



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

COURT FILE NO.: CV-24-00730836-00CL DATE: November 7, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING:

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 SANDVINE
CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA NETWORKS, INC., PROCERA
HOLDING, INC., NEW PROCERA GP COMPANY AND SANDVINE OP (UK) LTD.

BEFORE: JUSTICE PETER J. OSBORNE

PARTICIPANT INFORMATION

For Applicants:

Name of Person Appearing	Name of Party	Contact Info
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For Respondents; Court Officers:

Name of Person Appearing	Name of Party	Contact Info
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ENDORSEMENT OF JUSTICE OSBORNE:

Relief Sought

1. Sandvine Corporation (“Sandvine Canada”), and the other applicant companies (collectively, the “Applicants” and together with the partnership Procera II LP and certain non-filing entities, “Sandvine” or the “Company”), seeks an initial order (the “Initial Order”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”).
2. In particular, the Applicants seek an urgent stay of proceedings (the “Stay of Proceedings”) for the permitted initial ten-day period (the “Initial Stay Period”) under s. 11.02(2) of the *CCAA*, an extension of the Stay of Proceedings to certain Non-Applicant Stay Parties (as defined below), the appointment of KSV Restructuring Inc. as monitor (the “Proposed Monitor”), along with certain other relief necessary to preserve the Applicants’ business and stakeholder value during the Initial Stay Period.
3. The six other corporations that are wholly-owned Sandvine subsidiaries that are not Applicants but are integral to Sandvine’s integrated global operations (the “Non-Applicant Stay Parties”) include Sandvine Sweden A.B. (“Sandvine Sweden”), Sandvine Singapore Pte. Ltd., Sandvine Japan K.K., Sandvine Technologies (India) Private Limited, Sandvine Technologies Malaysia Sdn Bhd, and Sandvine Australia PTY Ltd.

Background to Application

4. The Applicants rely on the Affidavit of Jeffrey A. Kupp sworn November 6, 2024 together with Exhibits thereto, and the Pre-Filing Report of KSV Restructuring Inc. (“KSV”) as Proposed Monitor dated November 6, 2024. Defined terms in this Endorsement have the meaning given to them in the Application materials and/or the Pre-Filing Report, unless otherwise stated. References in this Endorsement to dollar amounts are expressed in United States currency.
5. Sandvine is a Canadian application and network optimization company headquartered in Waterloo, Ontario, which provides quality of experience (“QoE”) analysis and performance optimization software applications to its customers, the majority of whom consist of telecommunications service providers around the world. Sandvine operates in approximately 54 countries. Sandvine has approximately 500 employees and contractors and its products allow its customers to understand the application (“app”) traffic flowing in their networks with significantly higher accuracy compared to other products on the market.
6. Sandvine’s software products generate meta data about the quality and usage of over-the-top (“OTT”) apps (i.e., Netflix, Amazon Prime and YouTube) by subscribers. While Sandvine historically also sold proprietary computer hardware to support its software products, it is currently transitioning to a software-only business and today no longer offers hardware services other than limited ongoing maintenance and related support.
7. On February 27, 2024, Sandvine Canada and certain of the other Sandvine entities were designated on the US Department of Commerce’s Entity List (the “Entity List”), which resulted in the added entities being

subject to export restrictions which materially impacted Sandvine's business. To mitigate these impacts, Sandvine submitted a Request for Emergency Authorization to the U.S. Department of Commerce Bureau of Industry and Security ("BIS"), which was granted and subsequently extended to December 31, 2024.

8. On May 1, 2024, Sandvine submitted a proposal for removal from the Entity List, which removal ultimately occurred on October 23, 2024. In conjunction with these requests and discussions, Sandvine has reoriented its business model and will cease operating in non-democratic countries or countries where the threat to digital rights is too high. Sandvine is also making other significant changes to its governance and business model in consultation with BIS and other interagency partners of the U.S. government.
9. Sandvine's business has been significantly impacted by the Entity List designation, as the countries that Sandvine has exited (and is in the process of exiting) represent approximately 45% of Sandvine's 2023 revenue. Sandvine's top line revenue is projected to be reduced by approximately 50% compared to its 2023 revenue due to the country exits and customer attrition related to the Entity List dynamic.
10. In light of potential defaults stemming from the Entity List designation and related impacts, earlier this year Sandvine negotiated a reorganization with its Lenders, pursuant to which the Lenders became the indirect owners of Sandvine and Sandvine's debt was reduced by approximately US \$92 million (the "June 2024 Reorganization").
11. Despite these reductions, Sandvine remained over-leveraged and required additional short-term funding, as well as a plan to address the operational restructuring of its business, including the country exits. Sandvine and certain of the Existing Loan Lenders have therefore negotiated further agreements regarding the financing and restructuring of Sandvine, which provide for:
 - a. US \$45 million in new money financing under the DDTL Facility (as defined below), including a commitment to provide any undrawn portion as a DIP Facility (as defined below) in the event of court-supervised restructuring proceedings;
 - b. a restructuring support agreement (the "RSA") with approximately 97% of the Existing Loan Lenders;
 - c. an agreement by such Existing Loan Lenders to forbear from any default remedies under the First Lien Credit Agreement (as defined below) and other debt documents; and
 - d. a proposed transaction, to be tested through a sales process, whereby Sandvine's funded debt obligations would be converted into a 50% equity share of a restructured company and new first lien financing, and Existing Loan Lenders that provided new money commitments would receive 50% equity of the restructured company as consideration for such commitments. The proposed transaction would result in a US \$337 million reduction of Sandvine's current debt of approximately US \$421 million (in outstanding principal).
12. The RSA requires Sandvine to commence a restructuring proceeding by November 15, 2024, failing which the RSA can be terminated, and the Consenting Stakeholders (as defined below) could commence enforcement proceedings with respect to the DDTL Credit Agreement (as defined below), which would

in turn constitute an event of default under the First Lien Credit Agreement. Sandvine would not be able to pay or otherwise satisfy the amounts due under these agreements and is therefore insolvent.

13. The Applicants require immediate *CCAA* protection so that they will have the necessary breathing space to complete the last step of their balance sheet restructuring, continue to access needed liquidity from the Existing Loan Lenders, and have the time and resources to implement orderly exits from high-risk jurisdictions and restructure their operations accordingly.
14. Prior to the June 2024 Reorganization, Sandvine's primary debt obligations consisted of two secured credit facilities jointly issued to Sandvine Canada and Procera US as borrowers (the "Borrowers") totalling US \$504 million in debt:
 - a. the "First Lien Credit Agreement" between the Borrowers, the First Lien Guarantors, the lenders party thereto (the "First Lien Lenders"), and Jeffries Finance LLC ("Jeffries") as Administrative Agent and Collateral Agent, which prior to June 28, 2024, had an outstanding principal of approximately US \$394 million; and
 - b. the "Second Lien Credit Agreement" between the Borrowers, the Second Lien Guarantors, the lenders party thereto (the "Second Lien Lenders," and together with the First Lien Lenders, the "Lenders") and Barings Finance LLC as Administrative Agent and Collateral Agent, which prior to June 28, 2024, had an outstanding principal of US \$110 million.
15. The Lenders subsequently became the ultimate owners of Sandvine pursuant to the June 2024 Reorganization. As part of the June 2024 Reorganization, the Obligations under the Second Lien Credit Agreement were settled and extinguished in exchange for:
 - a. the issuance by the Borrowers of US \$18 million of Term Loans under the amended First Lien Credit Agreement to the Second Lien Lenders (on a pro rata basis); and
 - b. the issuance of Class C limited partner interests in Procera II LP to the Second Lien Lenders (on a pro rata basis).
16. Sandvine's debt obligations following the June 2024 Reorganization therefore consisted of terms loans in under the First Lien Credit Facility of approximately US \$412 million.
17. Additionally, Sandvine has 17 cash collateralized letters of credit totaling approximately US \$7.2 million, all of which were issued to secure future performance obligations by Sandvine for products and services pre-paid by its customers.
18. At present, Sandvine has drawn US \$20 million under the DDTL Facility.
19. I observe that, as set out in the Application materials and in the Pre-Filing report of the Proposed Monitor, the Lenders, who are owed approximately \$431.8 million in principal secured debt, are the largest economic stakeholders. 97% of the Lenders have entered into the RSA and support both this *CCAA* Application and the substantive relief being sought today and at the proposed comeback hearing, including (as further discussed below), approval of the DIP Facility, the proposed SISP, the proposed stalking horse

transaction, and the various related Charges ranking in priority to the security granted by the Sandvine Entities in favour of the Lenders.

Jurisdiction

20. Subsection 9(1) of the *CCAA* provides that an application for a stay of proceedings under the *CCAA* may be made to the court that has jurisdiction in the province in 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: *Target Canada Co. (Re)*, 2015 ONSC 303 (“*Target*”) paras. 26 to 30; *Bed Bath & Beyond Canada Limited (Re)*, 2023 ONSC 1014 (“*BBB*”) at para. 25.
21. Each of the Applicants fulfils these requirements. Sandvine Canada is incorporated in Canada and headquartered in Waterloo, while the remaining applicants each have assets in Canada in the form of funds on deposit in Canadian bank accounts and funds currently being held on retainer in Canada by counsel. A number of courts have held that funds deposited in bank accounts or held on retainer in this manner are sufficient to satisfy the *CCAA* jurisdiction requirements and have cautioned that the court must not engage in “a qualitative or detailed analysis of the Canadian assets”: *Global Light Telecommunications Inc., (Re)*, 2004 BCSC 745 at para. 17; see also *CanWest Global Communications Corp. (Re)*, 2009 CanLII 55114 (ONSC) (“*CanWest*”) at para. 30. In reference to funds held on retainer by counsel, see *Syncreon Group B.V. (Re)*, 2019 ONSC 5774 at para. 27; and *LTL Management LLC (Re)*, 2021 ONSC 8357 at para. 13.
22. Further, Ontario is the proper forum for the restructuring. Ontario is the chief place of business of the Applicants as a whole, given that: (i) the majority of Sandvine’s North American Employees are in Canada; (ii) the majority of Sandvine’s assets (in particular the majority of its IP assets, cash, customer accounts receivable, inventory, fixed assets, and real estate investments) are in Canada; (iii) Sandvine’s General Counsel resides in Canada; (iv) Sandvine is operationally dependent on the shared services provided by the Accounting and A/R teams, each of which is primarily located in Canada; (v) Sandvine Canada issues all customer invoices; (vi) approximately two thirds of Sandvine’s customer receipts are deposited into Sandvine Canada’s Canadian bank accounts; (vii) in 2023, Sandvine Canada generated approximately two thirds of Sandvine’s revenue; (viii) approximately 69% of Sandvine’s customers contract with Sandvine Canada; (ix) the majority of Sandvine’s patents are held by Sandvine Canada; and (x) Sandvine Canada is party to the majority of Sandvine’s shared services agreements.
23. Canadian courts have accepted that a multinational enterprise such as the Applicants’ business must be restructured as a global unit, even where operating units are located in foreign jurisdictions: See, e.g., *Ted Baker Canada Inc. et al (Re)*, (April 26, 2024), Ont S.C.J. [Commercial List], Court File No. CV-24-718993-00CL at para. 28, in which the court held that the requirements of s. 9(1) of the *CCAA* were satisfied on the basis that the applicants, which included both Canadian and U.S. entities, maintained their head office and much of their business activities in Ontario. See also *Ghana Gold Corp (Re)*, 2013 ONSC 3284 at para. 56, in which the court included foreign applicants within a *CCAA* proceedings on the grounds that doing so was “critical to a restructuring.”
24. If the proposed Initial Order is granted, Sandvine intends to commence a recognition proceeding under Chapter 15 of the US Bankruptcy Code in the United States Bankruptcy Court for the Northern District

of Texas to ensure that actions taken in relation to US entities and US property will be under the supervision of the US courts.

The Applicants are Insolvent

25. The CCAA applies to a “debtor company” or affiliated debtor companies where the total amount of claims against the debtor or its affiliates exceeds \$5 million. The Applicants are each a “company” for the purposes of s. 2 of the CCAA as they do business in or have assets in Canada: *Lydian International Limited (Re)*, 2019 ONSC 7473 at para. 35-36 (“*Lydian*”).
26. A “debtor company” means, *inter alia*, a company that is insolvent: CCAA, ss. 2 and 3(1). The CCAA defines a “debtor company” as, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (“BIA”).
27. The determination of whether a company is insolvent requires consideration of the definition of “insolvent person” in the BIA, and the expanded concept of insolvency adopted in *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (“*Stelco*”), in which this court held that a debtor is insolvent where there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. This approach to the insolvency criterion has been applied in other cases, including *Target* at para. 26; *Just Energy Corp. (Re)*, 2021 ONSC 1793 (“*Just Energy*”) at paras. 48 to 51; and *Nordstrom Canada Retail, Inc. (Re)*, 2023 ONSC 1422 (“*Nordstrom*”) at para. 26.
28. I am satisfied that the Applicants here face a liquidity crisis consistent with the *Stelco* test. If they do not commence restructuring proceedings by November 15, 2024, the Applicants would be unable to fulfil their obligations under the First Lien Credit Agreement and the DDTL Credit Agreement. Each of the Applicants is either a borrower or guarantor under those agreements or is the general partner of a guarantor.
29. Accordingly, the Applicants are corporations that collectively owe over \$5 million in outstanding liabilities. They have delivered the documents and financial statements required under s. 10(2) of the CCAA.

Stay of Proceedings

30. Section 11.02(1) of the CCAA provides that the Court may order a stay of proceedings on an initial CCAA application for a period of not more than 10 days. Section 11.001 of the CCAA provides that relief granted on an initial CCAA 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 initial 10-day period.
31. In *Lydian*, Chief Justice Morawetz stated that the Initial Stay Period preserves the status quo and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing. Whether particular relief is necessary to stabilize a debtor company’s operations during the Initial Stay Period is an inherently factual determination, based on all of the circumstances of the particular debtor.

32. All of the relief requested in this first-day application meets these criteria. Each aspect of the relief sought by the Applicants in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicants to properly respond to their current circumstances.
33. As set out in the Pre-Filing Report of the Proposed Monitor, the customers of Sandvine include over 130 of the largest global communications service providers, serving hundreds of millions of network users. Any disruption in the services provided by Sandvine could and likely would have serious implications for the continuity and security of services provided by customers of Sandvine, including many of the largest internet service providers in Canada and globally.
34. A stay of proceedings is clearly necessary here if any form of restructuring process is to be successful. The relief sought today is limited to what is reasonably necessary.
35. I further observe that the Applicants have included in these first day materials disclosure of the relief that will be sought on the comeback hearing, if the Initial Order sought today is granted, including approval of a sales and investment solicitation process (“SISP”) with a proposed stalking horse agreement.
36. Finally in this regard, the Applicants have prepared a Cash Flow Forecast for the 13-week period from November 3, 2024 to February 1, 2025, which has been reviewed by the Proposed Monitor. Its statutory report on the Forecast is attached to the Pre-Filing Report as Appendix “C”.

The Stay should be Extended to Procera II LP

37. I am also satisfied that the stay and the protections and authorizations proposed in the draft Initial Order should be extended to Procera II LP. The *CCAA* expressly applies by its terms to debtor companies but not partnerships. Where the functions and operations of partnerships are integral and closely related to the business and operations of the Applicants, the *CCAA* Court has the jurisdiction to extend the protection of the stay of proceedings to those partnerships in order to ensure that the purposes of the *CCAA* can be achieved. Such relief has been granted on multiple occasions. See: *Target*, at paras 42 and 43; *Just Energy*, at para. 116; and *BBB*, at para. 28.
38. The Applicants submit that it is appropriate to extend the stay of proceedings to Procera II LP. I agree. As guarantor under the Credit Facilities and the ultimate parent company of the Sandvine operating entities (and the vehicle through which certain of the Existing Loan Lenders currently own Sandvine), Procera II LP is insolvent, and the extension of the benefit of the stay of proceedings and the protections and authorizations of the Initial Order to Procera II LP is necessary to maintain stability and value in the *CCAA* process and to complete the proposed Restructuring Transactions.

The Stay should be Extended to the Non-Applicant Stay Parties

39. I am also satisfied that the stay should be extended to the Non-Applicant Stay Parties. The authority of the Court to extend a stay to non-filing affiliates is derived from the broad jurisdiction given to the Court under ss. 11 and 11.01(2) of the *CCAA* and is commonly granted as part of *CCAA* proceedings, including to foreign non-applicant affiliates: *Chalice Brands Ltd (Re)*., 2023 ONSC 3174, at para. 35.

40. In *JTI-Macdonald Corp.*, this Court outlined the factors determining when it is appropriate to extend a CCAA stay over non-filing affiliates, including where the business of the non-filing affiliate is significantly intertwined with that of the debtors and extending the stay would help maintain stability during the CCAA process: *JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625 at para. 15 (“*JTI-Macdonald*”).
41. The test as articulated in *JTI-Macdonald* is met here. The business and operations of the Non-Filing Affiliates are functionally and operationally integrated with those of the Applicants, and these entities provide research and development, sales, customer success in marketing services. The Non-Applicant Stay Parties together have approximately 294 employees constituting over half of Sandvine’s global workforce. I am satisfied that the extension of the stay to the Non-Applicant Stay Parties is therefore necessary to maintain stability and value in the CCAA process.

Appointment of KSV as Monitor

42. The Applicants propose to have KSV appointed as the Monitor. KSV is a “trustee” within the meaning of subsection 2(1) of the *BIA*, is established and qualified, and has consented to act as Monitor. The involvement of KSV as the court-appointed Monitor will lend stability and assurance to the Applicants’ stakeholders. KSV is not subject to any of the restrictions set out in s. 11.7(2) of the *CCAA*.
43. I am satisfied that KSV should be appointed as Monitor in these CCAA Proceedings.

The Charges and the DIP

The DIP and DIP Facility

44. The DIP Lenders have agreed to provide the proposed DIP Facility up to the amount of USD \$30 million. The Applicants seek an interim financing charge to secure that DIP Facility pursuant to section 11.2 of the *CCAA*. The DIP Charge is proposed to be secured against the Property as defined in the Initial Order, and to rank behind the Administration Charge and the Directors Charge and *pari passu* with amounts owed with respect to the DDTL Tranche A Loans and DDTL Tranche B Loans.
45. Section 11.2(4) of the *CCAA* sets out a non-exhaustive list of criteria that the Court must consider in deciding whether to grant a DIP lender’s charge. Those criteria apply to the period during which the Applicants are expected to be subject to CCAA proceedings, how the Applicants’ business and financial affairs are to be managed during the proceedings, whether the Applicants’ management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the Applicants’ property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the monitor supports the charge.
46. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the Court that the terms of the loan are “limited to what is reasonably necessary

for the continued operations of the debtor company in the ordinary course of business during that period: s. 11.2(5).

47. It is important that an applicant meet the criteria in section 11.2(1) as well as those in section 11.2(4). (See *CanWest Publishing Inc., Re*, 2010 ONSC 222 (“*CanWest IP*”) at paras. 42-44).
48. These factors favour the requested relief here. Sandvine will need access to debtor-in-possession financing during the *CCAA* proceedings to continue to operate its business and administer its insolvency and has no other immediate options to provide it with the liquidity it needs. Approving the DIP Facility and DIP Lenders’ Charge at this time will provide necessary certainty and stability for Sandvine and its stakeholders – including customers and vendors – that funding will be available to complete the transactions contemplated by the RSA (including any superior transaction received as part of the proposed sale process).
49. As noted above, the DIP Facility (and Charge) are supported by the Lenders and recommended by the Proposed Monitor who is of the professional opinion that the DIP Facility terms are reasonable in the circumstances, and comparable to other DIP facilities approved by Canadian courts in *CCAA* proceedings (see comparison chart attached to the Report as Appendix “D”).
50. Granting the DIP Charge at this time will ensure that the authorizations required to access the DIP Facility are put in place at commencement of the *CCAA* Proceedings, and that the Applicants can seek to have the DIP Charge recognized in a timely manner in the concurrent Chapter 15 proceedings. Further, the relief sought is appropriately limited, as the proposed Initial Order prohibits Sandvine from drawing on the DIP Facility unless approved at the comeback hearing. Sandvine intends to seek that authorization to draw on the DIP Facility at the Comeback Hearing.

Administration Charge

51. The Applicants are seeking an Administration Charge in favour of the Monitor, its Canadian and US Counsel, counsel to the Applicant in Canada and the US, and GLC, as security for their respective fees and disbursements (in the case of GLC, to the extent of the Monthly Advisory Fees, to a maximum of USD \$2.5 million for the duration of the Initial Stay Period).
52. The Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Property with first priority over all other charges and security interests.
53. The Court has jurisdiction to grant an administration charge under s. 11.52 of the *CCAA*. It is to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor. (See *CanWest*, at para. 54).
54. The proposed Administration Charge sought for the initial 10-day period meets this test and is appropriate. It is supported by the Proposed Monitor.

The Directors' Charge

55. The Court has jurisdiction to grant a directors' charge under section 11.51 of the *CCAA*, provided notice is given to the secured creditors who are likely to be affected by it.
56. To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors, managers and officers, who have considerable institutional knowledge and specialized expertise. They seek a priority directors' charge in favour of the Sandvine Entities directors, managers and officers for the Initial Stay Period, ranking subordinate to the Administration Charge, but in priority to the DIP Charge and all other interests. The managers include the managers of the Cayman entity, Procera II LP, whose roles and responsibilities largely mirror those of directors of Canadian corporations. The Applicants propose a directors' charge in the amount of \$4.44 million.
57. While there is available liability insurance, the policies will likely not provide sufficient coverage for potential liability that the directors, managers and officers could incur in relation to the *CCAA* proceedings.
58. The Monitor supports the Applicants' request for the directors' charge. I am satisfied it is appropriate here.
59. The directors' charge is approved.

Engagement of the Financial Advisor

60. On June 29, 2024, Sandvine engaged GLC Investment Advisors & Co., LLC and GLC Securities, LLC (collectively "GLC") as its independent financial advisor. The Applicants seek the approval of this engagement *nunc pro tunc*.
61. The Court has the jurisdiction to approve the engagement of the Financial Advisor under s. 11 of the *CCAA*, and Courts have approved the engagement of a financial advisor in order to assist the debtors in achieving the objectives of the *CCAA*, to assist the debtor's management in dealing with a crisis situation, and to allow management to focus on the debtor's continued operations: *Walter Energy Canada Holdings, Inc., (Re)*, 2016 BCSC 107 at paras. 35, 39-43, and 48.
62. GLC has significant experience as a financial advisor in North American restructuring and capital market transactions and was instrumental in assisting with both the negotiations that led to the execution of the RSA and the preparations for these *CCAA* proceedings. GLC's continued involvement, including running the proposed sales process on behalf of Sandvine, will be critical to the successful completion of a going concern restructuring transaction that will maximize value for stakeholders.
63. The GLC retainer and the terms of the Engagement Letter are supported by the Lenders and recommended by the Proposed Monitor who is of the opinion that the terms and in particular the fees are appropriate and comparable to the fees for similar engagements.

Pre-Filing Payments to Critical Third Parties

64. The Applicants seek authorization, with the consent of the Monitor, to make payments of pre-filing amounts to certain critical third parties. Sandvine relies on several third-party software providers for: (i) products it imbeds into its App QoE software and (ii) for products used in its internal operations, many of which are critical to Sandvine's business and its ability to serve customers.
65. Third-party software for Sandvine's internal needs include, among other things, security solutions for Sandvine's internal IT networks, customer relationship management (CRM) software, software to integrate the Company's IT applications, data storage and business intelligence products, video and messaging software programs for online collaboration, Enterprise Resource Planning (ERP) and finance software, shipping and logistics services, as well as export control and denied party screening essential to complying with export laws. Sandvine also relies on third-party suppliers who provide hardware that is critical for its business.
66. In addition, the proposed Initial Order provides that the Applicants can pay pre-filing amounts to other critical third parties up to a maximum aggregate amount of US \$250,000 with the consent of the Monitor.
67. The Court has exercised its jurisdiction on multiple occasions to grant similar relief in other cases: See, for example, *Target*, at para. 62 to 65; *Nordstrom*, at paras. 50-53; *Just Energy*, at para. 99; *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753 at paras. 72-74; and *Boreal Capital* at paras. 20-22.
68. The factors that courts have considered in determining whether to grant such authorization include: (a) whether the goods and services are integral to the business of the applicants; (b) the applicants' dependency on the uninterrupted supply of the goods or services; (c) the fact that no payments will be made without the consent of the Monitor (which is a requirement under the proposed Initial Order); and (d) the effect on the debtors' operations and ability to restructure if it could not make such payments: *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944 at para. 31.
69. These factors are fulfilled in this case, as these categories of suppliers are fundamental to the continuing operations of the Applicant.

Foreign Representative and Foreign Recognition

70. Because the Applicants have operations, assets and valuable business in the US, the Applicants intend to initiate a proceeding under Chapter 15 of Title 11 of the US Bankruptcy Code seeking an order to recognize and enforce orders made in these CCAA proceedings in the US and protect against any potential adverse action taken by US-based creditors (the "Chapter 15 Proceedings").
71. Jurisdiction to appoint any person or body to act as a representative for the purpose of having these CCAA proceedings recognized in any jurisdiction outside Canada, including but not limited to the United States, is found in section 56 of the CCAA. I am satisfied that the relief sought in this regard is appropriate. (See *Caesars Entertainment Operating Company Inc., Re*, 2015 ONSC 712 at para. 38; and *Payless Holdings LLC, Re*, 2017 ONSC 2242 at para. 35).

72. As noted, US proceedings are contemplated here to enforce the stay of proceedings established by the initial order if granted today, with the result that it is necessary to seek recognition of the initial order by the United States Bankruptcy Court.
73. Courts have consistently encouraged, and do encourage, comity and cooperation between courts in cross-border insolvencies.
74. Here, the operations of the Applicants are functionally and operationally integrated, such that the US business cannot operate independently of the Canadian business. I am satisfied that an order authorizing Sandvine to act as a foreign representative in respect of this proceeding, for the purpose of seeking seek recognition of the orders of this Court in the United States, is appropriate and in the best interests of stakeholders.

Initial Order and Comeback Hearing

75. For all of these reasons, the Initial Order is granted. Order to go in the form signed by me today which is effective immediately and without the necessity of issuing and entering.
76. The comeback hearing shall take place on Friday, November 15, 2024 commencing at 2:00 PM via Zoom in order to accommodate stakeholders who are located across Canada and the United States.

A handwritten signature in black ink, appearing to read "Osborne, J.", with a large, stylized initial "O" and a period at the end.

Osborne J.

Date: November 7, 2024