

Court File No.: _____

**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 PAYSTONE HOLDINGS INC.,
PAYSTONE INC., ATOM GROWTH INC., and ATOM
GROWTH (USA), INC.**

FACTUM OF THE APPLICANTS

June 5, 2026

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PART I: OVERVIEW

1. Paystone Holdings Inc. (“**Paystone Holdings**”), Paystone Inc. (“**Paystone**”), Atom Growth Inc. (“**Atom Growth Canada**”) and Atom Growth (USA), Inc. (“**Atom Growth USA**”) and collectively, the “**Applicants**” or the “**Company**”) seek relief pursuant to an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. The Applicants, primarily through Paystone, operate a fintech and software business that provides an integrated payment processing and customer engagement platform to small and medium-sized businesses (the “**Business**”). The Applicants serve approximately 38,000 customers across Canada and the United States and have approximately 118 employees (in addition to various offshore contractors).

3. The Applicants have rapidly grown the Business in recent years, primarily through a series of debt-funded acquisitions. Although the Business has continued to operate successfully during this period, the costs associated with these acquisitions (and the costs incurred in pursuing other transactions that were ultimately not completed), coupled with the effects of rising interest rates, have put significant pressure on the Company’s liquidity position.

4. The Company’s cash flow challenges were exacerbated by a billing error in April 2025, where the Company’s banking institution responsible for customer billing dramatically overcharged a significant number of Paystone’s customers. The results of the billing error were catastrophic. Paystone immediately lost certain customers, and the Company and its management were required to dedicate significant resources – both time and money – to stabilize the Business.

5. The billing error also caused the Applicants to default under the terms of their then-senior credit agreement with a syndicate of bank lenders (the “**Syndicate**”). At the request of the Syndicate, and following months of accommodations, Paystone engaged a financial advisor to conduct a sale and marketing process for the Business in an effort to improve the Company’s liquidity position and to identify a solution that would allow the Syndicate to be repaid. Shortly thereafter, Paystone retained Reflect Advisors, LLC as its Chief Restructuring Officer (in such capacity, the “**CRO**”).

6. The Applicants remained in default under the Senior Credit Agreement (as defined below), and in December 2025, the agent of the Syndicate delivered demand letters and notices of intention to enforce security. Following a negotiated forbearance period and a comprehensive sale process led by the financial advisor and overseen by the CRO, the Syndicate ultimately agreed to the terms of a loan purchase transaction on May 8, 2026, pursuant to which Sandton Investments X (Luxembourg) S.à r.l. (“**Sandton**”) acquired the obligations owing under the Applicants’ Senior Credit Facilities (as defined below). Sandton and the Company contemporaneously entered into a forbearance agreement (the “**Sandton Forbearance Agreement**”) which, among other things, extended the maturity dates under the Senior Credit Agreement and, subject to the satisfaction of certain conditions and the absence of specified defaults, provided for a significant discount on the Applicants’ outstanding debt obligations.

7. Notwithstanding the foregoing, the Applicants’ current debt load remains unsustainable for the Business. The Applicants are insolvent on both a balance sheet and cash-flow basis, are in default under various debt instruments and have received demand letters, notices of default and notices of intention to enforce security from their senior and subordinated secured lenders, as well as certain unsecured creditors (each as applicable).

8. Accordingly, these proposed CCAA proceedings are necessary to prevent uncoordinated enforcement actions against the Applicants' property and to provide the breathing room required to maintain ongoing operations while the Applicants advance their restructuring objectives.

9. Should the Initial Order be granted, the Applicants intend to return to Court at the comeback hearing to seek approval of a sale transaction pursuant to which the Business would be acquired by a company controlled by the individuals that co-founded, and currently control, the Applicants, Tarique Al-Ansari and Abdullah Saab (the "**Principals**"). This transaction is supported by Sandton, which would remain as senior secured lender, and, if approved, would right-size the Applicants' balance sheet, maximize value, preserve jobs for substantially all of the Applicants' employees, and see the Business continue as a going concern for the benefit of the Applicants' customers, employees, vendors, and other stakeholders.

10. No relief is being sought in the Initial Order in connection with the proposed sale transaction. The Applicants have limited the relief sought in the Initial Order to that which is reasonably necessary to maintain the status quo and continue their business operations in the ordinary course during the initial ten-day stay of proceedings (the "**Initial Stay Period**").

PART II: FACTS

11. The facts underlying this application are more fully set out in the affidavit of Adam Zalev sworn June 5, 2026 (the "**Zalev Affidavit**").¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Zalev Affidavit.

¹ Affidavit of Adam Zalev sworn June 5, 2026 [Zalev Affidavit], Motion Record of the Applicants dated June 5, 2026, at Tab 2 [Motion Record].

A. The Applicants

12. Paystone Holdings is the direct or indirect parent and controlling entity of each of the other Applicants. Paystone is the Company's primary operating entity.²

13. Paystone Holdings, Paystone and Atom Growth Canada (collectively, the "**Canadian Applicants**") are governed by the *Canada Business Corporations Act*, while Atom Growth USA is governed by the laws of the State of Delaware.³ The registered offices of the Canadian Applicants are located in London, Ontario, while Atom Growth USA's registered agent maintains an office in Delaware.⁴ Atom Growth USA's principal place of business is London, Ontario.⁵

B. The Business of the Applicants

1. Overview

14. The Applicants are privately owned companies in the fintech and software industry. The Company's business is focused on providing payment processing and customer engagement platforms to approximately 38,000 small and medium-sized businesses.⁶

15. The Company has three primary business lines:

- (a) Payment Solutions and Processing. The Payment Processing business line offers both physical and virtual payment solutions for merchants across Canada and the United States, including through the provision of: (i) hardware payment terminals

² Zalev Affidavit, *supra* note 1 at para 7, Motion Record at Tab 2.

³ Zalev Affidavit, *ibid* at paras 26, 28, 30, 31, Motion Record at Tab 2.

⁴ Zalev Affidavit, *ibid*, Motion Record at Tab 2.

⁵ Zalev Affidavit, *ibid* at para 31, Motion Record at Tab 2.

⁶ Zalev Affidavit, *ibid* at para 7, Motion Record at Tab 2.

and card readers; and (ii) software that enables credit card payment processing by computer or phone.⁷

(b) Loyalty, Gift Card and Customer Engagement Programs. The Gift Card & Loyalty software allows merchants to confirm gift card and loyalty point balances, while storing relevant information and transaction history for customers.⁸

(c) Marketing, Reputation and Customer Growth Software. The Reputation Marketing platform assists merchants with online review generation, referral programs, and automated customer engagement campaigns.⁹

16. The Company's revenues are driven by payment processing fees charged to customers, as well as recurring software subscription fees (calculated as a percentage of transaction volume) across its Gift Card & Loyalty and Marketing Reputation platforms.¹⁰

2. Employees & Independent Contractors

17. The Company has approximately 118 employees across Canada.¹¹ While the operations of the Company are almost entirely remote, the majority of the employees are located in Ontario.¹²

18. None of the employees are unionized or subject to a collective bargaining agreement, nor does the Company sponsor, administer or otherwise hold any registered or unregistered pension plans for its employees.¹³

⁷ Zalev Affidavit, *ibid* at para 44, Motion Record at Tab 2.

⁸ Zalev Affidavit, *ibid* at para 47, Motion Record at Tab 2.

⁹ Zalev Affidavit, *ibid* at para 48, Motion Record at Tab 2.

¹⁰ Zalev Affidavit, *ibid* at para 37, Motion Record at Tab 2.

¹¹ Zalev Affidavit, *ibid* at para 49, Motion Record at Tab 2.

¹² Zalev Affidavit, *ibid*, Motion Record at Tab 2.

¹³ Zalev Affidavit, *ibid* at para 52, Motion Record at Tab 2.

19. In addition to its direct employees, the Company also relies on more than 100 independent sales agents and contractors (the “**Sales Agents**”) to source new merchants and clients. The Sales Agents are paid a commission for client referrals.¹⁴ The Company also engages certain third-party entities that are responsible for managing international contractors who provide various services to the Business.¹⁵

3. Real and Leased Property

20. The Applicants do not own any real property.¹⁶ The Company maintains a month-to-month sublease arrangement for a portion of an office space in London, which provides an optional workspace for London-based employees. The Applicants pay approximately \$7,000 per month under this arrangement.¹⁷

21. As part of its most recent acquisition, the Company also assumed a lease for a property located in Hamilton, Ontario. The Applicants have been locked out of, and no longer have access to, these premises due to non-payment of rent. The landlord of the Hamilton property has delivered a demand letter seeking payment of unpaid rental arrears, of which approximately \$1.8 million is currently owing.¹⁸

4. Assets & Liabilities

22. As reflected in the Company’s unaudited balance sheet, as of April 30, 2026, the Applicants, on a consolidated basis, had reported assets of approximately \$50.6 million and

¹⁴ Zalev Affidavit, *ibid* at para 53, Motion Record at Tab 2.

¹⁵ Zalev Affidavit, *ibid* at para 50, Motion Record at Tab 2.

¹⁶ Zalev Affidavit, *ibid* at para 54, Motion Record at Tab 2.

¹⁷ Zalev Affidavit, *ibid* at para 55, Motion Record at Tab 2.

¹⁸ Zalev Affidavit, *ibid* at para 56, Motion Record at Tab 2.

reported liabilities of approximately \$117.9 million.¹⁹ Each of the Applicants has assets located in Canada, including retainers held by certain professionals.²⁰

23. The Applicants are insolvent on a balance sheet basis and cannot meet their obligations as they become due.²¹ Certain of the Applicants' liabilities are discussed below.

(i) Sandton's Senior Secured Debt

24. The Applicants are all obligors, as either borrower or guarantor, under a third amended and restated credit agreement (as amended from time to time, the "**Senior Credit Agreement**"), which governs the following obligations:

- (a) two senior credit facilities, comprising: (i) a revolving credit facility in the maximum principal amount of \$1 million; and (ii) a term loan facility in the maximum principal amount of up to \$90 million (collectively, the "**Senior Credit Facilities**");²² and
- (b) certain early termination fees arising from hedge transactions totaling approximately \$1.7 million, plus certain agent costs (together with the obligations under the Senior Credit Facilities, the "**Sandton Secured Indebtedness**").²³

25. As noted above, the members of the Syndicate were the Applicants' initial lenders under the Senior Credit Agreement. The Applicants have been in default of the terms of the Senior Credit Agreement for some time, and the Syndicate formally demanded repayment and delivered notices

¹⁹ Zalev Affidavit, *ibid* at paras 68, 70, Motion Record at Tab 2.

²⁰ Zalev Affidavit, *ibid* at para 33, Motion Record at Tab 2.

²¹ Zalev Affidavit, *ibid* at para 8, Motion Record at Tab 2.

²² Zalev Affidavit, *ibid* at para 76, Motion Record at Tab 2.

²³ Zalev Affidavit, *ibid* at para 80, Motion Record at Tab 2.

of intention to enforce security to the Applicants on December 22, 2025.²⁴ Although a forbearance agreement was subsequently reached with the Syndicate, the defaults were not waived, and the Applicants remain in default under the terms of the Senior Credit Agreement.

26. On May 8, 2026, Sandton agreed to purchase and accept each Syndicate member's right, title and interest in and to the obligations under the Senior Credit Agreement and all related credit and security documents (the "**Loan Transaction**").²⁵ Pursuant to the Loan Transaction, Sandton paid the Syndicate less than half of the value of the then-outstanding obligations.²⁶ Following the closing of the Loan Transaction on May 12, 2026, Sandton is the Applicants' senior secured creditor.²⁷

27. Concurrently with closing the Loan Transaction, the Applicants and Sandton entered into the Sandton Forbearance Agreement. The Sandton Forbearance Agreement amended certain terms of the Senior Credit Agreement, including, among other things: (i) extending the maturity date for the repayment of the Sandton Secured Indebtedness from December 31, 2027 to May 8, 2028; (ii) setting a fixed interest rate of 5% per annum for principal owing under the Senior Credit Agreement; and (iii) confirming that no further advances may be made under the Senior Credit Facilities.²⁸

28. Pursuant to the terms of the Sandton Forbearance Agreement, Paystone is required to pay a fixed monthly payment of \$825,000, which is a blended payment used to repay: first, interest owing for the immediately preceding month; and second, outstanding principal.²⁹

²⁴ Zalev Affidavit, *ibid* at paras 11, 16, Motion Record at Tab 2.

²⁵ Zalev Affidavit, *ibid* at para 75, Motion Record at Tab 2.

²⁶ Zalev Affidavit, *ibid* at para 14, Motion Record at Tab 2.

²⁷ Zalev Affidavit, *ibid* at para 72, Motion Record at Tab 2.

²⁸ Zalev Affidavit, *ibid* at para 15, Motion Record at Tab 2.

²⁹ Zalev Affidavit, *ibid* at para 82, Motion Record at Tab 2.

29. The Sandton Secured Indebtedness is guaranteed pursuant to unlimited guarantees granted by Paystone Holdings, Atom Growth Canada and Atom Growth USA and limited guarantees granted by the Principals. Each of the Applicants has also executed general security and pledge agreements as security for the Sandton Secured Indebtedness.³⁰

(ii) BDC's Secured Debt

30. Pursuant to a letter of offer dated January 29, 2024, BDC Capital Inc. (“**BDC**”) advanced a loan to Paystone in the aggregate principal amount of \$10 million (the “**BDC Loan**”).³¹

31. The obligations under the BDC Loan are guaranteed pursuant to unlimited guarantees granted by Paystone Holdings and Atom Growth Canada and limited guarantees granted by the Principals.³² The indebtedness arising under the BDC Loan is subordinated to the Sandton Secured Indebtedness pursuant to a priority agreement dated February 29, 2024.³³

32. The Applicants have defaulted under the BDC Loan. BDC delivered a letter to Paystone on February 19, 2026, demanding repayment and enclosing a notice of intention to enforce security – BDC was ultimately prevented from enforcing against Paystone following its receipt of a “standstill notice” sent on behalf of the Syndicate. The standstill period expires on June 20, 2026.

33. As of June 5, 2026, there is approximately \$11.8 million outstanding (including interest) under the BDC Loan.³⁴

³⁰ Zalev Affidavit, *ibid* at para 84, Motion Record at Tab 2.

³¹ Zalev Affidavit, *ibid* at para 88, Motion Record at Tab 2.

³² Zalev Affidavit, *ibid* at para 90, Motion Record at Tab 2.

³³ Zalev Affidavit, *ibid* at para 92, Motion Record at Tab 2; Atom Growth Canada and Atom Growth US signed joinder agreements to the Priority Agreement, see Exhibit O, Motion Record at Tab 2.

³⁴ Zalev Affidavit, *ibid* at para 94, Motion Record at Tab 2

(iii) Unsecured Obligations

34. Paystone also has the following material unsecured obligations:

- (a) 270 Note. Paystone issued an unsecured promissory note in favour of 2700715 Ontario Inc. (“**270**” and the “**270 Note**”) evidencing the amount of approximately \$1.835 million (plus interest). The principal thereunder is repayable through monthly payments of \$37,500, with the balance due on April 1, 2029. The obligations under the 270 Note are expressly subordinated to the claims of Paystone’s secured lenders. Due to its liquidity constraints, the Company has made no payments under the 270 Note, and approximately \$2.5 million is currently outstanding thereunder.³⁵

- (b) VTB Note. Paystone issued an unsecured promissory note in favour of Steve Levely (the “**VTB Note**” and together with the 270 Note, the “**Promissory Notes**”) evidencing indebtedness of up to approximately \$1.426 million. The VTB Note requires monthly principal payments of \$37,500 and matures once the outstanding principal and accrued interest have been paid in full. Due to its liquidity constraints, the Company has made no payments under the VTB Note. The obligations under the VTB Note are contractually subordinated and postponed to all existing and future secured indebtedness of Paystone.³⁶

- (c) Trade Creditors. As of June 3, 2026, Paystone has accrued unpaid trade and other unsecured debt in excess of \$7.7 million.³⁷

³⁵ Zalev Affidavit, *ibid* at paras 96-97, Motion Record at Tab 2.

³⁶ Zalev Affidavit, *ibid* at paras 100-101, Motion Record at Tab 2.

³⁷ Zalev Affidavit, *ibid* at para 104, Motion Record at Tab 2.

5. Cash Management System

35. The Company uses a banking and cash management system (the “**Cash Management System**”) to, among other things, collect, transfer and disburse funds generated by its business operations. Intercompany transfers are made on an “as needed” basis to ensure that each Applicant has sufficient working capital and liquidity to meet its needs.³⁸

36. Paystone has seven primary bank accounts, comprised of four deposit accounts and three disbursement accounts maintained with Scotiabank and National Bank. The Cash Management System is centrally administered by the Company’s finance department, headed by the Chief Financial Officer who is located in London, Ontario.³⁹

37. Paystone is seeking to continue to operate the Cash Management System in substantially the same manner as before the commencement of these CCAA proceedings.⁴⁰

C. Events Leading to the CCAA Filing

38. The Company undertook significant expansion in recent years through a series of debt-funded acquisitions. It also incurred substantial costs pursuing two potential U.S. transactions, neither of which closed. These costs, coupled with rapidly rising interest rates, caused significant liquidity challenges for the Company. Although the Applicants obtained accommodations from the Syndicate and secured additional financing through the BDC Loan, their financial position continued to deteriorate.⁴¹

³⁸ Zalev Affidavit, *ibid* at para 62, Motion Record at Tab 2.

³⁹ Zalev Affidavit, *ibid* at paras 61, 63, Motion Record at Tab 2.

⁴⁰ Zalev Affidavit, *ibid* at para 65, Motion Record at Tab 2.

⁴¹ Zalev Affidavit, *ibid* at paras 106, 107, Motion Record at Tab 2.

39. On April 2, 2025, the Company experienced a severe billing error following the transition of its billing operations to a new banking institution. The error resulted in a significant number of customers being overbilled by a factor of 100 (e.g., a customer that was supposed to have its account debited \$10,000 was instead debited \$1,000,000). Following the error, the Company immediately lost valuable customers, experienced reputational damage and was required to dedicate significant resources to remediation. Although the Applicants obtained additional financing from the Syndicate in an attempt to stabilize the Business, they were unable to repay these additional amounts when due and defaulted under the Senior Credit Agreement.⁴²

40. In response to these defaults, the Syndicate requested that Paystone engage a financial advisor to conduct a sale and marketing process (the “**Pre-Filing Process**”), and the Applicants also retained the CRO.⁴³ Despite the Applicants advancing these restructuring steps, defaults under the Senior Credit Facilities continued, resulting in the delivery of demand letters and notices of intention to enforce security under the *Bankruptcy and Insolvency Act* (Canada).⁴⁴ Following negotiations, the Applicants and the Syndicate entered into a comprehensive forbearance agreement on February 11, 2026, which, among other things, established deadlines for completion of the Pre-Filing Process.⁴⁵

41. The Pre-Filing Process, under which a comprehensive canvassing of the market was completed, generated four non-binding term sheets contemplating partial repayment of the debt owing to the Syndicate.⁴⁶ Separate and apart from that process, the CRO received a proposal from Sandton to acquire the obligations owing under the Senior Credit Facilities.⁴⁷ After examining the

⁴² Zalev Affidavit, *ibid* at paras 109-111, Motion Record at Tab 2.

⁴³ Zalev Affidavit, *ibid* at para 112, Motion Record at Tab 2.

⁴⁴ Zalev Affidavit, *ibid* at para 113, Motion Record at Tab 2.

⁴⁵ Zalev Affidavit, *ibid* at para 114, Motion Record at Tab 2.

⁴⁶ Zalev Affidavit, *ibid* at para 118, Motion Record at Tab 2.

⁴⁷ Zalev Affidavit, *ibid* at para 120, Motion Record at Tab 2.

results of the Pre-Filing Process, the Syndicate, in consultation with the CRO and the Applicants, determined that Sandton's proposal was the best offer received (either inside or outside of the Pre-Filing Process), as it resulted in the greatest recovery for the Syndicate. From the Applicants' perspective, it was also beneficial that the Sandton Forbearance Agreement contemplated a potential debt discount of approximately \$35 million under the Senior Credit Agreement, subject to the Applicants satisfying certain requirements.⁴⁸

42. The Loan Transaction closed on May 12, 2026, at which time Sandton became the Applicants' senior secured lender.⁴⁹

43. The Applicants' current indebtedness remains unsustainable, and they are unable to meet their obligations as they become due. As such, the Company requires urgent relief under the CCAA, including the Stay of Proceedings, to maintain current operations, prevent enforcement actions, advance its restructuring objectives and protect valuable customer relationships.⁵⁰

D. The Proposed Monitor

44. KSV Restructuring Inc. ("**KSV**") is the proposed monitor (in such capacity, the "**Proposed Monitor**") and if appointed, the "**Monitor**") in the CCAA proceedings.⁵¹

PART III: ISSUES

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

- (a) each of the Applicants is a "debtor company" to which the CCAA applies;
- (b) the Stay of Proceedings should be granted;

⁴⁸ Zalev Affidavit, *ibid* at para 82(c), 120, Motion Record at Tab 2.

⁴⁹ Zalev Affidavit, *ibid* at para 75, Motion Record at Tab 2.

⁵⁰ Zalev Affidavit, *ibid* at para 121, Motion Record at Tab 2.

⁵¹ Zalev Affidavit, *ibid* at para 129, Motion Record at Tab 2.

- (c) the Administration Charge should be granted;
- (d) the Applicants should be authorized to make certain pre-filing payments; and
- (e) KSV should be appointed as Monitor.

PART IV: LAW AND ANALYSIS

A. The Applicants are Debtor Companies to which the CCAA Applies

46. The CCAA applies to a “debtor company” or “affiliated debtor companies” whose liabilities exceed \$5 million.⁵² A “debtor company” is defined under subsection 2(1) of the CCAA as any “company” that is, among other things, “insolvent” or has committed an act of bankruptcy within the meaning of the BIA.⁵³

1. The Applicants are Affiliated Companies under the CCAA

47. The term “company” is defined under the CCAA to include “any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province” or “any incorporated company having assets or doing business in Canada.”⁵⁴

48. The test for “having assets or doing business in Canada” is disjunctive, such that either “having assets in Canada” or “doing business in Canada” is sufficient to qualify a company incorporated outside of Canada as a “company” within the meaning of the CCAA.⁵⁵

⁵² *Companies’ Creditors Arrangement Act*, [R.S.C., 1985, c. C-36, s 2\(1\)](#) [CCAA].

⁵³ [CCAA](#), *ibid*, [s 2\(1\)](#).

⁵⁴ [CCAA](#), *ibid*, [s 2\(1\)](#).

⁵⁵ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at [para 35](#) [Lydian]; *Cinram International Inc., Re*, [2012 ONSC 3767](#) at [paras 46-48](#) [Cinram].

49. This Court has held that the threshold for having assets in Canada is low and has cautioned that courts should not engage in a qualitative or detailed analysis of the Canadian assets.⁵⁶ Specifically, funds held on retainer have been held to constitute “assets in Canada” for the purposes of section 2(1) of the CCAA.⁵⁷

50. Each of the Applicants is a “company” under the CCAA for the following reasons:

- (a) Paystone, Paystone Holdings and Atom Growth Canada are governed by the CBCA; and
- (b) each of the Applicants has assets in Canada, including funds held on retainer with professionals located in Ontario.⁵⁸

51. Pursuant to subsection 3(2) of the CCAA, “companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.”⁵⁹ Companies that are affiliated with the same company at the same time are deemed to be affiliated with each other.⁶⁰

52. The Applicants are affiliated companies as Paystone is a subsidiary of Paystone Holdings and is itself the parent company of Atom Growth Canada and Atom Growth USA.

⁵⁶ [Cinram](#), *ibid*; *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al*, [2024 ONSC 6199](#) at [para 19](#) [Sandvine].

⁵⁷ [Cinram](#), *ibid* at [paras 46-48](#); [Sandvine](#), *ibid*.

⁵⁸ Zalev Affidavit, *supra* note 1 at para 33, Motion Record at Tab 2.

⁵⁹ [CCAA](#), *supra* note 52, [s 3\(2\)](#).

⁶⁰ [CCAA](#), *ibid*.

2. Each of the Applicants is Insolvent or with its Affiliated Companies has Liabilities in Excess of \$5 Million

53. In the absence of a definition for the term “insolvent” under the CCAA, courts have taken guidance from the definition of “insolvent person” in section 2 of the BIA.⁶¹

54. The BIA defines an “insolvent person” as a person:

- (a) who is for any reason unable to meet his obligations as they generally become due;
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.⁶²

55. Courts have also recognized the expanded definition of “insolvent person” articulated in *Re Stelco*, which provides that a company may be considered insolvent under the CCAA if “it is reasonably expected to run out of liquidity within [a] reasonable proximity of time as compared with the time reasonably required to implement a restructuring.”⁶³

56. Applied here, the Applicants are individually and collectively insolvent. As demonstrated by the Applicants’ most recent financial statements, the value of the Applicants’ property is not, as currently assessed, sufficient to allow repayment of their obligations.⁶⁴

⁶¹ *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#) at [para 26](#) [Nordstrom]; *Re Just Energy Corp.*, [2021 ONSC 1793](#) at [para 49](#).

⁶² *Bankruptcy and Insolvency Act*, [R.S.C 1985, c. B-3, s 2](#) [BIA].

⁶³ *Stelco Inc., Re*, [\[2004\] OJ No 1257](#) at [paras 26, 40](#); *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1645](#) at [para 33](#) [BZAM]; *Nordstrom*, *ibid* at [para 26](#).

⁶⁴ Zalev Affidavit, *supra* note 1 at paras 68, 70, Motion Record at Tab 2.

57. The Applicants are also in a liquidity crisis. They are in default, whether as borrower or guarantor, of their obligations under the Senior Credit Facilities in an amount exceeding \$5 million and have substantial amounts past due in respect of other secured and unsecured obligations, including the BDC Loan and the Promissory Notes. Absent a comprehensive restructuring, the Applicants have no prospect of meeting their obligations as they become due.⁶⁵

58. Accordingly, the Applicants are debtor companies to which the CCAA applies and eligible for creditor protection.

3. This Court has the Jurisdiction to Grant the Relief Sought

59. An application under the CCAA may be made to the court that has jurisdiction in the province where the debtor company has its “head office or chief place of business.”⁶⁶ The registered head offices of each of Paystone Holdings, Paystone and Atom Growth Canada is located in London, Ontario.⁶⁷ While Atom Growth USA’s registered office is located in Delaware, its principal place of business is London, Ontario.⁶⁸

60. The Applicants’ chief place of business is also located in Ontario. Although a predominantly remote company, the Applicants’ only active and physical office is located in Ontario.⁶⁹ The majority of the Applicants’ employees are located in Ontario (approximately 56%) and their Cash Management System is managed by the Applicants’ Chief Financial Officer who is a resident of Ontario.⁷⁰ Both Principals reside in Ontario.

⁶⁵ Zalev Affidavit, *ibid* at para 121, Motion Record at Tab 2.

⁶⁶ CCAA, *supra* note 52, s 9(1); See also *In Re Hudson’s Bay Company*, 2025 ONSC 1530 at paras 20-22 [Hudson’s Bay] citing *Nordstrom*, *supra* note 61 at paras 15, 27; *BZAM*, *supra* note 63 at paras 37-39.

⁶⁷ Zalev Affidavit, *supra* note 1 at para 26, Motion Record at Tab 2.

⁶⁸ Zalev Affidavit, *supra* note 1 at para 31, Motion Record at Tab 2.

⁶⁹ Zalev Affidavit, *ibid* at para 55, Motion Record at Tab 2.

⁷⁰ Zalev Affidavit, *ibid* at paras 49, 61, Motion Record at Tab 2.

61. Accordingly, Ontario is the appropriate venue for these proceedings and this Court has jurisdiction to hear this application.

62. As an initial application under the CCAA, this matter is eligible to be heard by the Ontario Superior Court of Justice (Commercial List). In light of the urgent nature of the relief sought, the substantial amount of indebtedness outstanding and the likelihood that these proceedings will involve material restructuring issues, the Applicants submit that it is appropriate for this matter to proceed before the Commercial List.

4. Relief is Limited to What is Reasonably Necessary

63. Notwithstanding this Court's broad discretion under section 11 of the CCAA to make any order it considers appropriate in the circumstances, the relief sought on an initial application must be confined to what is "reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period."⁷¹ Whether specific relief is required to stabilize a debtor company's operations during the initial stay period is a factual determination, to be made having regard to the particular circumstances of the debtor.⁷²

64. The Applicants, together with their advisors and the Proposed Monitor, have limited the relief sought in the proposed Initial Order to what is reasonably necessary to stabilize the Business, support ordinary course operations and preserve the value of the Property during the Initial Stay Period.⁷³ The Applicants intend to seek additional, substantive relief at the comeback hearing.

⁷¹ [CCAA](#), *supra* note 52, [s 11, 11.001](#).

⁷² *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#) at [para 16](#); *The Cannabist Company Holdings Inc. et al*, [2026 ONSC 1849](#) at [para 29](#) citing *Lydian*, *supra* note 55.

⁷³ Zalev Affidavit, *supra* note 1 at paras 22, 126, Motion Record at Tab 2.

B. The Stay of Proceedings Should be Granted

65. Subsection 11.02(1) of the CCAA authorizes this Court to impose a stay of proceedings for a period of not more than 10 days upon an initial application.⁷⁴

66. The jurisdiction vested in Courts to stay proceedings under section 11.02 “should be construed broadly to accomplish the legislative purposes of the CCAA.”⁷⁵ These purposes include, among others, enabling the continuation of the applicants’ business, preserving and maximizing the value of a debtor’s assets, providing for a timely and efficient resolution of a debtor’s insolvency, and avoiding the social and economic costs of a liquidation.⁷⁶ Accordingly, a stay of proceedings will be appropriate where it maintains the status quo and provides applicants with the breathing room required to restore solvency and emerge from the CCAA on a going-concern basis.⁷⁷

67. In this case, the Stay of Proceedings will preserve the status quo and provide the Applicants with the breathing room required to stabilize the Business. The continued, uninterrupted operation of the Business, together with the prevention of uncoordinated creditor enforcement actions, will help preserve and maximize value for the benefit of the Applicants’ customers and other stakeholders. The Stay of Proceedings will also allow the Applicants to focus on advancing their restructuring objectives, including seeking approval of a going-concern transaction that would allow the Applicants to deleverage their balance sheet and continue operations outside of these CCAA proceedings.

⁷⁴ [CCAA](#), *supra* note 52, [s 11.02\(1\)](#).

⁷⁵ *Canwest Global Communications Corp*, [2011 ONSC 2215](#) at [para 24](#) [Canwest].

⁷⁶ *Century Services Inc v Attorney General (Canada)*, [2010 SCC 60](#) at [para 15](#) [Century Services]; *Harte Gold Corp (Re)*, [2022 ONSC 653](#) at [para 32](#) [Harte Gold].

⁷⁷ *Century Services*, *ibid* at [para 14](#); *Canwest*, *supra* at note 75 at paras [24-25](#); *Harte Gold*, *ibid*.

68. The proposed Initial Order also prohibits the set-off of pre-filing obligations against post-filing obligations. In *Montréal (City) v. Deloitte Restructuring Inc.*, the Supreme Court of Canada confirmed that the Court has jurisdiction under sections 11 and 11.02 of the CCAA to stay set-off rights as between pre- and post-filing obligations.⁷⁸ This Court has routinely granted similar set-off relief to that sought in the proposed Initial Order.⁷⁹

69. The Applicants submit that the Stay of Proceedings and the related relief are in the best interests of their stakeholders, consistent with the purposes of the CCAA, and appropriate in the circumstances. The Stay of Proceedings is supported by the Proposed Monitor.⁸⁰

C. The Administration Charge Should be Granted

70. Section 11.52 of the CCAA vests this Court with jurisdiction, on notice to any secured creditors likely to be affected, to grant an administration charge in favour of a court-appointed monitor, its legal advisors, and any legal experts engaged by the debtor companies.⁸¹ This Court has recognized that it is essential to the success of any CCAA restructuring “to order a super-priority in respect of charges securing professional fees and disbursements.”⁸²

71. The following list of non-exhaustive factors may inform a Court’s decision to grant an administration charge:

- (a) the size and complexity of the business being restructured;

⁷⁸ *Montréal (City) v. Deloitte Restructuring Inc.*, [2021 SCC 53](#) at [para 20](#).

⁷⁹ *In the Matter of a Plan of Compromise or Arrangement of Hudson’s Bay Company ULC Compagnie de la Baie D’Hudson SRI et al.* ([March 7, 2025](#)), [Toronto, CV-25-00738613-00CL \(ONSC\) \(Initial Order\)](#) at [para 17](#); *In the Matter of a Plan of Compromise or Arrangement of Ayurcann Holdings Corp. and Ayurcann Inc.* ([January 30, 2026](#)), [Toronto, CV-24-00729147-00CL \(ONSC\) \(Initial Order\)](#); *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical Laboratories Limited et al.* ([May 15, 2025](#)), [Toronto, CV-24-00729147-00CL \(ONSC\) \(Initial Order\)](#).

⁸⁰ Zalev Affidavit, *supra* note 1 at para 128, Motion Record at Tab 2; Pre-Filing Report of the Proposed Monitor dated June 5, 2026 at s. 11.1 [Pre-Filing Report].

⁸¹ CCAA, *supra* note 52, [s 11.52\(1\)-\(2\)](#); *Re Chalice Brands Ltd.*, [2023 ONSC 3174](#) at [para 45](#).

⁸² *U.S. Steel Canada Inc. (Re)*, [2014 ONSC 6145](#) at [para 22](#); *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#) at [para 57](#).

- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.⁸³

72. Pursuant to the proposed Initial Order, the Applicants are seeking an Administration Charge in the amount of \$745,000 to secure the professional fees and disbursements incurred prior to, on, or subsequent to the date of the Initial Order for the following beneficiaries: (i) the Proposed Monitor, along with its counsel; (ii) the Applicants' counsel; and (iii) the CRO.

73. The Applicants submit that it is appropriate for this Court to exercise its jurisdiction to grant the proposed Administration Charge given that:

- (a) the Applicants require the knowledge, expertise and continued participation of the beneficiaries of the Administration Charge during the CCAA proceedings, each of which is performing distinct functions;
- (b) the beneficiaries of the Administration Charge will contribute to the Applicants' restructuring efforts and the development, approval and implementation of a going-concern transaction;
- (c) the quantum of the Administration Charge was determined in consultation with the Proposed Monitor, and is appropriate for the initial 10-day period considering the

⁸³ *BZAM*, supra note 63 at [para 64](#) citing *Canwest Publishing Inc.*, [2010 ONSC 222](#) at [para 54](#); *Target Canada Co. (Re)*, [2015 ONSC 303](#) at [paras 73-75](#).

size and complexity of the Business, the number of beneficiaries of the Administration Charge and the work to be undertaken to ensure the Applicants' successful restructuring;

- (d) the Administration Charge will not rank in priority to any Encumbrances (as defined in the proposed Initial Order) in favour of any person that has not been served with notice of the within application;
- (e) Sandton does not object to the Administration Charge or its quantum; and
- (f) the Proposed Monitor is supportive of the Administration Charge and its quantum.⁸⁴

D. The Applicants Should be Authorized to Make Pre-Filing Payments

74. Pursuant to the proposed Initial Order, the Applicants seek authorization to pay, among other expenses, amounts owing for goods and services supplied to the Applicants prior to the date of the Initial Order. Such payments may only be made with the consent of the Monitor and Sandton, and when, in the opinion of the Applicants, such supplier or service provider is critical to the Business.⁸⁵

75. This Court's inherent jurisdiction allows the payment of pre-filing amounts to suppliers whose services are critical to the post-filing operations of the debtor, even where the debtor does not propose to secure the payment of post-filing goods or services with a critical supplier charge.⁸⁶

76. In authorizing pre-filing payments, including upon an initial application under the CCAA, Courts have considered, among other factors:

⁸⁴ Zalev Affidavit, *supra* note 1 at paras 133-136, Motion Record at Tab 2; *Pre-Filing Report*, *supra* note 80 at s. 6.4.

⁸⁵ Zalev Affidavit, *ibid* at para 130(b), Motion Record at Tab 2; *Pre-Filing Report*, *ibid* at s. 7.1(b).

⁸⁶ [CCAA](#), *supra* note 52, [s 11](#); [BZAM](#), *supra* note 63 at [paras 73-74](#); [McEwan Enterprises Inc.](#), [2021 ONSC 6453](#) at [para 32](#).

- (a) whether the goods and services are integral to the debtor company's business;
- (b) the debtor company's need for the uninterrupted supply of the goods and services;
- (c) the fact that no payments would be made without the consent of the Court-appointed monitor;
- (d) the Court-appointed monitor's willingness to work with the debtor company to ensure that pre-filing payments are minimized; and
- (e) the effect on the debtor company's operations and ability to restructure if it could not make pre-filing payments.⁸⁷

77. It is critical that the Applicants be permitted to pay for goods and services supplied prior to the date of the Initial Order, including to certain software vendors. The amounts expected to be required to be paid are nominal.⁸⁸ These payments will assist in maintaining ordinary course operations throughout the Initial Stay Period and will avoid disruptions to the Applicants' customers, which could otherwise jeopardize the viability of a restructuring transaction in the proposed CCAA proceedings. Such payments are appropriately limited and must be approved by the Monitor.⁸⁹

⁸⁷ *Cinram*, *supra* note 55 at [para 37](#) and [Schedule "C"](#) at [para 68](#); *McEwan*, *ibid* at [para 33](#); *MPX International Corporation*, [2022 ONSC 4348](#) at paras [69-70](#).

⁸⁸ Zalev Affidavit, *supra* note 1 at para 131, Motion Record at Tab 2.

⁸⁹ Zalev Affidavit, *ibid* at para 130(b), Motion Record at Tab 2; *Pre-Filing Report*, *supra* note 80 at s. 7.4.

E. KSV should be Appointed as Monitor

78. When an order is made on the initial application in respect of a debtor company, the Court shall appoint a person to monitor the business and financial affairs of the company. The person appointed must be a trustee within the meaning of subsection 2(1) of the BIA.⁹⁰

79. The Applicants seek the appointment of KSV as Monitor in these CCAA proceedings. KSV is a trustee within the meaning of subsection 2(1) of the BIA and is not subject to any of the restrictions as to who may be appointed as monitor pursuant to subsection 11.7(2) of the CCAA.⁹¹ KSV has extensive experience acting as a court-appointed monitor and has consented to act as the Monitor in these CCAA proceedings.⁹²

PART V: RELIEF REQUESTED

80. The Applicants submit that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court, and respectfully request that this Court grant the proposed form of Initial Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5TH DAY OF JUNE, 2026.

Bennett Jones LLP
BENNETT JONES LLP

⁹⁰ *CCAA*, *supra* note 52, [s 11.7\(1\)](#).

⁹¹ *Pre-Filing Report*, *supra* note 80 at s.1.4.1.

⁹² *Pre-Filing Report*, *ibid*.

SCHEDULE A – LIST OF AUTHORITIES

Cases Cited

1. *Boreal Capital Partners Ltd et al. (Re)*, [2021 ONSC 7802](#)
2. *BZAM Ltd. Plan of Arrangement*, [2024 ONSC 1645](#)
3. *The Cannabist Company Holdings Inc. et al*, [2026 ONSC 1849](#)
4. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#)
5. *Canwest Publishing Inc.*, [2010 ONSC 222](#)
6. *Cinram International Inc., Re*, [2012 ONSC 3767](#)
7. *Century Services Inc v Canada (Attorney General)*, [2010 SCC 60](#)
8. *Re Chalice Brands Ltd.*, [2023 ONSC 3174](#)
9. *Re Earth Boring Co. Ltd.*, [2025 ONSC 2422](#)
10. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
11. *In Re Hudson's Bay Company*, [2025 ONSC 1530](#)
12. *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al.*, [2024 ONSC 6199](#)
13. *Re Just Energy Corp*, [2021 ONSC 1793](#)
14. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
15. *McEwan Enterprises Inc.*, [2021 ONSC 6453](#)
16. *Montréal (City) v. Deloitte Restructuring Inc.*, [2021 SCC 53](#)
17. *MPX International Corporation*, [2022 ONSC 4348](#)
18. *Nordstrom Canada Retail, Inc.*, [2023 ONSC 1422](#)
19. *Stelco Inc., Re*, [\[2004\] OJ No 1257](#)
20. *Target Canada Co. (Re)*, [2015 ONSC 303](#)
21. *U.S. Steel Canada Inc. (Re)*, [2014 ONSC 6145](#)

Endorsements and Orders

1. *In the Matter of a Plan of Compromise or Arrangement of Ayurcann Holdings Corp. and Ayurcann Inc.* ([January 30, 2026](#)), Toronto, CV-24-00729147-00CL (ONSC) (Initial Order)
2. *In the Matter of a Plan of Compromise or Arrangement of Hudson's Bay Company ULC Compagnie de la Baie D'Hudson SRI et al.* ([March 7, 2025](#)), Toronto, CV-25-00738613-00CL (ONSC) (Initial Order)
3. *In the Matter of a Plan of Compromise or Arrangement of Hakim Optical Laboratories Limited et al.* ([May 15, 2025](#)), Toronto, CV-24-00729147-00CL (ONSC) (Initial Order)

I certify that I am satisfied as to the authenticity of every authority.

Dated: June 5, 2026



JAMIE ERNST

SCHEDULE B – STATUTES AND REGULATIONS RELIED ON

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Section 2, “Insolvent Person”

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due

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

Section 2(1), “Company”

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies

Section 2(1), “Debtor company”

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or
- (d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (compagnie débitrice)

Section 3

Application

(1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

Section 9

Jurisdiction of court to receive applications

(1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

Section 10

Form of applications

(1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

Section 11

General Power of Court

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice

to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 11.001

Relief reasonably necessary

An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Section 11.02

Stays, etc. – initial application

(1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

Restriction

- (4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Section 11.52

Court may order security or charge to cover certain costs

(1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

- (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Section 11.7 (1)

(1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act.

Restrictions on who may be monitor

- (2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company
 - (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the Civil Code of Quebec that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the Bankruptcy and Insolvency Act, to monitor the business and financial affairs of the company.

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 106

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF PAYSTONE HOLDINGS INC., PAYSTONE INC.,
ATOM GROWTH INC., and ATOM GROWTH (USA), INC.**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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