

**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 seeking orders, among other things:

(a) approving the following sale transactions (collectively, the “**Transactions**”):

(i) a transaction (the “**UTP Transaction**”) for the sale by the Applicant of certain aircraft (the “**UTP Aircraft**”) contemplated by the agreement of purchase and sale dated July 17, 2025 (as the same may be amended, the “**UTP Sale Agreement**”) between the Applicant and Universal Turbine Parts, LLC (the “**UTP**”); and

(ii) a transaction (the “**Residual Assets Transaction**”) for the sale by the Applicant of certain aircraft and other assets (the “**Residual Assets**”) contemplated by the agreement of purchase and sale dated July 24, 2025 (“**Residual Assets Sale Agreement**”) between the Applicant and Momentum Jets Inc. (the “**Momentum Jets**”);

(b) authorizing, requesting and directing the applicable government authorities to register the transfer of ownership of the:

- (i) UTP Aircraft to UTP in the applicable registries and discharge the encumbrances against the Aircraft including in favour of Momentum Decisive Solutions Canada Inc. ("**Momentum Solutions**"); and
  - (ii) the Residual Assets (to the extent necessary) to Momentum Jets in the applicable registries and discharge the encumbrances against the Aircraft including in favour of Momentum Solutions;
- (c) authorizing KSV Restructuring Inc., the monitor in the CCAA (as defined below) proceedings (the "**Monitor**"), to make one or more distributions, on behalf of the Applicant, of the net proceeds of sale from the UTP Transaction and any other realizations of the Applicant to Momentum Solutions;
- (d) terminating these proceedings effective upon the filing by the Monitor of a certificate in the form attached as Schedule "A" to the proposed order ("**CCAA Termination Certificate**");
- (e) discharging the Monitor;
- (f) providing releases in favour of the Monitor and its counsel for any liability in connection with these proceedings, except in respect of their gross negligence or wilful misconduct;
- (g) approving the activities of the Monitor set out in the ninth report of the Monitor dated July 24, 2025 ("**Ninth Report**") and the fees and disbursements of the Monitor and its counsel including a fee accrual of \$100,000, before HST and disbursements (the "**Fee Accrual**"); and
- (h) sealing the confidential appendix to the Ninth Report pending closing of the UTP Transaction or further Order of the Court.

## PART 2 – SUMMARY OF FACTS

2. Further background regarding the relief sought on the return of this motion is set out in the Affidavit of David Atkins sworn July 24, 2025<sup>1</sup> and the Ninth Report.<sup>2</sup> Capitalized terms used herein and not otherwise defined have the meaning given to them in the Ninth 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.<sup>3</sup>

4. In connection with the CCAA proceedings (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 (together, the “**TD Stand Still Agreements**”). On April 25, 2024, the Court approved the TD Stand Still Agreements and extended the stay period up to May 31, 2024.<sup>4</sup>

5. The Stay Period has been extended from time to time and currently expires on July 31, 2025.<sup>5</sup>

6. On July 17, 2025, Momentum Solutions took assignment of TD’s loan and security (the “**TD Debt Assignment**”) – as a result, Momentum Solutions is now the Applicant’s senior secured lender as well as the Applicant’s lender pursuant to the Applicant’s debtor-in-possession credit facility (the “**DIP Facility**”).<sup>6</sup> Momentum Solutions was owed approximately \$10.17 million,

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<sup>1</sup> Affidavit of David Atkins sworn July 24, 2025 (“**Atkins Affidavit**”), Motion Record of the Applicant returnable July 24, 2025 (“**MR**”), Tab 2, p. 8.

<sup>2</sup> Ninth Report to Court of KSV Restructuring Inc. as Monitor of Skylink Express Inc. dated July 25, 2025 (“**Ninth Report**”).

<sup>3</sup> Atkins Affidavit at para 4, MR, Tab 2, p. 13.

<sup>4</sup> Atkins Affidavit at paras. 5, 7, MR, Tab 2, p. 13.

<sup>5</sup> Atkins Affidavit at para. 8, MR, Tab 2, p. 13.

<sup>6</sup> Atkins Affidavit at paras. 9, 10, MR, Tab 2, pp. 13 – 14.

including by way of the TD Debt Assignment and amounts owing to it under the DIP Facility (the “**Momentum Debt**”).<sup>7</sup>

### Sale Process

7. On May 30, 2024, the Court granted an order authorizing the Applicant to engage 1262396 Alberta Ltd. (dba Pollock Aviation (the “**Agent**”)) to act as its sales agent to market and sell its assets, which consist primarily of the Applicant’s aircrafts (the “**Fleet**”) and approved the Applicant’s proposed sale process (the “**Sale Process**”).<sup>8</sup>

8. The Applicant subsequently sold its four (4) 208B caravan aircraft pursuant to Orders of the Court dated July 5, 2024 and July 29, 2024 (the “**Previously Approved Transactions**”). The remainder of the Fleet consists of ten (10) 1900C all cargo aircraft. In addition to the remainder of the Fleet, the Applicant still owns certain parts and inventory associated with the aircraft, as well as its operational licenses.<sup>9</sup>

9. For more than a year, the Applicant, with the assistance of the Agent, has carried out an extensive marketing of the Company’s business and assets, including the Fleet. The Applicant is now proposing to complete two transactions which, upon completion, will result in the conveyance of all the Applicant’s remaining monetizable assets.

### The Transactions

10. In accordance with the Sale Process, the Applicant, in consultation with the Monitor, has now negotiated and finalized the terms of the Transactions for the sale of additional assets on the terms and conditions set out in the UTP Sale Agreement and Residual Asset Sale Agreement.

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<sup>7</sup> Ninth Report, p. 7, at para 2.1.4.

<sup>8</sup> Atkins Affidavit at para 11, MR, Tab 2, p. 14.

<sup>9</sup> Atkins Affidavit at para 8, MR, Tab 2, p. 14.

11. The UTP Sale Agreement was entered into after the parties had agreed on the terms of a letter of intent dated June 20, 2025 (the “**UTP LOI**”).<sup>10</sup> Although subsequently, the Applicant received an unsolicited offer with a proposed higher purchase price on June 22, 2025 (the “**Subsequent Offer**”), the Applicant elected to pursue the UTP LOI as it had already signed the UTP LOI back, and that transaction contemplated a quick closing and 100% purchase price paid up front, whereas the Subsequent Offer was subject to several terms and conditions including aircraft inspection and provided for a significantly lower deposit.<sup>11</sup>

12. With respect to the Residual Assets Transaction, to date, no other offers have materialized in respect of the Residual Assets despite extensive marketing by the Agent.

13. Certain key terms of the UTP Sale Agreement and the Residual Asset Sale Agreement are summarized as follows:<sup>12</sup>

<b>Purchaser</b>	UTP	Momentum Jets
<b>Assets to be Purchased</b>	Six (6) beech aircraft 1900 C aircraft and various engines.	The remaining aircraft and engines in the Applicant’s Fleet, plus remaining parts and inventory and the other residual assets described in the Residual Assets Sale Agreement.
<b>Purchase Price</b>	For the reasons provided in Section 3.2 of the Ninth Report, the Applicant is seeking to seal the purchase price in the UTP Transaction.	\$6,766, 017.76 – to be satisfied by release and forgiveness of the Momentum Debt in an amount equal to the purchase price.

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<sup>10</sup> Atkins Affidavit at para 14, MR, Tab 2, p. 15.

<sup>11</sup> Atkins Affidavit at paras. 15 – 16, MR, Tab 2, p. 15.

<sup>12</sup> Ninth Report, pp. 9 – 10, at para 3.3.1; Atkins Affidavit at para 17, 22, MR, Tab 2, pp. 15 – 16. Capitalized terms used in this paragraph and not otherwise defined have the meaning given to them in the UTP Sale Agreement and Residual Assets Sale Agreement.

	The Monitor has received the full purchase price in escrow.	
<b>As is, where is</b>	The UTP Sale Agreement is consistent with the standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with typical representations, warranties and conditions for transactions of this nature.	The Residual Assets Sale Agreement is consistent with the standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with typical representations, warranties and conditions for transactions of this nature.
<b>Closing Date</b>	Five (5) Business Days following the date the Court grants the Approval and Vesting Order (“ <b>AVO</b> ”), or such other date as may be agreed by the parties in writing.	On the date the Court makes the AVO or such other date that may be agreed by the parties in writing.
<b>Delivery Location</b>	Huron Regional Airport (YEE), unless otherwise agreed in writing by the parties.	In their present location.
<b>Material Conditions</b>	i. The Applicant shall have delivered or cause to be pre-delivered to the Monitor, as Escrow Agent, a copy of the International Registry’s draft pre-	Momentum Jets shall have satisfied the purchase price.



	<p>registration report to discharge any Liens published on the International Registry</p> <p>ii. The Applicant shall have delivered or cause to be pre-delivered to the Escrow Agent, any documentation as may be required to request deregistration of the purchased assets from the register of civil aircraft maintained by Transport Canada (the UTP Purchased Assets are to be exported to the United States)</p>	
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14. The proceeds from the UTP Transaction are sitting in trust with the Monitor as escrow agent. The combined value of the UTP Transaction and the Momentum Jets Transaction is less than the amount of the Momentum Debt. The Monitor, on behalf of the Applicant, will distribute the UTP Transaction proceeds to Momentum Solutions, up to the amount of the Momentum Debt, net of the Agent's commission and HST.<sup>13</sup>

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<sup>13</sup> Ninth Report, p. 11 at para 3.5.1.

### The Proposed Termination of the CCAA Proceedings

15. Upon the closing of the Transactions, the Proceedings will be complete as substantially all of the Applicant's assets will have been liquidated. The market has been extensively canvassed by the Applicant and Agent through the Sale Process for over a year.<sup>14</sup>

16. Upon the termination of the Proceedings, it is the Applicant's intention to make a voluntary assignment in bankruptcy. The bankruptcy will enable eligible employees to make claims under the wage earner protection program ("WEPP").

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

17. The issues to be determined in connection with this motion are whether this Court should:

- (a) approve the Transactions;
- (b) authorize the applicable government authorities to register the transfer of ownership of the UTP Aircraft and Residual Assets;
- (c) authorize the distributions;
- (d) authorize the termination of the CCAA Proceedings and discharge the Monitor upon the filing of the CCAA Termination Certificate;
- (e) grant the releases in favour of the Released Parties;
- (f) approve the sealing of the confidential appendix to the Ninth Report; and
- (g) grant the other requested relief.

18. For the reasons that follow, the Applicant submits that each of these issues should be answered in the affirmative.

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<sup>14</sup> Ninth Report, p. 8 at para 3.2.1.

### ***The Court Should Approve the Transactions***

19. Pursuant to Section 36 of the CCAA, the Court has the jurisdiction to approve a sale transaction within the context of CCAA proceedings. Section 36(3) of the CCAA sets out the relevant factors for consideration as follows:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.<sup>15</sup>

20. The above factors, however, are not intended to be exhaustive nor to be considered a checklist that must be followed in every transaction.<sup>16</sup> The Courts have also continued to consider the *Soundair* criteria as relevant to whether or not a sale should be approved. Those factors are similar to those set out in Section 36(3) of the CCAA and are as follows:

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<sup>15</sup> *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), [s. 36\(3\)](#).

<sup>16</sup> *Target Canada Co. (Re)*, [2015 ONSC 1487 \(CanLII\)](#) ["*Target*"] at para. 16.

- (a) whether the Court-appointed officer has made sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.<sup>17</sup>

21. The UTP Sale Agreement and the Residual Assets Sale Agreement both satisfy the above test. Among other things:<sup>18</sup>

- (a) the Sale Process undertaken by the Company, with the assistance of the Agent was commercially reasonable and consistent with the terms of the Sale Process Order, and with the processes used to market the Previously Approved Transactions;
- (b) the Agent is an experienced sales agent and aircraft broker and is well known in the aviation industry;
- (c) in the Agent's view, the purchase price under the UTP Transaction is consistent with its expectations considering the age and condition of the UTP Aircraft, which are being purchased for disassembly and parts;
- (d) the Subsequent Offer received for the UTP Aircraft was received after the Company had signed back the UTP LOI, was conditional and provided for a lower deposit;
- (e) the Transactions are unconditional, except for Court approval;

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<sup>17</sup> *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\) \["Soundair"\] at para. 16](#). See also, [Target, supra at paras. 14-17](#).

<sup>18</sup> Ninth Report, p. 10 – 11 at para 3.5.1.

- (f) Momentum Solutions consents to the Transactions. Given the combined purchase price of the Transactions, it is the only creditor with an economic interest in the Transactions; and
- (g) the Monitor is not aware of affected stakeholder objecting to or likely to object to the Transactions.

22. Momentum Jets is an affiliate of the Applicant (as well as Momentum Solutions). As such, the Residual Assets Transaction involves the sale of assets to a related party. In the context of such sales, in addition to the factors considered above, section 36(4) of the CCAA sets out additional factors for consideration in the context of a sale to a related party:

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.<sup>19</sup>

23. The Residual Assets Sale Agreement satisfies the above factors:<sup>20</sup>

- (a) the Sale Process undertaken by the Company, with the assistance of the Agent was commercially reasonable and consistent with the terms of the Sale Process Order, and with the processes used to market the Previously Approved Transactions;
- (b) despite the Sale Process being conducted for more than a year, no other transaction for these assets has materialized to date;<sup>21</sup> and

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<sup>19</sup> CCAA, [s.36\(4\)](#).

<sup>20</sup> Ninth Report, p. 10 at para 3.3.1.

<sup>21</sup> Atkins Affidavit at para. 24, MR, Tab 2, p. 17.

- (c) given the results of the Sale Process to-date, the Monitor does not expect recoveries from the assets being sold pursuant to the Momentum Transaction to exceed the Momentum Debt.<sup>22</sup>
- (d) the Applicant does not believe further marketing within the Proceedings will yield any better recovery.<sup>23</sup>

24. The Court has the jurisdiction to direct governmental authorities to transfer ownership and discharge registrations. Vesting Orders are routinely used to (a) transfer title in real property; (b) discharge land registrations; and (c) register partial discharges in the personal property registry. Indeed, the model approval and vesting order for Ontario includes specific language in that regard.<sup>24</sup>

25. Ownership of aircrafts in Canada and aircraft security must take place in the international registry of mobile assets (the “**International Registry**”). The International Registry permits individuals and organizations to register and search financial interests in aircraft assets. Pursuant to the applicable regulations governing the International Registry in order to discharge security interests and register a sale the seller, buyer and secured party must each be a “Transacting User Entity” and a “Professional User Entity” and must consent to the discharge of a registered security interest and sale.<sup>25</sup> UTP and the Applicant are each Transacting User Entities and are or will be Professional User Entities.

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<sup>22</sup> Ninth Report, p. 8 at para 3.2.3.

<sup>23</sup> Atkins Affidavit at para. 25, MR, Tab 2, p. 17.

<sup>24</sup> See: <https://www.ontariocourts.ca/scj/files/forms/com/approval-and-vesting-order-EN.doc>.

<sup>25</sup> See sections 2.1, 15 and 25 of the Regulations and Procedures for the International Registry: <https://www.internationalregistry.aero/ir-web/common/documentDownload?locale=en&documentId=4>.

26. The Court recently granted such relief in connection with the approval of the Previously Approved Sales.<sup>26</sup> Similar orders directing governmental authorities to transfer title and discharge registrations have been granted in the context of other airline insolvencies.<sup>27</sup>

### ***The Distribution Should be Approved***

27. Courts routinely grant orders authorizing distributions to secured creditors. In *AbitibiBowater*, the Court considered a number of factors in the context of an interim distribution including (a) whether the payee's security was valid and enforceable; (b) whether the distribution would leave the estate with sufficient liquidity; and (c) whether the amounts owed to the beneficiary of the distribution far exceed the amount of the distribution.<sup>28</sup>

28. The distribution order should be granted for the following reasons:

- (a) upon taking an assignment of TD's debt, Momentum is the Applicant's senior secured creditor;<sup>29</sup>
- (b) the value of the Transactions is less than the amount of the Momentum Debt; and<sup>30</sup>
- (c) Cassels has provided the Monitor with an opinion confirming the validity and enforceability of the TD Loan Security, subject to standard assumptions and qualifications.<sup>31</sup>

### ***The CCAA Proceedings Should be Terminated and the Monitor Should be Discharged***

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<sup>26</sup> *In the Matter of Skylink Express Inc.* (July 5, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL at para 4 ([Approval and Vesting Order of Justice Steele](#)); *In the Matter of Skylink Express Inc.* (July 5, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL at paras 8 and 9 ([Endorsement of Justice Steele](#)); *In the Matter of Skylink Express Inc.* (July 29, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-007-16267-00CL at para 4 ([Approval and Vesting Order of Justice Steele - Gingras](#)), para 4 ([Approval and Vesting Order of Justice Steele - Randigo](#)), para 4 ([Approval and Vesting Order of Justice Steele - Randigo](#)); *In the Matter of Skylink Express Inc.* (July 29, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL ([Endorsement of Justice Steele](#))

<sup>27</sup> See, for example: *In the Matter of Lynx Air Holdings Corporation et al.* (May 21, 2024), Court of King's Bench of Alberta, Calgary, 2401-02664 ([Approval and Vesting Order](#)).

<sup>28</sup> *AbitibiBowater Inc. (Arrangement relatif à)*, 2009 QCCS 6461 (CanLII) at para. 75.

<sup>29</sup> Atkins Affidavit at para 9, MR, Tab 2, pp. 13 – 14.

<sup>30</sup> Ninth Report, p. 11 at para 3.6.1.

<sup>31</sup> Ninth Report, p. 7 at para 2.1.3.

29. Section 11 of the CCAA grants this Court broad discretion to make “any order that it considers appropriate in the circumstances.”<sup>32</sup> The Supreme Court of Canada in *X9354-9186 Québec inc. v Callidus Capital Corp.* has clarified that the discretionary authority under Section 11 must be exercised to further the remedial objectives of the CCAA and should be guided by the following considerations:<sup>33</sup>

- (a) the order sought is appropriate in the circumstances;
- (b) the debtor company is acting in good faith; and
- (c) the debtor company is acting with due diligence.

30. The remedial objectives underlying the CCAA include “maximizing creditor recovery”<sup>34</sup> and providing a “timely, efficient and impartial resolution of a debtor’s insolvency.”<sup>35</sup> In furtherance of the CCAA’s remedial objectives, courts often grant orders to discharge a court-appointed monitor and terminate CCAA Proceedings.<sup>36</sup>

31. In the current circumstances, the requested relief is appropriate for the following reasons:

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<sup>32</sup> CCAA, s. 11. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#) at para 48 [*Callidus*].

<sup>33</sup> *Ibid* at para 49.

<sup>34</sup> *Callidus* at para 42.

<sup>35</sup> *Callidus* at para 40.

<sup>36</sup> See *In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc., et al.* (March 29, 2018), Toronto, [CV-16-11527-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*Golf Town Termination Order*]; see also *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp., et al.* (February 15, 2022), Toronto, [CV-21-00673304-00CL \(CCAA Distribution and Termination Order\) \(ONSC\)](#) [*Harte Gold Corp. Order*]; see also *In the Matter of a Plan of Compromise or Arrangement of Trichome Financial Corp., et al.* (September 14, 2023), Toronto, [CV-22-00689857-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*Trichome Financial Corp. Order*]; see also *In the Matter of Validus Power Corp et al.* (September 17, 2024), Toronto, [\(CV-23-00705215-00 & CV-23-00703754CL \(CCAA Termination Order\) \(ONSC\)](#); [*Validus Termination Order*]; see also *In the Matter of a Plan of Compromise or Arrangement of BioSteel Sports Nutrition Inc. et al* (July 31, 2024) Toronto, [\(CV-23-00706033-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*BioSteel Order*]; see also *In the Matter of the Plan of Compromise or Arrangement of BBB Canada Ltd.* (June 20, 2024), Toronto, [\(CV-23-00694493-00CL \(CCAA Termination Order\) \(ONSC\)](#) [*BBB Canada Order*].



- (a) as a result of the Transactions, substantially all of the Applicant's assets will have been liquidated and, other than certain residual matters, these proceedings will be complete;<sup>37</sup>
- (b) upon the filing of the CCAA Termination Certificate, the Monitor will have fulfilled its mandate, as contemplated by the Initial Order and the CCAA;
- (c) the Applicant intends to make a voluntary assignment in bankruptcy, which will facilitate the filing of WEPP claims for eligible employees; and
- (d) the Monitor supports the termination of the proceedings on the terms set out in the proposed Order.<sup>38</sup>

### ***The Releases Should be Granted***

32. The proposed Order contemplates releases for the Released Parties from the Released Claims. This Court has the jurisdiction to render orders approving releases under the broad discretion inherent in Section 11 of the CCAA to make any order considered "appropriate in the circumstances."<sup>39</sup>

33. In determining whether to approve releases in favour of third parties, Courts have considered the following factors: <sup>40</sup>

- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

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<sup>37</sup> Atkins Affidavit at para 27, MR, Tab 2, p. 17.

<sup>38</sup> Ninth Report, p. 5 at para 1.1.1(l)(ii).

<sup>39</sup> CCAA, s. 11.

<sup>40</sup> *Lydian International Limited (Re)*, [2020 ONSC 4006](#) at para 54.

- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefitted the debtors as well as the creditors generally.

34. It is not necessary for each of the above factors to apply in order for a release to be granted.<sup>41</sup> In this case, the proposed releases are appropriately limited in scope, and do not apply in respect of any claim or liability arising out of gross negligence or willful misconduct on the part of the Released Parties.<sup>42</sup> Courts regularly grant releases in favour of monitors and their counsel at the completion of CCAA proceedings provided that the scope of release contains necessary statutory exceptions.<sup>43</sup>

35. Neither the Applicant nor the Monitor are aware of any party who has expressed concerns regarding the performance of the Monitor's duties and obligations during these proceedings.<sup>44</sup> Granting the Releases (subject to applicable carveouts) will provide certainty and finality to the Released Parties.

### ***The Sealing Order Should be Approved***

36. The Applicant is requesting that the confidential appendix to the Ninth Report be sealed until either the completion of the UTP Transaction or further Order of this Court.

37. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where: (i) the order is

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<sup>41</sup> *Re Green Relief Inc.*, [2020 ONSC 6837](#) at para 28.

<sup>42</sup> Ninth Report, p. 15 at para 9.0.2.

<sup>43</sup> See, for example: Validus Order at para 10; see also BioSteel Order at para 16; see also BBB Canada Order at para 11; see also Golf Town Termination Order at para 14; see also Trichome Financial Corp. Order at para 16.

<sup>44</sup> Ninth Report, p. 15 at para 9.0.4.

necessary to prevent a serious risk to an important interest, including a commercial interest; and (ii) the salutary effects of the order outweigh its deleterious effects.<sup>45</sup> More recently, in *Sherman Estate v Donovan*, the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the openness poses a risk to an important interest of the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.<sup>46</sup>

38. Within the context of insolvency proceedings, it is common to seal bids and other commercially sensitive material, such as the details of competing offers, in the event that the proposed transaction not close or where further assets continue to be marketed.<sup>47</sup>

39. The confidential appendix contains the purchase prices and deposit information for the Transactions. If revealed, it could negatively impact the sale of the Purchased Assets if the Transactions do not close.<sup>48</sup> The salutary effects of the proposed sealing order outweigh the deleterious effects of the public not knowing the purchase price information for the Purchased Assets until the completion of the sale, Sale Process or further order of the Court.

### ***Additional Relief Requested***

40. The additional relief sought by the Applicant including the extension of the Stay Period to the date on which the CCAA Termination will become effective, approval of the Monitor's activities, and approval of the fees and disbursements of the Monitor and its counsel should be approved.

41. In respect of the Stay Period, among other things:

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<sup>45</sup> *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#).

<sup>46</sup> *Sherman Estate v Donovan*, [2021 SCC 25 \(CanLII\)](#).

<sup>47</sup> See, for example: *In the Matter of Ignite Services, et al.* (November 9, 2023), Superior Court of Justice of Ontario (Commercial List), Toronto, CV-23-00708635-00CL ([Endorsement of Justice Conway](#)).

<sup>48</sup> Ninth Report, p. 10 at para 3.4.1.

- (a) the Applicant has acted and continues to act, in good faith and with due diligence;
- (b) the extension of the Stay Period will allow the Applicant to complete the Transactions and any other remaining matters in the proceedings;
- (c) the Applicant, with the assistance of the Monitor, has prepared a cash flow that shows that the Applicant will have sufficient liquidity to pay all post-filing obligations during this period; and
- (d) the fees and disbursements as incurred by the Monitor and its counsel for the period approval is being sought are reasonable and appropriate in the circumstances.<sup>49</sup>

42. It is well established that the court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily.<sup>50</sup> Such approvals are commonly granted as part of orders in receivership proceedings.<sup>51</sup>

43. The Monitor has carried out its activities in accordance with the Initial Order and the CCAA. The fees incurred by the Monitor and its counsel for the period are reasonable in the circumstances. The Fee Accrual is reasonable in the circumstances and is necessary for completion of the Proceedings including the facilitation of the closing of the Transactions.

#### **PART 4 – ORDER REQUESTED**

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

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<sup>49</sup> Ninth Report, p. 16 at para 10.0.5.

<sup>50</sup> *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, 2014 BCSC 1855 at para 54; see also *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23 and *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 at para 15.

<sup>51</sup> See the *Order of Justice Penny dated June 5, 2023*, *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL, at para 7.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of July, 2025.

*Jennifer Stam*

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Lawyers for the Applicant

## Schedule "A"

### LIST OF AUTHORITIES

1. *AbitibiBowater Inc. (Arrangement relatif à)*, [2009 QCCS 6461 \(CanLII\)](#)
2. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
3. *In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc., et al.* (March 29, 2018), Toronto, [CV-16-11527-00CL \(CCAA Termination Order\) \(ONSC\)](#)
4. *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp., et al.* (February 15, 2022), Toronto, [CV-21-00673304-00CL \(CCAA Distribution and Termination Order\) \(ONSC\)](#)
5. *In the Matter of Ignite Services, et al.* (November 9, 2023), Superior Court of Justice of Ontario (Commercial List), Toronto, CV-23-00708635-00CL ([Endorsement of Justice Conway](#)).
6. *In the Matter of Lynx Air Holdings Corporation et al.* (May 21, 2024), Court of King's Bench of Alberta, Calgary, 2401-02664 ([Approval and Vesting Order](#)).
7. *In the Matter of Skylink Express Inc.* (July 5, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL ([Approval and Vesting Order of Justice Steele](#))
8. *In the Matter of Skylink Express Inc.* (July 5, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL ([Endorsement of Justice Steele](#)).
9. *In the Matter of Skylink Express Inc.* (July 29, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-007-16267-00CL ([Approval and Vesting Order of Justice Steele - Gingras](#)), ([Approval and Vesting Order of Justice Steele - Randigo](#)), ([Approval and Vesting Order of Justice Steele - Randigo](#))
10. *In the Matter of Skylink Express Inc.* (July 29, 2024), Superior Court of Justice (Commercial List), Toronto, CV-24-00716267-00CL ([Endorsement of Justice Steele](#))
11. *In the Matter of the Plan of Compromise or Arrangement of BBB Canada Ltd.* (June 20, 2024), Toronto, ([CV-23-00694493-00CL \(CCAA Termination Order\) \(ONSC\)](#))
12. *In the Matter of a Plan of Compromise or Arrangement of BioSteel Sports Nutrition Inc. et al* (July 31, 2024) Toronto, ([CV-23-00706033-00CL \(CCAA Termination Order\) \(ONSC\)](#))
13. *In the Matter of a Plan of Compromise or Arrangement of Trichome Financial Corp., et al.* (September 14, 2023), Toronto, [CV-22-00689857-00CL \(CCAA Termination Order\) \(ONSC\)](#)
14. *In the Matter of Validus Power Corp et al.* (September 17, 2024), Toronto, ([CV-23-00705215-00 & CV-23-00703754CL \(CCAA Termination Order\) \(ONSC\)](#))
15. *Leslie & Irene Dube Foundation Inc. v P218 Enterprises Ltd.*, [2014 BCSC 1855 \(CanLII\)](#)

16. *Lydian International Limited (Re)*, [2020 ONSC 4006](#)
17. *Re Green Relief Inc.*, [2020 ONSC 6837](#)
18. *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
19. [Order of Justice Penny dated June 5, 2023](#), *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v Stateview Homes (Nao Towns II) Inc. et al.*, Superior Court of Justice of Ontario (Commercial List), Toronto, Court File No. CV-23-00698395-00CL.
20. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#)
21. *Sherman Estate v Donovan*, [2021 SCC 25 \(CanLII\)](#)
22. *Target Canada Co. (Re)*, [2015 ONSC 1487 \(CanLII\)](#)
23. *Target Canada Co. (Re)*, [2015 ONSC 7574 \(CanLII\)](#)
24. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)

## **Schedule "B"**

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

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

##### ***Jurisdiction of Courts***

###### *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.

##### ***Obligations and Prohibitions***

###### *Restriction on disposition of business assets*

**36** (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

###### *Factors to be considered*

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.



*Additional factors – related persons*

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

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.

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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

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