a



compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

[CCAA](#), Section [22\(1\)](#).

41. Section 22(2) of the CCAA further provides that, for the purposes of Section 22(1), creditors with a “commonality of interest” may be included in the same class, and includes key factors for considerations as part of assessing the “commonality of interest” including:

- (a) the nature of the debts, liabilities or obligations giving rise to their claims;
- (b) the nature and rank of any security in respect of their claims;
- (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

[CCAA](#), Section [22\(2\)](#).

42. Creditors must be classified with the underlying purpose of the CCAA in mind, which is to facilitate successful restructurings. A fragmentation of classes that would render it excessively difficult to obtain approval of a CCAA plan would be contrary to the purpose of the CCAA and ought to be avoided.

[Norcen Energy Resources Ltd. v. Oakwood Petroleum Ltd.](#) (1988), 72 C.B.R. (N.S.) 20 at para. [27](#) (Alta. Q.B.).

[Re Canadian Airlines Corp.](#) (2000), 19 C.B.R. (4th) 12 at para. [14](#) (Alta. Q.B.), leave to appeal refused [2000 ABCA 149](#).

43. The proposed Meeting Order provides for a single class of creditors, the Unsecured Creditors' Class, comprised of the Affected Creditors. The Unsecured Creditors' Class would include all trade creditors and former employees, along with other general unsecured creditors.

Shapiro Affidavit at para. 31; Motion Record, Tab 2.

44. The CCAA Entities submit that the proposed single class of the Affected Creditors is appropriate in the circumstances. In particular, the fact that all of the Affected Creditors under the Plan have unsecured claims against one or more of the CCAA Entities and are proposed to receive the same treatment under the Plan favours placement of such creditors in the Unsecured Creditors' Class. As Farley J. noted in *Stelco*:

...absent valid reason to have separate classes it would be reasonable, logical, rational and practical to have all this unsecured debt in the same class. Certainly that would avoid any unnecessary fragmentation – and in this respect multiplicity of classes does not mean that that fragmentation starts only when there are many classes. Unless more than one class is necessary, fragmentation would start at two classes. Fragmentation if necessary, but not necessarily fragmentation.

[\*Stelco Inc. \(Re\)\*](#) (2005), 15 C.B.R (5th) 297 at para. 13 (ONSC).

45. The CCAA Entities submit that there is no valid reason to create more than one class of creditors in these proceedings.

### **C. THE CLAIMS AGREEMENT SHOULD BE APPROVED**

46. The CCAA Entities are seeking approval of the Claims Agreement pursuant to the proposed Ancillary Order.

47. This Court has broad discretion under Section 11 of the CCAA to make any order that it considers appropriate in the circumstances, subject to any restrictions under the CCAA. CCAA courts have routinely exercised both their inherent and statutory jurisdiction to grant relief to a debtor company that advances the progress of the proceedings and “fills the gaps” between provisions of the CCAA in a way that is consistent with the broad public policy objectives of the CCAA.

[9354-9186 Québec inc. v. Callidus Capital Corp.](#), 2020 SCC 10 at paras. [65](#) and [67](#).

[Calpine Canada Energy Limited, Re](#), 2007 ABQB 504 at paras. [71–72](#) [*Calpine*].

[CCAA](#), Section [11](#).

48. It is settled law that CCAA courts may approve a settlement by a debtor company in a CCAA proceeding.

[Robertson v ProQuest Information & Learning Co.](#), 2011 ONSC 1647 at para. [22](#) [*Robertson*].

[Calpine](#), *supra*, at paras. [75](#), [80–82](#).

[Nortel Networks Corp., Re](#), 2010 ONSC 1096 at paras. [39–43](#).

[CCAA](#), Section [11](#).

49. When approving a settlement under the CCAA, the Court must be satisfied that: (i) the agreement is fair and reasonable; (ii) the agreement will be beneficial to the debtor and its stakeholders generally; and (iii) the settlement is consistent with the purpose and spirit of the CCAA.

[Robertson](#), *supra*, at para. [22](#); BOA, Tab 3.

[Air Canada, Re](#) (2004), 47 C.B.R. (4th) 169 at para. [9](#) (ONSC).

[Calpine](#), *supra*, at paras. [59](#) and [75](#); BOA, Tab 2.

50. The Court will review the proposed settlement from the perspectives of fairness and reasonableness in the context of moving the proceedings towards a successful compromise. It is thus appropriate for the Court to approve agreements that a debtor company has entered into in its efforts to move the company's restructuring efforts forward.

*Re Stelco Inc.* (2005), 15 C.B.R. (5th) 288 at para. 18 (ONCA), citing *HongKong Bank v Chef Ready Foods* (1990), 4 C.B.R. (3d) 311 at para. 10 (BCCA).

51. The Claims Agreement results from many months of discussions among the CCAA Entities and the CRA (including the Department of Justice) to try to reach a comprehensive resolution of the CCAA Entities' tax liabilities and to determine the claims of the CRA to be addressed in these proceedings. The Claims Agreement is fair and reasonable and in the best interests of the CCAA Entities and their stakeholders because, among other things, the Claims Agreement:

- (a) determines the CRA's claims for voting and distribution purposes in respect of the proposed Plan;
- (b) provides for the significant Section 296 Claim to be reduced over time as creditors of the CCAA Entities are repaid the HST portion of their claims pursuant to the proposed Plan; and
- (c) enables the CCAA Entities to finalize and present the proposed Plan and advance toward the completion of the CCAA proceedings.

Shapiro Affidavit at para. 20; Motion Record, Tab 2.

52. The CCAA Entities submit that it is appropriate for this Court to approve the Claims Agreement pursuant to the proposed Ancillary Order.

**D. THE SEALING OF THE CONFIDENTIAL APPENDIX IS APPROPRIATE**

53. The CCAA Entities request that this Court seal the confidential appendix to the Sixth Report, which contains the Claims Agreement.

54. This Court has the discretion pursuant to Section 137(2) of the *Courts of Justice Act* (Ontario) and pursuant to its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

[\*Courts of Justice Act, R.S.O. 1990\*](#), c. C.43, s. 137(2).

55. The Courts will exercise their discretion to depart from the general principle that court proceedings should be public where it is demonstrated that openness would cause serious harm or injustice. In *MacIntyre v. Nova Scotia (Attorney General)*, the Supreme Court of Canada held:

Undoubtedly every Court has a supervisory and protecting power over its own records. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose. The presumption, however, is in favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right.

[\*MacIntyre v Nova Scotia \(Attorney General\)\*](#), [1982] 1 SCR 175 at para. 70.

56. The test to determine whether a sealing order should be granted is set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, as recently restated by the Supreme Court of Canada in *Sherman Estate v. Donovan*:

In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that;

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

[Sherman Estate v. Donovan](#), 2021 SCC 25 at paras. [7](#), [38](#), [41](#) and [43](#) [*Sherman Estate*].

[Sierra Club of Canada v. Canada \(Minister of Finance\)](#), [2002] 2 SCR 522 at para. [53](#).

57. The Supreme Court has explicitly recognized that commercial interests are an “important public interest” and this Court, in the insolvency context, has ordered sealing over confidential or commercially sensitive documents to protect the interests of debtors and other stakeholders.

[Sherman Estate](#), *supra*, at paras. [41–43](#); BOA, Tab 10.

58. The Claims Agreement sets out the terms of the agreement between the CCAA Entities and the CRA relating to the Section 296(1)(b) Assessments and all other tax related issues between the CCAA Entities and the CRA, including the amount and nature of CRA’s claims to be accepted in the Claims Process and addressed under the proposed Plan. The Claims Agreement contains various information regarding the tax liabilities of the CCAA Entities and the CRA’s agreed treatment of such liabilities in these particular circumstances, thereby reflecting certain negotiated resolutions unique to these circumstances.

Shapiro Affidavit at para. 8; Motion Record, Tab 2.

59. The CRA approaches each dispute over its tax claims on a case-by-case basis, and refuses to agree that the facts of any case should influence the outcome of another dispute. Accordingly, the CRA required that the specific terms of the Claims Agreement remain confidential and that the CCAA Entities, in seeking its approval, must seek to have the Claims Agreement sealed. If granted, the sealing of the Claims Agreement will therefore protect the interests of the CRA, a federal agency acting in the public interest. Counsel for the CRA has advised that not sealing the Claims Agreement would be cause for the CRA to consider such agreement frustrated. The salutary effect of sealing the Claims Agreement (*i.e.*, protecting the CRA's public interest in dealing with each case on its own facts) greatly outweighs any deleterious effects of such sealing (*i.e.*, the lack of immediate public access to a highly specific negotiated resolution that was completed on a confidential basis). Given the nature of the Claims Agreement, there is no reasonable alternative measure to preserve the confidentiality that the CRA has required.

Shapiro Affidavit at para. 22; Motion Record, Tab 2.

60. As a result, it is submitted that the test for a sealing order has been met and the Court should order pursuant to the proposed Ancillary Order that the confidential appendix to the Sixth Report be treated as confidential, sealed and not form part of the public record in the within CCAA proceedings. The Monitor supports the sealing of the Claims Agreement.

Sixth Report, at s.4.1(1).

**E. IT IS APPROPRIATE TO EXTEND THE STAY PERIOD**

61. Section 11.02(2) of the CCAA provides the Court discretion to make an Order extending the stay of proceedings granted in an initial order.

[CCAA](#), Section [11.02\(2\)](#).

62. In order to make an order pursuant to Section 11.02(2), the Court must be satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.

[CCAA](#), Section [11.02\(3\)](#).

63. The CCAA Entities submit that an extension of the Stay Period to and including February 28, 2022 is appropriate in the circumstances given, among other things:

- (a) the CCAA Entities have acted, and continue to act, in good faith and with due diligence in respect of all matters relating to these proceedings, including, without limitation, to complete the retrieval and return of unsold Literature Business inventory for credit and reduction of the Metro 360 payables, complete the Claims Process pursuant to the Claims Procedure Order, file objections to the CRA reassessments and engage in ongoing dialogue with the CRA and its representatives over several months leading to the entering into of the Claims Agreement, and develop and draft the proposed Plan and the materials related to the requested Meeting Order;
- (b) the extension of the Stay Period to February 28, 2022 is necessary to provide the CCAA Entities with the time needed to (i) distribute the Plan and voting materials to the Affected Creditors pursuant to the Meeting Order (if granted) and (ii) hold the Creditors' Meeting and return before this Court to seek approval of the Plan (if approved at the Creditors' Meeting);



- (c) the updated cash flow forecast covering the period until February 28, 2022 indicates that the CCAA Entities are expected to continue to have access to sufficient funds during the requested extension of the Stay Period;
- (d) creditors will not suffer any material prejudice if the Stay Period is extended; and
- (e) the Monitor is supportive of the request to extend the Stay Period to and including February 28, 2022.

Shapiro Affidavit, at paras. 72-77; Motion Record, Tab 2.

Sixth Report, at s. 8.1(2) and Appendix "B".

64. Accordingly, the CCAA Entities submit that it is appropriate for this Court to extend the Stay Period to and including February 28, 2022.

#### **PART IV- RELIEF REQUESTED**

65. For all of the above-stated reasons, the CCAA Entities respectfully request that this Court grant the relief sought in the proposed Meeting Order and Ancillary Order, including an extension of the Stay Period, in order to enable the CCAA Entities to move forward with seeking the approval and implementation of the proposed Plan.

#### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

November 12, 2021

GOODMANS LLP

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Goodmans LLP

## **SCHEDULE A**

### **LIST OF AUTHORITIES**

1. [Elan Corp. v Comiskey](#) (1990), 1 OR (3d) 289 (CA)
2. [U.S. Steel Canada Inc. \(Re\)](#), 2017 ONSC 1967
3. [Arrangement relatif à Bloom Lake](#), 2018 QCCS 1657
4. [ScoZinc Ltd. \(Re\)](#), 2009 NSSC 136
5. [Ardenton Capital Corporation et al.](#), File No. S-211985 (B.C.S.C.), Meetings Order dated October 1, 2021
6. [Yatsen Group of Companies Inc. et al.](#), Court File No. CV-21-00655505-00CL (Ont. S.C.J. [Commercial List]), Meeting Order dated August 4, 2021
7. [Norcen Energy Resources Ltd. v. Oakwood Petroleum Ltd.](#) (1988), 72 C.B.R. (NS) 20 (Alta. Q.B.)
8. [Re Canadian Airlines Corp. \(2000\)](#), 19 C.B.R. (4th) 12 (Alta. Q.B.), leave to appeal refused [2000 ABCA 149](#)
9. [Stelco Inc. \(Re\)](#) (2005), 15 C.B.R. (5th) 297 (ONSC)
10. [9354-9186 Québec inc. v. Callidus Capital Corp.](#), 2020 SCC 10
11. [Calpine Canada Energy Ltd, Re](#), 2007 ABQB 504
12. [Robertson v ProQuest Information & Learning Co.](#), 2011 ONSC 1647
13. [Nortel Networks Corp., Re](#), 2010 ONSC 1096
14. [Air Canada, Re](#) (2004), 47 C.B.R. (4th) 169 (ONSC)
15. [Re Stelco Inc.](#) (2005), 15 C.B.R. (5th) 288 (ONCA)
16. [HongKong Bank v Chef Ready Foods](#) (1990), 4 C.B.R. (3d) 311 (ONCA)
17. [MacIntyre v Nova Scotia \(Attorney General\)](#), [1982] 1 SCR 175
18. [Sherman Estate v. Donovan](#), 2021 SCC 25
19. [Sierra Club of Canada v. Canada \(Minister of Finance\)](#), [2002] 2 SCR 522

## SCHEDULE B

### STATUTORY REFERENCES

#### [COMPANIES' CREDITORS ARRANGEMENT ACT](#)

**RSC 1985, c C-36, as amended**

##### [s. 4](#)

*Compromise with unsecured creditors* – Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

##### [s. 11](#)

*General power of court* – Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

##### [s. 11.02\(2\)](#)

*Stays, etc. — other than initial application* – A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

##### [s. 11.02\(3\)](#)

*Burden of proof on application* – The court shall not make the order unless

- (a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

[s. 12](#)

*Fixing deadlines* – The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

[22\(1\)](#)

*Company may establish classes* – A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

[22\(2\)](#)

*Factors* – For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (a) the nature of the debts, liabilities or obligations giving rise to their claims;
- (b) the nature and rank of any security in respect of their claims;
- (c) the remedies available to the creditors in the absence of the compromise or arrangement being sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and
- (d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

**COURTS OF JUSTICE ACT**

**R.S.O. 1990, c. C.43**

s.137(2)

*Sealing documents* – A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

**PARTNERSHIPS ACT**  
**R.S.O. 1990, c. P.5**

s. 10(1)

*Liability of partners* – Except as provided in subsection (2), every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while the person is a partner, and after the partner's death the partner's estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his or her separate debts.

**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  
957855 ALBERTA LTD. (FORMERLY NEWSWEST INC.) AND ROSEBUD CREEK  
FINANCIAL CORP. IN RESPECT OF METRO 360 GENERAL PARTNERSHIP**

**Applicants**

Court File No. CV-20-00642783-00CL

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

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**FACTUM OF THE APPLICANTS  
(Motion Returnable November 17, 2021)**

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