

Court File No. CV-23-00700581-00CL

**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
15315441 CANADA INC.**

Applicant

**FACTUM OF THE APPLICANT
(RE: Stay Extension, Distribution, And Fees Approval)**

October 12, 2023

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TO: THE SERVICE LIST

PART I - OVERVIEW¹

1. The F&F Entities obtained relief under the CCAA by an Initial Order dated June 5, 2023, which was amended and restated on June 15, 2023. On June 19, 2023, this Court granted the SISP Order which among other things, approved the SISP and authorized the F&F Entities and the Monitor to immediately commence the SISP.
2. Following completion of the SISP, on August 29, 2023, the F&F Entities sought and obtained the Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement and the Transactions contemplated therein and approved the Claims Process, as the Transactions generated approximately \$13 million in excess of the secured debt of the F&F Entities.
3. The Transactions closed on September 15, 2023. Among other things, all Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities vested absolutely and exclusively in Residual Co., and the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings.
4. This factum is filed in support of Residual Co.'s motion for, among other things: (a) approval of the Fourth Report of the Monitor and the activities of the Monitor referred to therein; (b) approval of the fees of the Monitor and its counsel, Thornton Grout Finnigan LLP ("**TGF**"); (c) authorization for the Monitor to make distributions received in connection with the Transactions to Residual Co.'s secured creditor, ACT; and (d) extending the Stay Period until and including January 30, 2024.

PART II - FACTS

5. The facts with respect to this motion are more fully set out in the Grewal Affidavit and the Fourth Report. Dollar amounts referred to herein are in Canadian dollars unless otherwise stated.

¹ All capitalized terms used in this factum and not otherwise defined have the meanings given to them in the affidavit of Avininder Grewal sworn on October 6, 2023 (the "**Grewal Affidavit**") and the Fourth Report of the Monitor dated October 11, 2023 (the "**Fourth Report**").

A. Background

6. FFHC, through its wholly-owned subsidiaries, is an independent cannabis retail chain with 72 retail cannabis stores open across Canada and two (2) licensed wholesale distribution facilities. Certain subsidiaries of FFHC also carry on business as a wholesale cannabis distributor and operate digital platforms which provide various services and software products relating to cannabis products.²

7. Facing a severe liquidity crisis, the F&F Entities sought and were granted protection under the CCAA pursuant to the Initial Order granted on June 5, 2023 (which was amended and restated by the ARIO). The Initial Order and ARIO, among other things:

- a. appointed FTI as Monitor;
- b. granted a stay of proceedings in favour of the F&F Entities until and including September 1, 2023;
- c. approved the execution by the F&F Entities of the DIP Facility Agreement, pursuant to which the F&F Entities were authorized to borrow up to a total amount of \$9.8 million;
- d. approved the KERP and granted a corresponding KERP Charge in the amount of \$1.16 million; and
- e. granted the Administration Charge in the amount of \$600,000, the DIP Lender's Charge in the amount of \$9.8 million, and the D&O Charge in the amount of \$2.8 million.³

8. On June 19, 2023, the F&F Entities sought and obtained the SISP Order, which, among other things: (a) approved the SISP and authorized the F&F Entities and the Monitor to immediately commence the SISP; and (b) approved the Stalking Horse Agreement between FFHC and ACT, solely for the purpose of constituting the Stalking Horse Bid under the SISP.⁴

² Grewal Affidavit, *supra* at para. 4.

³ *Ibid* at paras. 5-7.

⁴ *Ibid* at para. 8.

9. Following the completion of the SISP, the F&F Entities with the assistance of the Monitor identified the successful bid and transaction. On August 29, 2023, the F&F Entities sought and obtained from the Court:

- a. An Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement and the Transactions contemplated therein, and extended the Stay Period until and including October 15, 2023; and
- b. A Claims Process Order which approved the proposed claims process pursuant to which claimants may file claims against Residual Co.⁵

10. Following the approval of the Transactions by this Court, the management and directors of F&F Entities, FIKA, and the Monitor and their advisors worked intensively to obtain the various necessary approvals needed to close the Transactions. The Transactions closed on September 15, 2023. Among other things, the following occurred upon closing of the Transactions:

- a. all of FFHC's right, title and interest in and to the Excluded Assets vested absolutely and exclusively in Residual Co. All applicable Claims and Encumbrances continued to attach to the Excluded Assets and to the Purchase Price;
- b. all Excluded Contracts, Excluded Leases and Excluded Liabilities were channeled to, assumed by and vested absolutely and exclusively in Residual Co.; and
- c. the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings, and the F&F Entities were deemed to be released from the purview of the ARIO and all other Orders of this Court granted in respect of these CCAA Proceedings, save and except for the Approval and Reverse Vesting Order.⁶

11. As a result of the Transactions, the F&F Entities are continuing to operate, with the majority of employees retaining their employment, majority of their landlords retaining a paying tenant and a majority of their suppliers retaining a paying counterparty. In addition, the Transactions

⁵ *Ibid* at para. 9.

⁶ *Ibid* at paras. 10-12.

generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.⁷

12. Following closing of the Transactions, Residual Co. has, among other things: (a) limited its cash burn by sending disclaimer notices in respect of several contracts; and (b) responded to numerous creditor and stakeholder enquiries regarding these CCAA Proceedings.⁸

B. Overview of the Monitor's and TGF's Fees and Disbursements

13. The Monitor and TGF have been paid their fees and disbursements at their standard rates and charges by the F&F Entities and the Applicant, as applicable, from time to time, in accordance with paragraph 34 of the ARIO, as part of the costs of the CCAA Proceedings.⁹

14. The Monitor and TGF have maintained records of their professional time and costs. The Monitor now requests approval of its fees and disbursements for the period of June 5, 2023, to September 30, 2023, and the fees and disbursements of TGF for the period of May 29, 2023, to September 30, 2023 (both periods are collectively referred to as the "**Period**").¹⁰

15. The total fees and disbursements of the Monitor for the period of June 5, 2023, to September 30, 2023, are \$2,920,551.97, with fees in the amount of \$2,558,054.50, disbursements in the amount of \$26,504.48, and HST in the amount of \$335,992.99, as are more particularly described in the Affidavit of Jeffrey Rosenberg sworn October 11, 2023 (the "**Rosenberg Affidavit**"), a copy of which is attached to the Fourth Report as Appendix "D".¹¹

16. The total fees and disbursements of TGF from May 29, 2023, to September 30, 2023, are \$464,631.89, with fees in the amount of \$399,202.50, disbursements in the amount of \$11,976.12, and HST in the amount of \$53,453.27, as more particularly described in the Affidavit of Rebecca Kennedy, sworn October 11, 2023 (the "**Kennedy Affidavit**", together with the Rosenberg Affidavit, the "**Fee Affidavits**"), a copy of which is attached to the Fourth Report as Appendix "E".¹²

⁷ *Ibid* at para. 13.

⁸ *Ibid* at para. 16.

⁹ Fourth Report, *supra* at para. 35.

¹⁰ *Ibid* at para. 36.

¹¹ *Ibid* at para. 42.

¹² *Ibid* at para. 43.

17. The Monitor and TGF billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring and accounting matters.¹³

18. In the Monitor's professional judgement, the accounts requested to be approved on this motion, as set out in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in the CCAA Proceedings.¹⁴

C. Activities of the Monitor and TGF

19. During the Period, the Monitor fulfilled the role of the Monitor as such role is described in the ARIO and prescribed by the CCAA.

20. The fees of the Monitor were incurred in respect of three (3) different work streams, which included (i) CCAA Proceeding preparations and post-filing monitoring, (ii) the SISP, and (iii) the creation of a Financial Statement Model (the "**Model**"). The fees of the Monitor reflect the nature and condensed timing of the CCAA filing, which necessitated significant work and staff of the Monitor at the beginning of the CCAA Proceedings on matters that would traditionally be addressed prior to the filing.¹⁵

21. During the CCAA Proceedings, the Monitor has undertaken, among other things, the following activities:

- a. participated in discussions with and assisted the F&F Entities in discussions with landlords, suppliers, other creditors, shareholders, and employees related to the CCAA Proceedings;
- b. supervised and assisted with activities related to the SISP, with FTI Capital Advisors – Canada, which activities included, among other things:

¹³ Rosenberg Affidavit, *supra* at para. 5; Kennedy Affidavit, *supra* at para. 7.

¹⁴ Fourth Report, *supra* at para. 44.

¹⁵ *Ibid* at paras. 37-38.

- i. conducted an extensive marketing process to solicit interest in an investment in or acquisition of the F&F Entities (the “**Opportunity**”);
 - ii. prepared a summary regarding the Opportunity and arranged for notice of the SISP to be published in various publications;
 - iii. prepared a virtual data room for potential bidders who may be interested in the Opportunity;
 - iv. reviewed letters of intent (“**LOIs**”) and binding bids, in consultation with the F&F Entities and their advisors;
 - v. attended the F&F Entities’ warehouses to supervise meetings between bidders who had submitted LOIs; and
 - vi. conducted the auction in accordance with the SISP;
- c. engaged with various provincial regulators regarding the CCAA Proceedings and F&F’s intention to remain in compliance with its licenses under the various provincial statutes and regulations;
- d. monitored and participated in the closing of the Transactions and delivered the Monitor’s Closing Certificate to evidence the closing of the Transactions;
- e. participated in certain post-closing matters together with Residual Co. and FIKA, which included,
- i. KERP fund remittances for payment by Residual Co. to KERP participants;
- f. commenced reimbursement of an insurance premium payment relating to the pre-close period;
- g. reviewed updated consolidated cash flow projections of the F&F Entities’ recipients and disbursements and information related thereto provided by the F&F Entities; and

h. reported to the Court on the status of the CCAA Proceedings.¹⁶

D. Distribution to ACT

22. As referenced in the affidavit of Stephane Trudel sworn on June 5, 2023, in support of the Initial Order, FFHC entered into a loan agreement with ACT in respect of a \$11 million working capital loan pursuant to the secured ACT Facility, which was fully drawn down on October 21, 2022. As noted above, all Excluded Liabilities (which include the ACT Facility) were vested to Residual Co., including in respect of the ACT Facility.¹⁷

23. The Subscription Agreement provides for a cash payment (the “**Cash Consideration**”) to be held by the Monitor for the benefit of Residual Co. Accordingly, The Applicant is seeking authorization in the proposed Stay Extension, Distribution, and Fees Approval Order, to make distributions from the Cash Consideration in payment of the ACT Facility in the amount of \$11,779,041.10 as of June 12, 2023, and any further interest or fees accrued on this amount until the Distribution is made by the Monitor to ACT.

PART III – ISSUES

24. This issues to be considered on this motion are whether this Court should:
- a. approve the Fourth Report and the conduct and activities of the Monitor referred to therein;
 - b. approve the fees and disbursements of the Monitor and TGF;
 - c. approve the distributions to ACT; and
 - d. extend the Stay Period until and including January 30, 2024.

¹⁶ *Ibid* at para. 14; First Report of the Monitor dated June 14, 2023; Supplement to the First Report of the Monitor dated June 14, 2023 (“**First Report Supplement**”); Second Report of the Monitor dated July 5, 2023 (“**Second Report**”); Third Report of the Monitor dated August 26, 2023 (collectively, the “**Monitor’s Reports**”).

¹⁷ Grewal Affidavit, *supra* at para. 21.

PART IV – LAW AND ARGUMENT

A. The Monitor’s Activities in the Fourth Report Should be Approved

25. A request to approve a monitor’s report “is not unusual”.¹⁸ There are policy and practical reasons for the Court to approve the Monitor’s activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- a. allows the Monitor to move forward with next steps in the CCAA Proceedings;
- b. brings the Monitor’s activities before the Court;
- c. allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- d. enables the Court to satisfy itself that the Monitor’s activities have been conducted in prudent and diligent manners;
- e. provides protection for the Monitor not otherwise provided by the CCAA; and
- f. protects the creditors from the delay and distribution that would be caused by:
 - i. re-litigation of steps taken to date, and
 - ii. potential indemnity claims by the Monitor.¹⁹

26. The form of the proposed order, with respect to approval of the Fourth Report and the Monitor’s activities described therein, is consistent with the language used in *Target*²⁰ and subsequent proceedings.²¹

27. In the present case, the Monitor’s Reports and the conduct and activities of the Monitor referred to therein should be approved.

¹⁸ *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*Target*].

¹⁹ *Target*, *ibid* at [para 22](#).

²⁰ *Target*, *ibid* at [paras 7 and 26](#).

²¹ See, for example: [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension) at para 3.

28. The Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the ARIO. No party has put forward evidence to the contrary. It is respectfully submitted that in the circumstances, the Court should respect the good faith decisions of the Monitor and its legal counsel related to the CCAA Proceeding.

B. The Monitor's and TGF's Fees Should be Approved

(i) Jurisdiction of this Court to Pass the Accounts

29. The jurisdiction of this Court to pass the accounts is confirmed at paragraph 34 of the ARIO, which provides that "The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge."²²

(ii) The Fair and Reasonable Test for Approval of Accounts

30. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness".²³ The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.²⁴

31. The Court does not engage in a "docket-by-docket or line-by-line assessment" of the accounts, as minute details of each element of a professional's services may not be instructive when looked at in isolation.²⁵ Rather, the focus of the fair and reasonable assessment should be on what was accomplished, not how much time it took.²⁶

32. In this case, it is not necessary or desirable for the Court to engage in a review of each individual entry to determine whether the Monitor's and TGF's accounts are fair and reasonable. There has been adequate disclosure of the activities of the Monitor and TGF in the Monitor's Reports and throughout the CCAA Proceedings. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout the CCAA Proceedings, it is

²² [Amended and Restated Initial Order](#) issued by Osborne J. on June 15, 2023, at para 34.

²³ *Nortel Networks Inc*, [2022 ONSC 6680](#) [*Nortel Inc*] at [para 10](#).

²⁴ *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) [*Nortel Corp*] at [paras 15, 21](#).

²⁵ *Nortel Inc*, *supra* note 12; see also *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) [*Diemer*] at [para 45](#).

²⁶ *Diemer*, *ibid*.

respectfully submitted that the Court can and should determine that the Monitor's and TGF's accounts are fair and reasonable.

(iii) Factors to Be Considered

33. The test to be applied in determining whether to approve the Monitor's and TGF's fees is whether they are fair and reasonable. Any challenges to a court officer's accounts are evaluated based on specific objections, as "without some specified principled objection, it would be inappropriate to reduce the fees of Court officers based on the suggestion that they are too high".²⁷

34. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal has recognized the following list of non-exhaustive factors:²⁸

- a. the nature, extent and value of the assets being handled;
- b. the complications and difficulties encountered;
- c. the degree of assistance provided by the company, its officers or its employees;
- d. the time spent;
- e. the Monitor's knowledge, experience and skill;
- f. the diligence and thoroughness displayed;
- g. the responsibilities assumed;
- h. the results achieved; and
- i. the cost of comparable services when performed in a prudent and economical manner.

²⁷ *Re Tiger Brand Knitting Co*, [2006 CarswellOnt 9983](#) at paras 14-15 (Ont SCJ).

²⁸ *Diemer*, *supra* note 14 at [para 33](#); see also *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at [para 23](#).

35. These factors are not intended to be an exhaustive list and other factors may be material in any particular case.²⁹

36. The relevant factors are addressed immediately below.

(A) Nature, extent and value of the assets being handled

37. The extent and value of the assets in this case are significant, including in excess of \$86 million of secured and unsecured obligations.³⁰

38. Further, the F&F Entities operated in the highly regulated cannabis industry, and its assets consisted of numerous licenses, intellectual properties and lease interests, all of which are complex assets to handle.³¹

(B) Complications and difficulties encountered

39. The CCAA Proceedings have involved complex issues and a multitude of competing interests from various groups of stakeholders. The Monitor and TGF played critical roles throughout the F&F Entities negotiations with various key stakeholders and assisted the F&F Entities throughout the CCAA Proceedings by addressing various difficult and complex situations. Such examples include but are not limited to:

- a. despite the ARIO and the SISF Order ultimately being granted by this Court, a large shareholder contested such relief sought by the F&F Entities³²;
- b. TPB brought a motion to lift the stay of proceedings to seek repossession of its goods held by the F&F Entities³³;
- c. ongoing engagement with the applicable regulatory authorities to keep them apprised of the CCAA Proceedings and the Transactions contemplated under the Subscription Agreement;

²⁹ *Nortel Corp*, *supra* note 13 at [para 14](#).

³⁰ Affidavit of Stephane Trudel sworn June 5, 2023 (the "Initial Trudel Affidavit") at para. 106.

³¹ *Ibid* at paras. 58-59, 64-71, and 85-88.

³² First Report Supplement, *supra* at paras. 3-10.

³³ Second Report, *supra* at paras. 13-17.

- d. identification, negotiation, and implementation of a “reverse vesting” transaction, comprising a robust SISF which culminated in approximately \$13 million of additional proceeds in excess of the F&F Entities’ secured indebtedness;³⁴
- e. designing and building the Model for due diligence purposes following the commencement of the CCAA Proceedings, in light of the condensed timing of the mandate and resignation of the F&F Entities’ CFO; and³⁵
- f. renegotiation of lease terms with the F&F Entities’ large landlord retail base.³⁶

(C) Time spent

40. The Monitor and TGF have named the individual professionals who have performed necessary work to advance the CCAA Proceedings during the Period, along with their position, hourly billing rate, total number of hours worked and the total associated professional fees.³⁷

41. The time spent, and thus the fees and disbursements of the Monitor and TGF resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the F&F Entities, having regard to the complications and challenges that have confronted the Monitor, to maximize the amounts available for distribution to creditors, and to best position the F&F Entities to emerge from the CCAA Proceedings as a going concern.³⁸

42. In addition to this Court’s direct knowledge of the Monitor’s and TGF’s activities, the information necessary for this Court to assess the reasonableness of the time spent and the fees and disbursements of the Monitor and TGF during the Period has been detailed in the Monitor’s Reports.³⁹

³⁴ Fourth Report, *supra* at para. 40.

³⁵ *Ibid* at para. 41.

³⁶ *Ibid* at para. 38.

³⁷ Rosenberg Affidavit, *supra*; Kennedy Affidavit, *supra*.

³⁸ Monitor’s Reports, *supra*.

³⁹ *Ibid*.

(D) Knowledge, experience, and skill

43. The Monitor and TGF have significant knowledge, experience and skill in complex restructuring matters. The Monitor and its counsel have acted in this capacity in some of Canada's largest and most complicated restructuring mandates. The lead professionals involved are all highly regarded and possess significant expertise in complex and special situations.

(E) Diligence and thoroughness displayed

44. The breadth of matters detailed in the Monitor's Reports demonstrate the diligence and thoroughness displayed by the Monitor and TGF.

(F) Responsibilities assumed

45. The Monitor, with the assistance of TGF, carried out extensive activities during the Period, as detailed in the Monitor's Reports.

46. The more significant responsibilities that the Monitor has assumed include: (a) assisting the F&F Entities in considering their restructuring options; (b) assisting in discussions with key stakeholders, including suppliers, creditors and employees, related to the CCAA Proceedings and responding to requests for information from certain of such parties; (c) supervising and assisting with activities related to the SISF with FTI Capital Advisors – Canada ULC; (d) reviewing updated consolidated cash flow projections of the F&F Entities' recipients and disbursements and information related thereto provided by the F&F Entities; and (e) reporting to the Court on the status of the CCAA Proceedings.⁴⁰

(G) Results achieved

47. The activities of the Monitor and TGF during this Period of the CCAA Proceedings were integral to advancing the CCAA Proceedings. Notably, the activities of the Monitor and TGF have assisted in getting to the Transactions which provided for, among other things: (a) approximately \$13 million in excess of the F&F Entities' secured liabilities; and (b) F&F Entities continuing operations as a going concern.⁴¹

⁴⁰ *Ibid.*

⁴¹ Affidavit of Stephane Trudel sworn August 23, 2023, at para. 35.

48. Specifically, as a result of these efforts, (a) most of the F&F Entities' approximately 594 employees have preserved their employment; (b) a substantial number of the F&F Entities' landlords and suppliers of goods and services have preserved their business relationships with the F&F Entities; and (c) continuity of supply has been maintained in provinces where the F&F Entities have distribution operations which play a critical part in the provincial supply chain.⁴²

(H) Cost of comparable services when performed in a prudent and economical manner

49. The Monitor's and TGF's professional fees and disbursements are comparable to the rates charged by other professional firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring matters.

50. Accordingly, it is respectfully submitted that a consideration of the factors articulated by the courts supports the conclusion that the remuneration of the Monitor and TGF is fair and reasonable and their fees and disbursements for the Period should be approved.

C. The Distributions to ACT Should be Approved

51. It is well established that the Court has the authority to approve distributions to creditors in the course of a CCAA process. This Court has noted that courts often order payments to creditors outside of a CCAA plan.⁴³

52. In this case, it is reasonable and appropriate for the Court to exercise its discretion and approve the distributions to ACT, in full satisfaction of the ACT Facility. TGF has reviewed the loan and security documentation relating to the ACT Facility, and subject to standard assumptions and qualifications, confirmed that such security documentation is valid and enforceable.⁴⁴

D. The Stay Extension Should be Granted

53. The current Stay Period expires on October 15, 2023. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that

⁴² *Ibid.*

⁴³ *Nortel Networks Corp, Re*, [2014 ONSC 4777](#) [*Nortel*] at [paras. 53-55](#).

⁴⁴ Fourth Report, *supra* at paras. 28-31.

make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.⁴⁵

54. The Applicant is seeking to extend the Stay Period from October 15, 2023, to and including January 30, 2024. The Claims Bar Date for all Proofs of Claim for Pre-Filing Claims and Restructuring Claims is October 12, 2023. While the Monitor has been diligently reviewing all Proofs of Claim received so far, additional time is needed to report and revise or accept the claims received in the Claims Process.⁴⁶

55. Since the granting of the Approval and Reverse Vesting Order and Claims Process Order, the F&F Entities and the Applicant have acted in good faith and with due diligence. Among other things:

- a. preserved the F&F Entities' liquidity and operated in the ordinary course of business;
- b. limited the Applicant's cash burn by sending disclaimer notices in respect of several contracts;
- c. negotiated terms of various lease amendments with landlords and executed such lease amendments;
- d. worked towards and closed the Transactions contemplated under the Subscription Agreement;
- e. engaged with the applicable regulatory authorities to keep them apprised of the CCAA Proceedings and the Transactions contemplated under the Subscription Agreement;
- f. repaid the DIP Facility;
- g. made payments to the KERP participants in accordance with the Court approved KERP; and

⁴⁵ CCAA, *supra* s. 11.02(2) and (3).

⁴⁶ Grewal Affidavit, *supra* at para. 15.

h. responded to numerous creditor and stakeholder enquiries regarding these CCAA Proceedings.⁴⁷

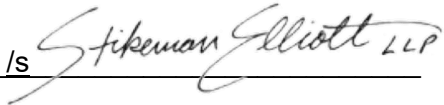
56. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to January 30, 2024. As detailed in Updated Cash Flow Forecast, the Applicant is not carrying on active operations and is expected to maintain liquidity to fund operations up to February 2, 2024.⁴⁸

57. The Monitor supports the proposed extension of the Stay Period to and including January 30, 2024.⁴⁹

PART V – ORDER SOUGHT

58. For the reasons set out above, the Applicant respectfully submits that the Court should grant the Stay Extension, Distribution, and Fees Approval Order in the form attached to the Applicant's Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of October, 2023.


/s

STIKEMAN ELLIOTT LLP

⁴⁷ *Ibid* at para. 16.

⁴⁸ *bid* at paras. 19-20; Fourth Report, *supra* at paras. 32-34; Appendix "B" to the Fourth Report.

⁴⁹ Fourth Report, *supra* at para. 34.

SCHEDULE “A” – LIST OF AUTHORITIES

1. *Re Target Canada Co*, [2015 ONSC 7574](#).
2. *Nortel Networks Inc*, [2022 ONSC 6680](#).
3. *Nortel Networks Corp (Re)*, [2017 ONSC 673](#).
4. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#).
5. *Re Tiger Brand Knitting Co*, [2006 CarswellOnt 9983](#) (Ont SCJ).
6. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#).
7. *Nortel Networks Corp, Re*, [2014 ONSC 4777](#).
8. *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont. Sup Ct [Commercial List] Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension)).

**SCHEDULE “B”
TEXT OF STATUTES AND REGULATIONS**

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

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.

**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 15315441 CANADA INC.**

Applicant

Court File No. CV-23-00700581-00CL

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT
(RE: STAY EXTENSION, DISTRIBUTION, AND FEES
APPROVAL ORDER)**

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