

**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 CLEARPIER ACQUISITION CORP. AND 1000238820 ONTARIO
INC.

Applicants

**FACTUM OF THE APPLICANTS
(RE: AMENDED AND RESTATED INITIAL ORDER AND SOLICITATION ORDER)**

April 7, 2025

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TO: THE SERVICE LIST

PART I - OVERVIEW

1. ClearPier Acquisition Corp. (“**CPAC**”) and 1000238820 Ontario Inc. (“**Ontario Inc.**”, together with CPAC, the “**Applicants**”) were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to an initial order (the “**Initial Order**”) granted by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 2, 2025.
2. The Applicants are now seeking the granting by the Court of an Amended and Restated Initial Order (the “**ARIO**”), substantially in the form of the draft order attached to the Motion Record at Tab 2:
 - (a) Extending the Stay Period to and including August 7, 2025; and
 - (b) Increasing the amount of the Administration Charge (as defined below) to an aggregate amount of \$600,000.
3. The Applicants are also seeking the granting by the Court of a Sale and Investment Solicitation Order (the “**SISP Order**”), substantially in the form of the draft order attached to the Motion Record at Tab 5, authorizing:
 - (a) Richter Inc., in its capacity as monitor (the “**Monitor**”), to conduct, with the assistance of the Applicants and the Proposed Sale Advisor (as defined below, and as deemed necessary by the Monitor) a sale and investment solicitation process (the “**SISP**”) in respect of the business and assets of the CPAC Group (as defined below) as well as that of their affiliates, ClearPier Performance Inc. (“**CPP**”) and Media Quest Group Limited (“**MQ**”), in accordance with the procedures attached to the draft SISP Order sought (the “**SISP Procedures**”); and
 - (b) the Applicants to engage KPMG Corporate Finance Inc. (“**KPMG**” or the “**Proposed Sale Advisor**”) as its sale advisor in the context of the SISP in accordance with the terms and conditions with the draft engagement letter (the “**KPMG Engagement Letter**”) annexed to the First Report of Richter Inc., as Monitor of the Applicants (“**Richter**” or the “**Monitor**”).

PART II - FACTS

4. The facts with respect to this motion are set out in the Affidavit of Jignesh Shah sworn March 31, 2025, initially filed in support of the Applicants' initial CCAA application (the "**Shah Affidavit**"). The following paragraphs provide a summary of such facts. Capitalized terms used herein but not otherwise defined have the meaning given to them in the Shah Affidavit.

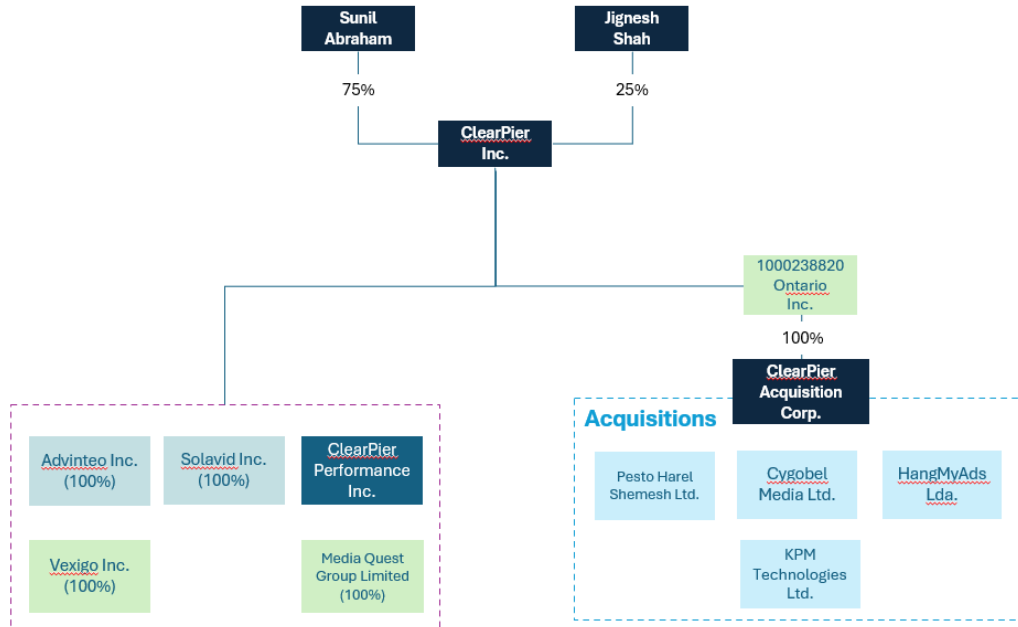
A. CORPORATE STRUCTURE

5. The Applicants are holding companies incorporated under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B. 16, with their registered office at 20 Richmond Street East, 6th Floor, Toronto, Ontario.¹

6. As appears from the organizational chart below, Mr. Shah and Mr. Abraham are the ultimate indirect holders of the shares of CPAC Group, as well as those of their affiliated companies reflected on the left-hand side of the organizational chart (who are not subject to these proceedings).²

¹ *Ibid* at paras. 14 and 15.

² *Ibid* at paras. 13 and 15.



7. The Applicants have no material operations of their own, as they operate through the following operating subsidiaries (the “**CPAC Operating Subsidiaries**”):

- (a) Cygobel Media Ltd. (“**Cygobel**”), a corporation incorporated under the laws of Israel;
- (b) KPM Technologies Ltd. (“**KPM**”), a corporation incorporated under the laws of Israel;
- (c) Pesto Harel Shemesh Ltd. (“**Pub Plus**”), a corporation incorporated under the laws of Israel; and
- (d) HangMyAds Lda. (“**HMA**”), a corporation incorporated under the laws of Portugal.³

A. EMPLOYEES

8. While the Applicants do not have any employee of their own, the CPAC Operating Subsidiaries employ a total of 61 employees (57 full time employees and 4 part-time

³ *Ibid* at para 16.

employees) located in Israel and Portugal. Some of these employees provide various services, including accounting services to the Applicants.⁴

B. THE CPAC GROUP'S FINANCIAL POSITION

(i) Assets and Liabilities

9. As at December 31, 2024, the assets of the CPAC Group, on a consolidated basis, were approximately US\$51,808,140.⁵

10. As at December 31, 2024, the liabilities of the CPAC Group, on a consolidated basis, had an unaudited book value of approximately US\$75,110,823 which consisted of approximately US\$18,975,892 in current liabilities and US\$56,134,931 in non-current liabilities.⁶

11. As such, as at December 31, 2024, at book value, CPAC Group's total liabilities exceeded its total assets by US\$23,302,682.

C. THE CPAC GROUP'S DEBT STRUCTURE

(ii) EDC Financing

12. On September 8, 2022, CPAC entered into the EDC Credit Agreement for the financing of CPAC's international acquisition and expansion strategy, through which CPAC acquired the shares in Cygobel, KPM, Pub Plus and HMA.⁷

13. In the aggregate, EDC advanced \$30.5 million and US\$34.9 million to CPAC, secured by the assets of CPAC, Ontario Inc., Pub Plus, Cygobel, KPM, and the shares of HMA.⁸

⁴ *Ibid* at paras. 36-38.

⁵ *Ibid* at para. 40.

⁶ *Ibid* at para. 41.

⁷ *Ibid* at para. 43.

⁸ *Ibid* at paras. 44 and 45.

14. EDC further holds unsecured guarantees from other affiliated companies of CPAC: ClearPier Inc., ClearPier Performance Inc., Solavid Inc., Advinteo Inc., Vexigo Inc, and Media Quest Group Limited.⁹

15. EDC is the Applicants' most important creditor, as well as their only secured creditor.¹⁰

16. The remainder of the CPAC Group's liabilities are unsecured.¹¹

D. THE CPAC GROUP'S FINANCIAL DIFFICULTIES

17. CPAC implemented its expansion strategy and acquisition of the CPAC Operating Subsidiaries in 2022, at a time when the digital media advertising market was significantly profitable.¹²

18. However, in the year following such acquisitions, the CPAC Group's revenues began to decrease, while the costs of goods sold (media costs) began to increase.¹³

19. Over the past year, although some of the CPAC Operating Subsidiaries have recorded a positive EBITDA, on a consolidated basis, the EBITDA recorded for the entire CPAC Group was either nil or was negative.¹⁴

20. The global revenues that are currently generated by the CPAC Group are simply insufficient to cover its ongoing financial obligations, including towards EDC to whom, as previously mentioned, is owed in excess of approximately \$36 million and US\$40 million

⁹ *Ibid* at para. 46 and 47.

¹⁰ *Ibid* at para. 48.

¹¹ *Ibid* at paras. 49-51.

¹² *Ibid* at para. 52.

¹³ *Ibid* at para. 53.

¹⁴ *Ibid* at para. 54.

pursuant to the EDC Credit Agreement. Overdue scheduled interest and principal payments are in excess of \$11,000,000 and \$US11,000,000.¹⁵

21. The Applicants are now insolvent as a result of their inability to meet their obligations as they become due, particularly with respect to the payment of their debt obligations, and the aggregate amount of its outstanding indebtedness is well in excess of the \$5 million threshold set out in the CCAA.¹⁶

E. THE PRE-FILING RESTRUCTURING EFFORTS

22. On November 15, 2023, EDC delivered to CPAC a reservation of rights letter asserting certain defaults thereunder, which was followed, on February 27, 2024, by a demand letter and Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act (Canada)*.¹⁷

23. Since then, the Applicants have been in discussion with EDC and its advisors to find a global solution that would allow the payment of their indebtedness towards EDC and the preservation of the CPAC Group's operations as a going concern.¹⁸

24. On April 8, 2024, CPAC, together with the other guarantors under the EDC Credit Agreement, executed a first Standstill Agreement with EDC, pursuant to which, *inter alia*, the parties thereunder agreed that CPAC, with the assistance of a financial advisor, would solicit term sheets for an equity investment that would allow the repayment of EDC's indebtedness.

25. On August 21, 2024, CPAC, together with the other guarantors under the EDC Credit Agreement, executed a second Standstill Agreement with EDC pursuant to which, *inter alia*, the parties thereunder agreed that: (i) CPAC, with the assistance of its financial advisor, would

¹⁵ *Ibid* at para. 55.

¹⁶ *Ibid* at para. 56.

¹⁷ *Ibid* at paras. 9 and 58.

¹⁸ *Ibid* at para. 60.

pursue the solicitation of term sheets for an equity investment and (ii) CPAC would also engage another financial advisor acceptable to EDC that would conduct a sale and investment solicitation process for the CPAC Group's business as a whole.¹⁹

26. Since then, the Applicants and EDC have had several exchanges regarding a potential third standstill agreement. However, due to the parties' inability to reach an agreement with respect to the terms and conditions of such third standstill agreement, no third standstill agreement was ever executed, and EDC ultimately filed its Receivership Application.²⁰

27. Nevertheless, the Applicants and EDC have continued their discussions over the course of the past few weeks and, despite the filing by EDC of its Receivership Application, the parties have agreed on an alternative path going forward, which includes the commencement of the present CCAA application by the Applicants (with Richter acting as court-appointed monitor) and the conduct of a SISP (with KPMG acting as sale advisor).

28. Under such alternative scenario, the Applicants and the CPAC Operating Subsidiaries would remain in control of their operations, with a view to enhance the chances of preserving enterprise value for the Applicants and the CPAC Operating Subsidiaries (and therefore maximizing creditor recovery), while at the same time allowing for the opportunity for such entities to maintain employments and their operations as a going concern.

29. In addition, in order to maximize the chances of success of the SISP, the Applicants have agreed, further to their discussions with EDC, for the SISP to be conducted in respect of all of the business and assets of the CPAC Group, as well as that of ClearPier Performance Inc. ("CPP") and Media Quest Group Limited ("MQ") who are not applicants under these

¹⁹ *Ibid* at para. 61.

²⁰ *Ibid* at para. 62.

proceedings, and whose senior secured creditor is the Royal Bank of Canada, but whose businesses are complementary to those of the CPAC Group.

F. THE COMMENCEMENT OF THE CCAA PROCEEDINGS AND THE GRANTING OF THE INITIAL ORDER

30. As previously mentioned, on April 2, 2025, the Applicants sought and obtained the Initial Order pursuant to the CCAA, as part of which the Court, *inter alia*:

- (a) granted a stay of proceedings (the “**Stay**”) in favour of the Applicants, their property and directors and officers until and including April 14, 2025 (the “**Stay Period**”), and extended the Stay in favour of the CPAC Operating Subsidiaries;
- (b) appointed Richter as Monitor of the Applicants; and
- (c) granted a priority charge in the initial amount of \$500,000 (the “**Administration Charge**”) in favour of the Applicants’ counsel (Stikeman Elliott LLP), the Monitor (Richter), counsel to the Monitor (McCarthy Tetrault LLP), and counsel to EDC (Norton Rose Fulbright Canada LLP) in order to secure payment of their respective fees and disbursements incurred in connection with services rendered in connection with the Applicants’ restructuring efforts; and
- (d) Scheduled a “*comeback hearing*” on April 10, 2025.

PART III – ISSUES

31. The issues to be determined by this Court at the comeback hearing are whether the Court should:

- (b) grant the ARIO sought, and, more specifically:
 - (i) extend the Stay of Proceedings until, and including, August 7, 2025; and
 - (ii) increase the quantum of the Administration Charge.
- (c) grant the SISP Order, and, more specifically:

- (i) authorize the Monitor to conduct a SISP in respect of the SISP Targets, with the assistance of the Applicants and of the Proposed Sale Advisor, as deemed necessary by the Monitor, all in accordance with the SISP Procedures annexed to the proposed SISP Order; and
- (ii) approve the appointment of KPMG as the Applicants' Sale Advisor and grant to the Proposed Sale Advisor the benefit of the Sale Advisor Completion Fee Charge (to secure payment of its Completion Fee).

PART V – LAW AND ANALYSIS IN RESPECT OF THE ARIO

A. THE STAY OF PROCEEDINGS SHOULD BE EXTENDED

32. On an application other than an initial application, section 11.02(2) of the CCAA provides that the Court may make a stay order for any period that the Court considers necessary, if the applicant satisfies the Court that: (a) circumstances exist that make the order appropriate; and (b) that the applicant has acted, and is acting, in good faith and with due diligence.²¹

33. The Applicants are seeking an extension of the Stay Period, as previously ordered by the Court as part of the Initial Order, up to, and including, August 7, 2025.

34. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for continued steps to stabilize the Applicants' businesses, to further engage with stakeholders and to comprehensively explore available restructuring options. In particular, the extension of the Stay Period is necessary to allow the Monitor to carry out the SISP, with the assistance of the Applicants and of the Proposed Sale Advisor (as deemed necessary by the Monitor).

²¹ CCAA, s. 11.02(2).

35. An extension of the Stay of Proceedings up to and including August 7, 2025 would advance the policy objectives of the CCAA by allowing the Applicants to continue working diligently to evaluate, put in place and conduct a SISP, and take any other measures that would be in the best interests of their stakeholders.

36. In this regard, the proposed SISP Procedures (further discussed below) contemplate that the Applicants will be required to return before the Court during the week of August 4, 2025 to August 8, 2025 in order to seek its approval in respect of one or more successful bid(s). The requested extension of the Stay Period is intended to track the various milestones contemplated in the SISP.

37. As set out in the cash flow projection that will be attached to the Monitor's First Report (the "**Cash Flow Forecast**"), the Applicants are expected to have sufficient liquidity to operate through the proposed extension of the Stay Period to and including August 7, 2025.

38. The Applicants and the Monitor do not believe that any creditor will suffer any material prejudice if the Stay of Proceedings is extended as requested, and the Applicants' stakeholders will benefit from the extension of the Stay Period. Additionally, the Monitor and EDC, which is the Applicants' sole secured creditor, are both supportive of the proposed extension of the Stay Period as being necessary to implement the SISP.

B. THE INCREASED ADMINISTRATION CHARGE SHOULD BE GRANTED

39. The increases being sought to the Administration Charge reflect the Applicants' estimated professional fees which could be outstanding during the CCAA proceedings, which professional fees secured by the Administration Charge would include the fees and disbursements of: (i) counsel to the Applicants (Stikeman Elliott LLP), (ii) the Monitor (Richter Inc.), (iii) counsel to the Monitor (McCarthy Tetrault LLP), (iv) counsel to EDC (Norton Rose Fulbright Canada LLP) and (v) the proposed Sale Advisor (KPMG) for its "Work Fee" to be

charged in accordance with the KPMG Engagement Letter. The Applicants request that the proposed Sale Advisor (KPMG) also be a beneficiary to the Administration Charge to secure the its "Work Fee", on a *pari passu* basis with the other beneficiaries of the Administration Charge.

40. The Applicants require the expertise, knowledge and continued participation of each proposed beneficiaries of the Administration Charge during these CCAA proceedings in order to allow them to pursue and complete these restructuring proceedings through which a SISP is proposed to be conducted.²²

41. The proposed increase to the quantum of the Administration Charge is based on the estimated professional fees that could be outstanding during the initial Stay of Proceedings, as determined in consultation with the Monitor, who is supportive of same.

42. The increased Administration Charge is proposed to have first priority over all other charges.

PART VI – LAW AND ANALYSIS IN RESPECT OF THE SISP ORDER

A. THIS COURT SHOULD GRANT THE SISP ORDER AND APPROVE THE SISP PROCEDURES

43. The proposed SISP is to be conducted in two (2) phases, for which the milestones and milestones' dates agreed upon between the Applicants, the Monitor, KPMG and EDC are as follows²³:

²² The Applicants' Notice of Motion dated April 7, 2025 (the "Notice of Motion") at para.21, Tab 1 of the Applicants' Motion Record dated April 7, 2025 (the "Motion Record").

²³ *Ibid* at para. 27.

44.

EVENT	KEY DATE
PHASE 1	
<p><u>Teaser Letter</u> Distribution of Teaser letter to potentially interested parties</p>	Starting on April 30, 2025
<p><u>CIM and VDR</u> Preparation of non-disclosure agreement, confidential information memorandum and virtual data room</p>	By no later than May 7, 2025
<p><u>Phase 1 Qualified Bidders & Bid Deadline</u> Phase 1 Bid Deadline (for delivery of non-binding LOIs)</p>	By no later than June 4, 2025 at 5:00 p.m. (prevailing Eastern Time)
<p><u>Phase 1 Satisfactory Bid</u> Notification to each Phase 1 Qualified Bidder in writing as to whether its bid constituted a Phase 1 Qualified Bid.</p>	By no later than June 11, 2025, at 5:00 p.m. (prevailing Eastern Time)
PHASE 2	
<p><u>Phase 2 Bid Deadline & Qualified Bidders</u> Phase 2 Bid Deadline (for delivery of definitive offers)</p>	By no later than July 9, 2025, at 5:00 p.m. (prevailing Eastern Time)
<p><u>Auction(s)</u> Auction(s) (if needed)</p>	Week of July 14, 2025 to July 16, 2025
<p><u>Selection of final Successful Bid(s)</u> Deadline for selection of final Successful Bid(s)</p>	By no later than July 23, 2025, at 5:00 p.m. (prevailing Eastern Time)
<p><u>Definitive Documentation</u> Completion of definitive documentation in respect of Successful Bid(s)</p>	Week of July 28, 2025 to August 1, 2025
<p><u>Approval Application – Successful</u></p>	Week of August 4, 2025 to August

<u>Bid(s)</u> Filing of Approval Application in respect of Successful Bid(s)	8, 2025
<u>Closing – Successful Bid(s)</u> Anticipated deadline for closing of Successful Bid(s)	Week of August 11, 2025 to August 15, 2025 or such earlier date as is achievable
<u>Outside Date – Closing</u> Outside Date by which the Successful bid must close	August 22, 2025

45. The SISP is intended to solicit offers or proposals for an investment, a sale, a restructuring, a recapitalization or a refinancing transaction in respect of the business or the assets of the CPAC Group, CPP and MQ (collectively, the “**SISP Targets**”).²⁴

46. While CPP and MQ do not form part of the CPAC Operating Subsidiaries and are not otherwise subject to the CCAA Proceedings, they are affiliates of the CPAC Group whose respective businesses, are closely aligned with those of the CPAC Group, in addition to the fact that their sales team also provide services to some of the entities forming part of the CPAC Group. Their inclusion as part of the SISP is intended to enhance the chances of maximizing value for the benefit of the CPAC Group’s creditors and stakeholders. Since the senior secured creditor of CPP and MQ is the Royal Bank of Canada (“**RBC**”), the SISP Procedures provide that decisions in respect of such entities will require the input of RBC.

47. In addition, in order to preserve the integrity of the SISP, the SISP Procedures provide the following:

- (a) Subject to compliance with the SISP Procedures, any shareholders, directors, officers, or any person related to any of the SISP Targets (as defined below) (each a “**Related Bidder**”) shall be entitled to submit or otherwise participate in a

²⁴ *Ibid* at para. 25; see also Shah Affidavit, *supra* note 1, at para. 4.

bid in the SISP, provided that any Related Bidder notifies the Monitor in writing of its intention to do so by no later than ten (10) business days following the granting of the SISP Order. Upon receipt of such notice, the Monitor and the Propose Sale Advisor will be authorized to take any action it deems necessary and appropriate to complete the SISP and maintain its integrity, and may advise potential bidders of the Related Bidders' intention to participate in a bid (without providing the details of such bid) to the extent deemed appropriate. The Monitor shall be entitled to consult the Related Bidders to the extent deemed necessary, without however providing or otherwise disclosing to any Related Bidders any confidential information in relation to the SISP; and

- (b) Subject to compliance with the SISP Procedures, EDC shall also have the right, but not the obligation, to submit or otherwise participate in a Bid (including a credit-bid) in the SISP, including by providing any funding commitment to any bidder (an "**EDC Sponsored Bid**"). However, EDC must inform the Monitor and the Proposed Sale Advisor of such intention as soon as possible so that the Monitor may take all reasonable measures to preserve the integrity of the SISP, including by suspending EDC's consultation or consent rights set out in the Procedures to the extent that one or more competing Bid(s) is submitted or if a bidder has advised that it will submit a Bid for an amount in excess of the EDC Sponsored Bid. If applicable, the Monitor and the Sale Advisor may advise potential bidders of EDC's intention to participate in an EDC Sponsored Bid (without providing the details of such bid).²⁵

48. Although the CCAA does not require debtors to seek the Court's approval in respect of a SISP, the Applicants, together with the Monitor, all agree that it is appropriate for this Court to do so in this case to ensure transparency throughout this process and ensure that all potential bidders be advised in advance of the applicable procedures for the SISP.

49. The CCAA confers broad powers to the Court to facilitate restructurings, including the power to approve a solicitation process in relation to a CCAA debtor and its business and assets prior to, or in the absence of, a plan of compromise and arrangement. The Supreme

²⁵ *Ibid* at para. 28.

Court has explicitly stated that CCAA liquidation proceedings or sales processes are not inconsistent with such remedial objectives.²⁶

50. In *Nortel*, the Ontario Superior Court of Justice identified several factors to be considered in determining whether to approve a sales process, which have since been consistently applied:

- (a) Is a sale warranted at this time?
- (b) Will the sale be of benefit to the whole "economic community"?
- (c) Do any of the debtors' creditors have a bona fide reason to object to a sale of the business?
- (d) Is there a better viable alternative?²⁷

51. These criteria have been recently applied by this Court in *Green Growth Brands*.²⁸

52. It should be noted that Section 36 of the CCAA directly applies only in the context of the approval of a sale, not a sale process²⁹, such that it is not this Court's role in approving a sale process to apply the section 36 criteria.

53. Nonetheless, the *Nortel* criteria for approving a sales process should be evaluated in light of the considerations that may ultimately apply when seeking approval for a concluded sale under section 36 of the CCAA, including whether the proposed solicitation process is likely to

²⁶ *9354-9186 Québec Inc. v. Callidus Corp.*, 2020 SCC 10 at paras 45-46; *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC) at paras 47-48 [*Nortel*]; CCAA, at ss. 11 and 36

²⁷ *Nortel*, at para. 49.

²⁸ *In the Matter of a Plan of Compromise or Arrangement of Green Growth Brands Inc.*, 2020 ONSC 3565, at para. 61.

²⁹ *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ON SC), at para 17 [*Brainhunter*]; *Tacora Resources Inc. (Re)*, 2023 ONSC 6126, at para. 165 [*Tacora*].

satisfy the requirement that it is reasonable in the circumstances, whether the monitor approved the solicitation process and the extent to which the creditors were consulted.³⁰

54. In *Walter Energy*, the Ontario Superior Court of Justice considered the following additional factors in approving sale procedures in a CCAA proceeding:

- (a) the fairness, transparency and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.³¹

55. In light of the above criteria and factors, the SISP should be approved as:

- (a) the SISP is fair and reasonable in the circumstances;
- (b) the SISP and the SISP Procedures are the result of extensive discussions between the Applicants, Richter, KPMG, as proposed Sale Advisor, EDC, and their respective legal advisors;
- (c) the SISP will provide for a fair, efficient and transparent process that will allow a proper canvassing of the market, which, in turn, will allow for the maximization of the value of the Applicants' assets, all for the benefit of the Applicants' creditors and other stakeholders;

³⁰ *Brainhunter*, at para. 16; *Tacora*, at para. 165.

³¹ *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107, at paras. 20-21; *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750, at para 6; *Bron Media Corp. (Re)*, 2023 BCSC 1563, at para 41; *Tacora*, 2023 ONSC 6126, at para 167.

(d) the SISP will be ran by the Monitor, with the assistance of the Applicants and the Sale Advisor, as deemed necessary by the Monitor, and under the supervision of the Court;

(e) the Applicants are insolvent, unable to indefinitely continue operations in their current state and must restructure to preserve their business. A sale and/or investment will maximize value for the Applicants' stakeholders through ascribing fair market value to the business and assets of the Applicants;

(f) the Applicants do not believe that any creditor has a reasonable basis to object to the SISP;

(g) the SISP is the best option in the circumstances for maximizing the best possible price for the assets, particularly in consideration of the Applicants' liquidity constraints;

(h) the Monitor, EDC and KPMG believe that the factors to be considered in arriving at a Successful Bid(s) are appropriate in the circumstances; and

(i) the Monitor, EDC and KPMG believe that the timelines and the terms of the SISP are reasonable, and are supportive of the SISP.

56. To the extent that one or more transaction(s) is or are secured in the context of the SISP, the Applicants will return before the Court to seek its approval thereof in accordance with section 36 of the CCAA.

B. THIS COURT SHOULD APPROVE THE APPOINTMENT OF THE SALE ADVISOR AND GRANT THE SALE ADVISOR COMPLETION FEE CHARGE

57. As part of the SISP Order, the Applicants also request that this Court approves its execution of the KPMG Engagement Letter, which essentially provides for the following:

- (a) as sale advisor, KPMG will provide financial advisory services to facilitate one or more transactions involving the SISP Targets;
- (b) in consideration for its services, KPMG will be entitled to:
 - (i) monthly work fees of \$75,000 per month (the “**KPMG Work Fee**”), payable by CPAC, which will be fully credited against or deducted from the KPMG Completion Fee (as defined below) in excess of the KPMG Minimum Fee (as defined below). As previously discussed, the KPMG Work Fee is proposed to be secured by the increased Administration Charge, on a *pari passu* basis with the other beneficiaries to such charge; and
 - (ii) a completion fee in an amount equal to 2.5% of the transaction value(s) of the transaction(s) to be completed as part of the SISP (the “**KPMG Completion Fee**”), it being understood that the Completion Fee shall not be less than \$1,000,000 (the “**KPMG Minimum Fee**”), unless no transaction occurs, in which case no Completion Fee or Minimum Fee will be owing. The KPMG Completion Fee (or the KPMG Minimum Fee, as applicable), is proposed to be secured by a priority charge in favour of KPMG (the “**Sale Advisor’s Charge**”), which Sale Advisor’s Charge would be subordinated to the Administration Charge.³²

58. Section 11 of the CCAA provides this Court with the authority to allow debtor companies to enter into arrangements to facilitate a restructuring, which may include the retention of expert advisors, including financial advisors, where necessary to help with the restructuring efforts.³³

59. Courts have approved the appointment of consultants and financial advisors pursuant to section 11 of the CCAA in restructuring proceedings, as well as corresponding charges to secure such advisors' professional fees, where such advisors' knowledge and experience is

³² *Ibid* at para. 29.

³³ *Tacora*, at para 158; *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371, at para. 27.

critical to assisting the debtor with a successful restructuring or is necessary to assist the debtor with a liquidation sale, or the conduct and implementation of a sale process.³⁴

60. The Applicants will benefit from the approval of the Sale Advisor and its engagement in these CCAA proceedings. KPMG is an investment banking firm with a global reach, and with insights into the business and operations of the SISP Targets.

61. The Applicants believe that the implementation of the SISP in accordance with the SISP Procedures, and the engagement of KPMG as its Sale Advisor constitutes, in the present circumstances, the best path forward to maximize creditor recovery and enhance the chances preserving the operations of the CPAC Group as a going concern.

62. KPMG will be essential in providing financial advisory services with respect to the exploration of strategic alternatives with a view to close one or more transaction(s) in respect of the business and/or assets of the SISP Targets.

63. Richter, in its capacity as Monitor, has reviewed the KPMG Engagement Letter and is supportive of KPMG as the Sale Advisor to the SISP Targets in accordance with the terms of such engagement letter, as well as the establishment of the Sale Advisor Completion Fee Charge.

PART V – ORDER SOUGHT

64. For all of the foregoing reasons, the Applicants request that the Court grant the ARIO and the SISP Order substantially in the forms included at tabs Tab 2 and Tab 5 of the Motion Record.

³⁴ Tacora, [at para 158](#); *Target Canada Co. (Re)*, [2015 ONSC 303](#), at para. 72; *Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)*, [2019 ONSC 1215](#), at paras. 30-32; *Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies de Forex Inc., Forex Amos Inc. & Wawa OSB Inc.* SISP Order, issued February 20, 2023 [[Court File No. 500-11-061947-236](#)] at para 3 and 5; *Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies de Cirque du Soleil inc. & al.*, Amended and Restated Initial Order, issued July 10, 2020 [[Court File No. 500-11-058415-205](#)] at para 46.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of April, 2025.

Per M. Celikaksoy

mcelikaksoy

STIKEMAN ELLIOTT LLP
Counsel for the Applicant

**SCHEDULE A
LIST OF AUTHORITIES**

Cases

1. *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC)
2. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10
3. *In The Matter of A Plan of Compromise or Arrangement of Green Growth Brands Inc.*, 2020 ONSC 3565
4. *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ON SC)
5. *Tacora Resources Inc. (Re)*, 2023 ONSC 6126
6. *Walter Energy Canada Holdings, Inc., Re*, 2016 BCSC 107
7. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750
8. *Bron Media Corp. (Re)*, 2023 BCSC 1563
9. *Victorian Order of Nurses for Canada (Re)*, 2015 ONSC 7371
10. *Target Canada Co. Re*, 2015 ONSC 303
11. *Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)*, 2019 ONSC 1215
12. *Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies de Forex Inc., Forex Amos Inc. & Wawa OSB Inc.* SISP Order, issued February 20, 2023 [Court File No. 500-11-061947-236]
13. *Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies de Cirque du Soleil inc. & al.*, Amended and Restated Initial Order, issued July 10, 2020 [Court File No. 500-11-058415-205]

Other Authorities

14. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36

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

Per M. Celikaksoy



Dated: April 7, 2025

Signature

SCHEDULE "B" RELEVANT LEGISLATION

Companies' Creditors Arrangement Act, RSC 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.

Relief reasonably necessary

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

Stays, etc. — initial application

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

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the company is deemed to be a director for the purposes of this section.

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.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in [subsection 11.02\(1\)](#) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied 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.

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 CLEARPIER ACQUISITION CORP. AND 1000238820 ONTARIO INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANTS
(RE: AMENDED AND RESTATED INITIAL ORDER
AND SOLICITATION ORDER)**

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