

**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 GUARDIAN FINANCIAL CORP. AND OTHER ENTITIES LISTED ON
SCHEDULE "A"**

(Applicants)

**FACTUM OF THE APPLICANTS
(Re: CCAA Termination and Other Relief)
(Returnable September 1, 2021)**

August 26, 2021

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SCHEDULE "A"**

(Applicants)

PART I - OVERVIEW

1. The Applicants are part of the IWG multinational corporate group that offers a network of on-demand office and co-working spaces, and ancillary services and support, to a variety of clients across a host of industries in over 1,000 locations in the United States and Canada.

2. On July 30, 2020, certain of the Applicants' affiliates in the United States (the "**Chapter 11 Debtors**") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**", and such proceedings, the "**Chapter 11 Cases**"). Certain Chapter 11 Debtors (the "**Guarantor Debtors**") guaranteed certain Leases held by the CCAA Debtors (as defined below).

3. One of the Guarantor Debtors, RGN-National Business Centers, LLC, in its capacity as foreign representative (in such capacity, the "**Foreign Representative**"), and on behalf of certain of the Chapter 11 Debtors, sought recognition of the Chapter 11 Cases under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**", such proceedings, the "**Recognition Proceedings**"). On August 24, 2020, this Court recognized the Chapter 11 Cases as "foreign main proceedings". KSV Restructuring Inc. (f/k/a/

KSV Kofman Inc.) (“**KSV**”) was appointed as Information Officer in respect of the Recognition Proceedings.

4. Subsequently, on August 31, 2020, the Guardian Financial Corp. and other entities listed on Schedule “A” (collectively, the “**Applicants**”) commenced proceedings under the CCAA (the “**CCAA Proceedings**”) and this Court granted an Initial Order in respect of the Applicants and certain affiliated limited partnerships (together, the “**CCAA Debtors**”, and each a “**CCAA Debtor**”). On September 10, 2020, this Court granted an Order amending and restating the Initial Order (as amended and restated, the “**Initial Order**”). KSV was appointed monitor (the “**Monitor**”) of the CCAA Debtors.

5. As described further below, the Guarantor Debtors and certain other affiliates have obtained confirmation of a joint plan of reorganization (as amended from time to time, the “**U.S. Plan**”) in the Chapter 11 Cases and expect to emerge from creditor protection following termination for the CCAA Proceedings. The CCAA Debtors have also undertaken significant restructuring efforts during the CCAA Proceedings by obtaining numerous favourable consensual lease amendments with their Landlords (as defined below) and now believe they are positioned to emerge from the CCAA Proceedings.

6. This factum is filed in support of a motion by the Applicants for an Order (the “**CCAA Termination Order**”), substantially in the form of the draft Order attached to the Applicants’ Motion Record at Tab 3, *inter alia*:

- (a) terminating and discharging the CCAA Proceedings;
- (b) waiving certain limited defaults arising under Leases held by the CCAA Debtors as a result of the commencement of the CCAA Proceedings and related matters;

- (c) authorizing certain Disclaiming Debtors (as defined below) to file assignments in bankruptcy following the termination of the CCAA Proceedings and granting related relief in respect of the administration of the Disclaiming Debtors' estates; and
- (d) discharging the Monitor and approving the fees and activities of the Monitor and its counsel.

PART II - THE FACTS

7. The facts with respect to this motion are more fully set out in the affidavit of James S. Feltman sworn August 24, 2021 (the "**Eighth Feltman Affidavit**"). Capitalized terms used within this factum but not otherwise defined have the meanings ascribed to them in the Eighth Feltman Affidavit.

A. The Chapter 11 Cases

8. On June 11, 2021, the Chapter 11 Debtors, including the Guarantor Debtors, filed the U.S. Plan with the U.S. Court.

Eighth Feltman Affidavit at para. 21, Applicants' Motion Record, Tab 2.

9. The U.S. Plan applies to certain of the Chapter 11 Debtors, including the Guarantor Debtors. The claims against the Guarantor Debtors contained within all the classes (including the subclasses) are unimpaired under the U.S. Plan. As a result, such holders of claims were deemed to have accepted the U.S. Plan and were not entitled to a vote.

Eighth Feltman Affidavit at para. 22, Applicants' Motion Record, Tab 2.

10. On August 19, 2021, the U.S. Court held a hearing (the "**Confirmation Hearing**") in respect of confirmation of the U.S. Plan. Following the Confirmation Hearing, the U.S. Court granted an Order confirming the U.S. Plan (the "**Confirmation Order**"). Confirmation of the U.S.

Plan will allow the Chapter 11 Debtors, including the Guarantor Debtors, to emerge from the Chapter 11 Cases following the satisfaction or waiver of the conditions precedent contained in the U.S. Plan.

Eighth Feltman Affidavit at paras. 24, Applicants' Motion Record, Tab 2.

11. The U.S. Plan contains a condition precedent to its effectiveness related to the CCAA Proceedings—that this Court enter an order terminating and discharging the CCAA Proceedings and ordering that no Lease of the CCAA Debtors (or right or obligation thereunder) may be terminated or modified as a result of (a) the commencement of the CCAA Proceedings and (b) the insolvency or financial condition of any CCAA Debtor at any time before the termination and discharge of the CCAA Proceedings (the “**Condition Precedent**”).

Eighth Feltman Affidavit at paras. 25, Applicants' Motion Record, Tab 2.

B. The CCAA Debtors' Restructuring Efforts

12. Throughout the CCAA Proceedings, the CCAA Debtors have continued to engage in good-faith, arm's-length negotiations with their Landlords in order to obtain favourable lease amendments to ensure that each Centre is financially viable and sustainable on a long-term basis.

Eighth Feltman Affidavit at para. 27, Applicants' Motion Record, Tab 2.

13. As of August 24, 2021, the CCAA Debtors and their Canadian Affiliates have successfully negotiated Lease amendment agreements (“**LAAs**” and each a “**LAA**”) for 32 Centres. In addition, the CCAA Debtors have agreements in principle in respect of LAAs for 11 additional Centres.

Eighth Feltman Affidavit at para. 29, Applicants' Motion Record, Tab 2.

14. Throughout the CCAA Proceedings, the CCAA Debtors have made tremendous progress to stabilize their Lease portfolio and align it with the new “market realities” through the negotiation of consensual LAAs with Landlords. The efforts have led to the CCAA Debtors being able to maintain the vast majority of Centres and Leases for the benefit of the Landlords, the Occupants and their other stakeholders. Only two Leases were disclaimed by the CCAA Debtors during the CCAA Proceedings resulting in the closure of two Centres. The CCAA Debtors liable under the disclaimed Leases (the “**Disclaiming Debtors**”) are:

- (a) RGN Ontario XXI Limited Partnership and RGN Ontario XXI GP Inc.; and
- (b) RGN Ontario XLVII Limited Partnership and RGN Ontario XLVII GP Inc.

Eighth Feltman Affidavit at paras. 30 and 39, Applicants’ Motion Record, Tab 2.

PART III - ISSUES

15. The issues before this Court are:

- (a) Should this Court terminate the CCAA Proceedings?
- (b) Should this Court grant the waiver of the insolvency defaults contained within the proposed CCAA Termination Order?
- (c) Should this Court grant the relief related to the bankruptcies of the Disclaiming Debtors?
- (d) Should this Court approve the fees and activities of the Monitor and its counsel?

PART IV - THE LAW

A. This Court should terminate the CCAA Proceedings

16. The CCAA Debtors submit that this Court should grant the proposed CCAA Termination Order, approving the mechanism for the termination and discharge of the CCAA Proceedings. This Court has the jurisdiction to terminate the CCAA Proceedings pursuant to s. 11 of the CCAA.

CCAA, s. 11.

17. The CCAA Debtors are seeking to terminate these CCAA Proceedings in order to return to their ordinary course business operations. The original purpose of the CCAA Proceedings was to obtain a stay of proceedings to prevent the termination of Leases based on technical defaults caused by the commencement of the Chapter 11 Cases in respect of the Guarantor Debtors, and also ensure the CCAA Debtors were provided with an opportunity to negotiate with their Landlords in a stabilized environment. With the contemplated emergence of the Guarantor Debtors, the CCAA Debtors no longer require the benefit of the stay of proceedings and, subject to the Court granting the waiver provisions within the CCAA Termination Order, the CCAA Debtors are no longer in need of creditor protection.

Eighth Feltman Affidavit at para. 33, Applicants' Motion Record, Tab 2.

18. Though no plan of arrangement was completed during the CCAA Proceedings, the CCAA Debtors made tremendous progress to stabilize their Lease portfolio through the negotiation of consensual LAAs. Several LAA's have already been negotiated and approved by this Court while others were completed without Court approval. While the CCAA Debtors continue to negotiate the final terms of certain LAAs, these negotiations can be conducted in the ordinary course outside of the CCAA Proceedings. Additionally, where lease amendments have not been completed, the CCAA Debtors are expected to continue operating under the original terms of their Leases without amendments. These consensual amendments and the

continuation of the vast majority of the CCAA Debtors' other Leases represent a successful outcome in these proceedings. Indeed, as the Supreme Court of Canada has noted, "[t]he best outcome [in a CCAA proceeding] is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the CCAA process terminates without reorganization being needed".

Eighth Feltman Affidavit at paras. 27, 30 and 31, Applicants' Motion Record, Tab 2.

Century Services Inc. v. Canada (Attorney General), 2010 SCC 60 at para. 14 ([CanLII](#)).

19. Under the proposed CCAA Termination Order, the termination of the CCAA Proceedings will occur on the Monitor filing a certificate confirming that the conditions precedent to the effectiveness of the U.S. Plan have been satisfied or waived. This Court has previously granted orders that include a similar mechanism for terminating a CCAA proceeding at a future date. The proposed mechanism is consistent with furthering the efficient resolution of these CCAA proceedings and being respectful of valuable court time. The proposed mechanism will avoid the cost and time of a further motion to seek termination of the CCAA Proceedings.

See *Re Peraso Technologies Inc.* (28 October 2020), Toronto CV-20-00642010-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Termination Order ([Monitor's Website](#)).

20. The CCAA Proceedings have served their purpose and with confirmation of the U.S. Plan, the CCAA Proceedings have run their course. The vast majority of CCAA Debtors are now able to successfully exit the process as a going concern.

B. Approving the limited waivers of insolvency defaults is appropriate in the circumstances

21. The Applicants are seeking a provision within the CCAA Termination Order declaring that no Landlord or contract counterparty of the CCAA Debtors shall be permitted (a) to declare a default as against the CCAA Debtors under any Lease or agreement with the CCAA Debtors, or (b) to terminate, forfeit, rescind, refuse to perform, repudiate its obligations thereunder, or

otherwise exercise any rights or remedies or take any action or proceedings against the CCAA Debtors, as a result of: (i) the insolvency of the CCAA Debtors; or (ii) the commencement of the CCAA Proceedings by the CCAA Debtors.

22. The Court has jurisdiction to grant such limited waivers of insolvency defaults pursuant to sections 11 and 34 of the CCAA, and granting the requested limited waiver is appropriate in the circumstances. A “very broad discretion is afforded to courts dealing with CCAA proceedings to interfere with private contractual or statutory rights”. This includes the contractual rights of non-creditors. As the Court stated in *Gauntlet Energy*, “[i]nterference with contractual rights of creditors and non-creditors is consistent with the objective of the CCAA to allow struggling companies an opportunity to survive whenever reasonably possible.”

CCAA, ss. 11, 34.

Re Pope & Talbot Ltd., 2009 BCSC 1552 at para. 129 ([CanLII](#)).

Re Gauntlet Energy Corporation, 2003 ABQB 718 at para. 53 ([CanLII](#)) [*Gauntlet Energy*], cited with approval in *Re Hayes Forest Services*, 2009 BCSC 1169 at para. 29 ([CanLII](#)) and *Re Backbay Retailing Corporation v. Gray's Apparel Company Ltd.*, 2008 BCSC 1876 at para. 17 ([CanLII](#)).

23. The requested limited waiver is an integral part of the CCAA Debtors’ restructuring and is necessary in order to provide the CCAA Debtors with a “fresh start”. The waivers will prevent Landlords from opportunistically taking advantage of *ipso facto* clauses to terminate Leases with the CCAA Debtors. Such terminations by Landlords would entirely undermine the CCAA Debtors’ restructuring efforts and the success of the CCAA Proceedings and lead to the demise of the applicable CCAA Debtors. The waiver is also a necessary part of the Chapter 11 Debtors restructuring, as the effectiveness of the Confirmation Order is predicated on this Court granting the CCAA Termination Order and the waivers therein.

Eighth Feltman Affidavit at para. 35, Applicants’ Motion Record, Tab 2.

24. The requested limited waiver is consistent with provisions of the CCAA and specifically gives effect to section 34 of the CCAA. Section 34(1) states:

Certain rights limited

34 (1) **No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement**, including a security agreement, with a debtor company **by reason only that proceedings commenced under this Act or that the company is insolvent**. [emphasis added]

25. Section 34(5) stipulates that the effect of a term that contravenes section 34(1) is that the term is of no force and effect:

Provisions of section override agreement

(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect.

26. In *Doman Industries*, a case that predates section 34 of the CCAA, the Court recognized that it had the jurisdiction pursuant to section 11 of the CCAA to grant waivers and releases outside the context of a plan of arrangement which affect third parties' rights. The Court referred to the statements of the Court in *Playdium*, in which the Court said:

In interpreting s. 11(4), including the "such terms" clause, the remedial nature of the CCAA must be taken into account. If no permanent order could be made under s. 11(4) it would not be possible to order, for example, that the insolvency defaults which occasioned the CCAA order could not be asserted by the Famous Players after the stay period. If such an order could not be made, the CCAA regime would prospectively be of little or no value because even though a compromise of creditor claims might be worked out in the stay period, Famous Players (or for that matter, any similar third party) could then assert the insolvency default and terminate, so that the stay would not provide any protection for the continuing prospects of the business. In view of the remedial nature of the CCAA, the Court should not take such a restrictive view of the s. 11(4) jurisdiction.

Re Doman Industries, 2003 BCSC 376 at para. 15 ([CanLII](#)) [*Doman Industries*].

Playdium Entertainment Corp., Re (2001), 31 C.B.R. (4th) (ONSC) ([CanLII](#)) [*Playdium*].

27. The Court in *Doman Industries* noted that these statements were made "in the context of a third party which had a contract with the debtor company" but that "the reasoning applies

equally to a creditor of the debtor company in circumstances where the debtor company has chosen not to compromise the indebtedness owed to it". Therefore, the Court concluded that it could grant a permanent stay to prevent certain parties from relying on events of default existing prior to or during the restructuring period.

Doman Industries at paras. 16 and 17.

28. The CCAA Debtors do not believe that any stakeholder will be prejudiced by the termination of the CCAA Proceedings or the requested waiver. The waiver is limited in nature and any potential defaults will effectively be cured by the CCAA Debtors emerging from the CCAA Proceedings and continuing with their Leases which either have been amended consensually or unaffected by the CCAA Proceedings.

C. This Court should authorize the Disclaiming Debtors to make assignments into bankruptcy

29. This Court has frequently exercised its jurisdiction to allow liquidating debtors to make an assignment in bankruptcy on terms similar to those sought in the proposed CCAA Termination Order—including with respect to the administration of the bankrupts' estates on a consolidated basis as proposed here. The Court has jurisdiction to grant procedural consolidation of the bankrupts' estates pursuant to s. 11 of the CCAA.

Re King Street Company Inc. (29 March 2021), Toronto CV-20-00650945-00CL (Ont. Sup. Ct. [Comm. List]) CCAA Termination Order ([Monitor's Website](#)).

Re TGF Acquisition Parent Ltd. (22 June 2021), Toronto CV-21-00657098-00CL (Ont. Sup. Ct. [Comm. List]) Wind-Down Order ([Monitor's Website](#)).

CCAA, s. 11.

30. The Disclaiming Debtors are not expected to recommence any business in the future and, subject to the granting of the CCAA Termination Order, will be liquidated and dissolved following the CCAA Proceedings. The Disclaiming Debtors' assignments into bankruptcy will facilitate the final administration of their affairs in an efficient manner. Accordingly, the CCAA

Debtors believe the relief sought with respect to the Disclaim Debtors' assignment into bankruptcy is appropriate in the circumstances.

Eighth Feltman Affidavit at paras. 38-39, Applicants' Motion Record, Tab 2.

D. The Court should approve the fees and activities of the Monitor

31. The CCAA Debtors are seeking, as part of the CCAA Termination Order, the approval of the Monitor's activities as detailed in the reports filed in the CCAA Proceedings. This Court has not previously approved the Monitor's activities detailed in its reports.

Eighth Feltman Affidavit at para. 40, Applicants' Motion Record, Tab 2.

32. In *Target Canada Co. (Re)*, the Court wrote that a request to approve a monitor's report "is not unusual" and that "there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process."

Target Canada Co. (Re), 2015 ONSC 7574 at paras. 2 and 22 ([CanLII](#)).

33. In this case, the Monitor's activities as described in its reports should be approved. The Monitor carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order and all other Orders of the Court issued in the CCAA Proceedings.

Eighth Feltman Affidavit at para. 42, Applicants' Motion Record, Tab 2.

34. The CCAA Debtors further seek approval of (a) the fees and disbursements of the Monitor and counsel to the Monitor that have been incurred; and (b) the fees and disbursements of the Monitor and counsel to the Monitor that will be incurred in performance of the duties of the Monitor up to the termination of the CCAA Proceedings. In approving the fees and disbursements of the Monitor and its counsel, the Court must consider whether those fees were "fair and reasonable in all of the circumstances. The concerns are ensuring that the monitor is fairly compensated while safeguarding the efficiency and integrity of the CCAA process."

Nortel Networks Corp. et al. (Re), 2017 ONSC 673 at para. 13 ([CanLII](#)), citing *Winalta Inc. (Re)*, 2011 ABQB 399 at para. 30 ([CanLII](#)).

35. The CCAA Debtors believe that the fees and disbursements of the Monitor and its counsel, including future fees and disbursements up to the fixed maximum, are fair and reasonable and commensurate with the size and complexity of the CCAA Proceedings. The Monitor's and its counsel's professional rates are comparable to the rates charged by other professional firms in the Toronto market for the provision of similar services regarding commercial restructuring matters. In light of the foregoing, the CCAA Debtors support the approval of the fees and disbursements of the Monitor and its counsel.

36. The CCAA Debtors also seek to discharge and relieve KSV from its role as Monitor with respect to the CCAA Debtors and a release in favour of the Monitor and its counsel related to their activities carried out in the CCAA Proceedings. It is well-established that the Court may grant an order discharging the Monitor on terms similar to those being sought in the proposed order. The Court's jurisdiction for making such an order is grounded in s. 11 of the CCAA. In fact, the Court has granted similar relief in these CCAA Proceedings in discharging the Monitor from its duties in respect of particular CCAA Debtors, which have emerged from these proceedings.

Re Guardian Financial Corp. (30 June 2021), Toronto CV-20-00646507-00CL (Ont. Sup. Ct. [Comm. List]) Stay Extension and Other Relief Order.

See also *Re JTI-MacDonald Corp.*, 2010 ONSC 4212 ([CanLII](#)).

PART V - ORDER SOUGHT

37. The Applicants respectfully request that this Court grant the requested relief substantially in the form of the draft CCAA Termination Order attached at Tab 3 of the Applicants' Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of August, 2021.

A handwritten signature in black ink, appearing to read "L. Ni". The signature is fluid and cursive, with a large initial "L" and a smaller "Ni" following.

Stikeman Elliott LLP
Lawyers for the Applicants

SCHEDULE "A"
ADDITIONAL APPLICANTS

RGN Alberta IV GP Inc.
RGN Alberta X GP Inc.
RGN Alberta XIII GP Inc.
RGN Alberta XIV GP Inc.
RGN Alberta XVII GP Inc.
RGN British Columbia XX GP Inc.
RGN British Columbia XVI GP Inc.
RGN British Columbia XXV GP Inc.
RGN Manitoba II GP Inc.
RGN Ontario II GP Inc.
RGN Ontario L GP Inc.
RGN Ontario LV GP Inc.
RGN Ontario LVI GP Inc.
RGN Ontario LVIII GP Inc.
RGN Ontario LXII GP Inc.
RGN Ontario XI GP Inc.
RGN Ontario XLI GP Inc.
RGN Ontario XLII GP Inc.
RGN Ontario XLV GP Inc.
RGN Ontario XLVI GP Inc.
RGN Ontario XLVII GP Inc.
RGN Ontario XLVIII GP Inc.
RGN Ontario XXI GP Inc.
RGN Ontario XXIV GP Inc.
RGN Ontario XXIX GP Inc.
RGN Ontario XXV GP Inc.
RGN Ontario XXVIII GP Inc.
RGN Ontario XXXI GP Inc.
RGN Ontario XXXII GP Inc.
RGN Ontario XXXIII GP Inc.
RGN Quebec V GP Inc.
RGN Quebec VI GP Inc.
RGN Quebec XIV GP Inc.
RGN Quebec XVI GP Inc.
RGN Services Limited

SCHEDULE "B"
OTHER CCAA DEBTORS

RGN Alberta IV Limited Partnership
RGN Alberta X Limited Partnership
RGN Alberta XIII Limited Partnership
RGN Alberta XIV Limited Partnership
RGN Alberta XVII Limited Partnership
RGN British Columbia XX Limited Partnership
RGN British Columbia XVI Limited Partnership
RGN British Columbia XXV Limited Partnership
RGN British Columbia XXIV Limited Partnership
RGN Manitoba II Limited Partnership
RGN Ontario II Limited Partnership
RGN Ontario L Limited Partnership
RGN Ontario LV Limited Partnership
RGN Ontario LVI Limited Partnership
RGN Ontario LVIII Limited Partnership
RGN Ontario LXII Limited Partnership
RGN Ontario XI Limited Partnership
RGN Ontario XLI Limited Partnership
RGN Ontario XLII Limited Partnership
RGN Ontario XLV Limited Partnership
RGN Ontario XLVI Limited Partnership
RGN Ontario XLVII Limited Partnership
RGN Ontario XLVIII Limited Partnership
RGN Ontario XXI Limited Partnership
RGN Ontario XXIV Limited Partnership
RGN Ontario XXIX Limited Partnership
RGN Ontario XXV Limited Partnership
RGN Ontario XXVIII Limited Partnership
RGN Ontario XXXI Limited Partnership
RGN Ontario XXXII Limited Partnership
RGN Ontario XXXIII Limited Partnership
RGN Quebec V Limited Partnership
RGN Quebec VI Limited Partnership
RGN Quebec XIV Limited Partnership
RGN Quebec XVI Limited Partnership

**SCHEDULE “C”
LIST OF AUTHORITIES**

Cases

1. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 ([CanLII](#))
2. *Nortel Networks Corp. et al. (Re)*, 2017 ONSC 673 ([CanLII](#))
3. *Re Backbay Retailing Corporation v. Gray’s Apparel Company Ltd.*, 2008 BCSC 1876 ([CanLII](#))
4. *Re Doman Industries*, 2003 BCSC 376 ([CanLII](#))
5. *Re Gauntlet Energy Corporation*, 2003 ABQB 718 ([CanLII](#))
6. *Re Hayes Forest Services*, 2009 BCSC 1169 ([CanLII](#))
7. *Re JTI-MacDonald Corp.*, 2010 ONSC 4212 ([CanLII](#))
8. *Re Playdium Entertainment Corp.* (2001), 31 C.B.R. (4th) (ONSC) ([CanLII](#))
9. *Re Pope & Talbot Ltd.*, 2009 BCSC 1552 ([CanLII](#))
10. *Target Canada Co. (Re)*, 2015 ONSC 7574 ([CanLII](#))
11. *Winalta Inc. (Re)*, 2011 ABQB 399 ([CanLII](#))

**SCHEDULE “D”
RELEVANT STATUTES**

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

General power of court

11 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.

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

11.02 (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.

Certain rights limited

34 (1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent.

Provisions of section override agreement

34 (5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect.

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

FACTUM OF THE APPLICANTS
(RETURNABLE SEPTEMBER 1, 2021)

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