

**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 SKYLINK EXPRESS INC.

**FACTUM OF THE APPLICANT, SKYLINK EXPRESS INC.**

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**PART 1 – INTRODUCTION**

1. The Applicant, Skylink Express Inc. (the “**Applicant**”), brings this motion requesting the following relief, among other things:

- (a) extending the Stay Period (as defined below) to July 31, 2025;
- (b) increasing the maximum borrowing amount under the Applicant’s debtor in possession credit facility (the “**DIP Facility**”) from \$5.90 million to \$6.75 million in accordance with a fourth amendment to the DIP Term Sheet (as defined below) dated April 21, 2025 (the “**Fourth Amended DIP Term Sheet**”);
- (c) approving the Eighth Report of the Monitor (as defined below) dated April 21, 2025 (the “**Eighth Report**”), and the activities described therein; and
- (d) approving the fees of the Monitor and its counsel, Cassels Brock & Blackwell LLP (“**Cassels**”), from October 1, 2024 to March 31, 2025.

## PART 2 – SUMMARY OF FACTS

2. Further background in these CCAA proceedings (the “**Proceedings**”) is set out in the Affidavit of Joseph Grimaldi sworn April 21, 2025<sup>1</sup> and the Eighth Report.<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning given to them in the Eighth Report.

### Background

3. On March 11, 2024, the Applicant sought and obtained an initial order (as amended and restated, the “**Initial Order**”), which granted the Applicant protection pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “**CCAA**”), and imposed a stay of proceedings (the “**Stay Period**”) to March 21, 2024. Pursuant to the Initial Order, KSV Restructuring Inc. (“**KSV**”) was appointed as the Monitor (in such capacity, the “**Monitor**”).<sup>3</sup>

4. In connection with the Proceedings, the Applicant and the Applicant’s senior secured creditor, The Toronto-Dominion Bank (“**TD**”), entered into an escrow agreement and a forbearance agreement (the “**Forbearance Agreement**” and together, the “**TD Stand Still Agreements**”). The TD Stand Still Agreements were approved by the Court on April 25, 2024.<sup>4</sup>

5. On May 30, 2024, the Court approved a sale process (the “**Sale Process**”) for the Applicant’s various aircraft and certain other assets. Subsequently, on July 5, 2024, the Court issued an order approving the sale of one of the Applicant’s caravan aircraft. On July 29, 2024, the Court approved the sale of three additional caravan aircraft.<sup>5</sup>

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<sup>1</sup> Affidavit of Joseph Grimaldi sworn April 21, 2025 (“**Grimaldi Affidavit**”), Motion Record of the Applicant returnable April 28, 2025 (“**MR**”), Tab 2, p. 8.

<sup>2</sup> Eighth Report to Court of KSV Restructuring Inc. as Monitor of Skylink Express Inc. dated April 21, 2025 (“**Eighth Report**”).

<sup>3</sup> Grimaldi Affidavit at para. 4, MR, Tab 2, p. 9.

<sup>4</sup> Grimaldi Affidavit at para. 6, MR, Tab 2, p. 9.

<sup>5</sup> Grimaldi Affidavit at paras. 7-8, MR, Tab 2, p. 9.

6. Since the granting of the Initial Order, the Applicant has sought and obtained various orders from the Court approving extensions to the Stay Period. Most recently, on January 31, 2025, the Court extended the Stay Period to April 30, 2025 to allow the Applicant to continue to advance the Sale Process with respect to the balance of the Applicant's unsold assets (collectively, the "**Remaining Assets**").<sup>6</sup>

#### Sale Process

7. At the outset of these proceedings, the principal purpose of the Proceedings was to provide the Applicant with time to restructure its primary customer contract with United Parcel Services Canada Ltd. Those negotiations were unsuccessful, and the Applicant entered into a wind-down agreement dated on July 31, 2024, setting out the terms of the agreed wind down of the Applicant's performance of that contract.<sup>7</sup>

8. The wind-down services are now complete. The primary remaining activity in the Proceedings is to complete the Sale Process with respect to the Remaining Assets, which include ten Beechcraft 1900C aircrafts, plus inventory and other sundry assets. The Applicant, with the Agent, and under the supervision of the Monitor, is working to complete one or more transactions prior to the end of the proposed stay extension; however, there is no certainty that any of the ongoing discussions will be successful.<sup>8</sup>

#### DIP Facility

9. The Initial Order approved the Applicant's debtor in possession term sheet with the DIP Lender dated as of March 8, 2024 (the "**DIP Term Sheet**") and authorized an initial borrowing

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<sup>6</sup> Grimaldi Affidavit at paras. 5, 6 and 9, MR, Tab 2, pp. 9-10.

<sup>7</sup> Grimaldi Affidavit at para. 10, MR, Tab 2, p. 10.

<sup>8</sup> Grimaldi Affidavit at paras. 11-12, MR, Tab 2, p. 10.

of \$1.35 million under the DIP Term Sheet, as secured by a corresponding DIP Lender's Charge in the same amount.<sup>9</sup>

10. Pursuant to an Order of the Court dated January 31, 2025, which approved a third amendment to the DIP Term Sheet dated as of January 23, 2025 (the "**Third Amended DIP Term Sheet**"), the current maximum borrowing amount under the DIP Term Sheet is \$5.90 million.<sup>10</sup>

11. The Debtor has prepared a cash flow forecast to the end of the Stay Period. The cash flow forecast reflects that the Debtor is projected to require an increase in the maximum amount it can borrow under the DIP Term Sheet to pay its operating costs and to pay professional costs. The DIP Lender has agreed to increase the Applicant's permitted borrowings under the DIP Facility to \$6.75 million pursuant to the Fourth Amended DIP Term Sheet, which amounts are to be secured by the DIP Lender's Charge. The Fourth Amended DIP Term Sheet is identical to the Third Amended DIP Term Sheet except for the maximum amount that can be borrowed under the DIP Facility.<sup>11</sup>

### **PART 3 – STATEMENT OF ISSUES, LAW & AUTHORITIES**

12. The issues to be determined on this motion are as follows:

- (a) whether to extend the Stay Period up to July 31, 2025;
- (b) whether to approve an increase in the maximum borrowing amount under the DIP Facility from \$5.90 million to \$6.75 million;
- (c) whether to approve the fees of the Monitor and its counsel from October 1, 2024 to March 31, 2025; and

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<sup>9</sup> Eighth Report at para. 1.0.2(b)(ii), p. 1.

<sup>10</sup> Eighth Report at para. 1.0.11(b), p. 3.

<sup>11</sup> Eighth Report at paras. 4.1.1-4.1.5, pp. 7-8; Grimaldi Affidavit at para. 17, MR, Tab 2, p. 11.

- (d) whether to approve the Eighth Report and the Monitor's activities described therein.

### Stay Extension

13. The Court may extend the Stay Period pursuant to Section 11.02(2) of the CCAA. The Court may make such an order where it is satisfied that: (a) circumstances exist which may such an order appropriate; and (b) the Applicant has acted and is continuing to act in good faith and with due diligence.<sup>12</sup>

14. Extending the Stay Period to July 31, 2025 is necessary and appropriate in the circumstances for the following reasons, among others:

- (a) the Applicant is acting in good faith and with due diligence;<sup>13</sup>
- (b) the Applicant's updated cash flow forecast to July 31, 2025 indicates that the Applicant is projected to have sufficient liquidity to fund its post-filing obligations, provided that the Court approves the proposed increase in the DIP Facility;<sup>14</sup>
- (c) the extension of the Stay Period will allow the Applicant to continue to advance the Sale Process;<sup>15</sup>
- (d) TD does not oppose the extension of the Stay Period and the DIP Lender supports it;<sup>16</sup>
- (e) the Monitor believes that the extension is appropriate, in the best interests of the Applicant's stakeholders, and that no stakeholder will be prejudiced by the

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<sup>12</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), ss. [11.02\(2\)-\(3\)](#).

<sup>13</sup> Eighth Report at para. 7.2(a), p. 10.

<sup>14</sup> Eighth Report at para. 7.2(b), p. 10.

<sup>15</sup> Eighth Report at para. 7.2(c), p. 10.

<sup>16</sup> Eighth Report at para. 7.2(d), p. 10.

proposed extension provided the maximum amount that can be borrowed under the DIP Term Sheet is approved;<sup>17</sup> and

- (f) neither the Applicant nor the Monitor is aware of any party that is opposed to an extension of the Stay Period.<sup>18</sup>

### DIP Facility Increase

15. Section 11.2 of the CCAA provides a court with the jurisdiction to approve interim financing and related priority charges.<sup>19</sup> In determining whether to approve a proposed increase in interim financing and a corresponding charge, the Court is to consider the following non-exhaustive factors:<sup>20</sup>

- (a) the period during which the company is expected to be subject to proceedings under the CCAA;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) the nature and value of the company's property; and
- (e) whether any creditor would be materially prejudiced as a result of the security or charge.

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<sup>17</sup> Eighth Report at para. 7.2(e), p. 10.

<sup>18</sup> Eighth Report at para. 7.2(f), p. 10.

<sup>19</sup> CCAA, [s. 11.2](#).

<sup>20</sup> *Ibid*, [s. 11.2\(4\)](#).



16. In this case, the following factors support the request for the proposed DIP Facility increase pursuant to the Fourth Amended DIP Term Sheet:

- (a) the increase is required for the Applicant to continue to carry out the Sale Process, maintain its remaining aircraft during the stay extension and pay the costs of these proceedings;<sup>21</sup>
- (b) without the funds to be provided under the DIP Facility, the Applicant is not projected to have sufficient cash flow to carry out the Sale Process and service its debt owing to TD, as required by the Forbearance Agreement;<sup>22</sup>
- (c) the DIP Lender is not seeking an increase in the cost of the DIP Facility, and the Monitor has previously determined that the cost of the DIP Facility falls within the range of similar facilities recently approved by the Court and other Canadian courts in CCAA and other restructuring proceedings;<sup>23</sup>
- (d) the DIP Facility ranks subordinate to TD's security interest, which is a requirement of TD;<sup>24</sup>
- (e) the Monitor believes that no stakeholder will be prejudiced by the DIP Facility increase;<sup>25</sup> and
- (f) TD does not oppose the proposed increase in the DIP Facility and corresponding increase in the DIP Lender's Charge.<sup>26</sup>

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<sup>21</sup> Eighth Report at para. 4.2.1(a), p. 8.

<sup>22</sup> Eighth Report at para. 4.2.1(b), p. 8.

<sup>23</sup> Eighth Report at para. 4.2.1(c), p. 8.

<sup>24</sup> Eighth Report at para. 4.2.1(d), p. 8.

<sup>25</sup> Eighth Report at para. 4.2.1(g), p. 9.

<sup>26</sup> Eighth Report at para. 4.2.1(f), p. 9.

### The Monitor's and its Counsel's Fees

17. In deciding whether to approve the fees and disbursements of KSV in its capacity as the Monitor, and those of its counsel, Cassels, the Court must determine if the fees were “fair and reasonable in all the circumstances.”<sup>27</sup> The emphasis should be on “what was accomplished, and not on how much time it took.”<sup>28</sup> This Court has provided a non-exhaustive list of factors to consider when assessing the fairness and reasonableness of the fees and disbursements, including, *inter alia*, the time spent and the cost of comparable services when performed in a prudent and economical manner.<sup>29</sup>

18. The Monitor is of the view that the hourly rates charged by Cassels are consistent with the rates charged by law firms practicing corporate insolvency and restructuring in the Toronto market. Furthermore, the Monitor believes that the fees incurred by Cassels and the Monitor have been validly incurred in accordance with the provisions of the Orders in the Proceedings and are reasonable and appropriate under the circumstances.<sup>30</sup>

### The Monitor's Activities

19. In *Re Target Canada Co.*, the Court noted that there are good policy and practical reasons to grant the approval of a monitor's report and the activities described therein.<sup>31</sup> In this case, the Monitor's activities, as detailed in the Eighth Report, were necessary and carried out in good faith by the Monitor.<sup>32</sup> In addition, the Monitor's activities were undertaken in accordance with its mandate set forth in the previous Orders issued in the Proceedings and the CCAA more generally.

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<sup>27</sup> *Pace Securities Corp. et al v First Hamilton Holdings Inc. et al.*, [2021 ONSC 6956](#) at para 26.

<sup>28</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para 45.

<sup>29</sup> *Re Nortel Networks Corporation, et al.*, [2017 ONSC 673](#) at para 14.

<sup>30</sup> Eighth Report at para 5, p 11.

<sup>31</sup> *Re Target Canada Co.*, [2015 ONSC 7574](#) at para 22; see also *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at para 13.

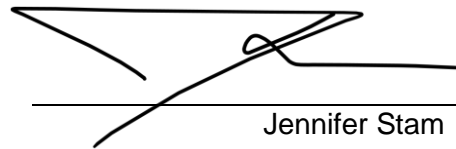
<sup>32</sup> See e.g., Eighth Report at para. 6.0.1, p. 9.

Approval of the Monitor's activities will assist in moving forward with the next steps in the Proceedings.

#### **PART 4 - ORDER REQUESTED**

20. For the reasons set out above, the requested relief set out in the Applicant's notice of motion should be granted.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of April, 2025.



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## **Schedule "A"**

### **LIST OF AUTHORITIES**

1. *Bank of Nova Scotia v Diemer*, 2014 ONCA 851
2. *Laurentian University of Sudbury*, 2022 ONSC 2927
3. *Pace Securities Corp. et al v First Hamilton Holdings Inc. et al.*, 2021 ONSC 6956
4. *Re Nortel Networks Corporation, et al.*, 2017 ONSC 673
5. *Re Target Canada Co.*, 2015 ONSC 7574

## **Schedule "B"**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### ***COMPANIES' CREDITORS ARRANGEMENT ACT*** **R.S.C., 1985, c. C-36**

##### **Section 11.02**

Stays, etc. — other than initial application

11.02 (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.

##### **Section 11.2**

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

#### Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

#### Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

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