

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, RSC 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SHAW-ALMEX INDUSTRIES LIMITED
AND SHAW ALMEX FUSION, LLC

Applicants

**FACTUM OF THE APPLICANTS
(RE: STAY EXTENSION ORDER AND TUV ORDER)**

September 9, 2025

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. On May 13, 2025, Shaw-Almex Limited (“**SAIL**”) and Shaw Almex Fusion, LLC (together with SAIL, the “**Applicants**”) sought and were granted an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*.¹ Since that time, the Applicants have been working diligently and in good faith with FTI Consulting Canada Inc. (“**FTI**” and in its capacity as monitor of the Applicants, the “**Monitor**”) to pursue the restructuring efforts that these proceedings (the “**CCAA Proceeding**”) are facilitating, including closing a transaction to sell substantially all their assets and their Business (as defined herein) as a going concern that maximizes value for the benefit of all stakeholders. The transaction in question was approved by this Court in an Approval and Vesting Order dated July 18, 2025 (the “**Approval and Vesting Order**”), which then closed on August 27, 2025.

2. The Applicants now seek a stay extension and distribution order (the “**Stay Extension Order**”), substantially in the form appended at tab 3 of the Applicants’ motion record, which, among other things:

- (a) extends the Stay of Proceedings up to and including January 31, 2026 (the “**Extended Stay Period**”);
- (b) authorizes the Monitor to make an interim distribution to Royal Bank of Canada (“**RBC**”) from the proceeds of sale from the transaction contemplated by the Asset Purchase Agreement dated as of July 10, 2025 between the Applicants, as vendors, and Almex Canada, Limited (the “**Purchaser**”), as purchaser, (the “**Asset Purchase Agreement**”) to pay down the DIP Facility (as defined herein) and their pre-filing secured indebtedness;

¹ [RSC 1985, c C-36](#) [“**CCAA**”].

- (c) authorizes the Monitor to make a distribution to Business Development Bank of Canada ("**BDC**") subject to a receipt of a satisfactory security review; and
- (d) seals the confidential supplements (the "**Confidential Supplements**") to the Fourth Report of the Monitor dated September 9, 2025 (the "**Fourth Report**") until further order of the Court.

3. The Monitor also seeks an order, substantially in the form attached as tab 4 to the Applicants' motion record that (the "**TUV Order**"), that among other things, authorizes and directs the Monitor to continue and commence proceedings under Section 96 of the *Bankruptcy and Insolvency Act RSC 1985, c B-3* ("**BIA**") in respect of the transfer of shares in Shaw Almex Spain Real Holdings, S.L. ("**Real Holdings**") from SAIL to Shaw Almex Global Holdings Limited ("**Global Holdings**"), pursuant to a share sale and purchase agreement dated December 31, 2021 (the "**Share Purchase Agreement**" and the transaction thereunder, the "**Impugned Transaction**").

4. The relief sought in the Stay Extension Order and TUV Order will provide the Applicants with the breathing room to complete the transfer of legal ownership of the Beneficial Subsidiaries, address outstanding matters relating to the Contempt Motion and TUV Motion, and prepare materials to seek Court approval of the termination of the CCAA Proceeding.

PART II – FACTS

5. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Affidavit of Andrew Hustrulid sworn May 8, 2025 delivered in support of the Initial Order (as defined herein) and the Fourth Report of the Monitor, as applicable.

A. Background of the Restructuring Proceeding

6. Until the closing of the transaction, the Applicants were in the business of providing customized solutions for all aspects of conveyor belt systems (the “**Business**”).²

7. The Applicants’ financial difficulties were attributable to a combination of factors including, among others, significant issues securing a new reliable supplier of rubber, increased operational costs due to external market factors, insufficient financial reporting and controls overseen by former management, and losses suffered as a result of currency hedging transactions.³

8. In light of these challenges, SAIL filed a Notice of Intention to Make a Proposal under the BIA (the “**NOI Proceeding**”). FTI consented to act as the proposal trustee in the NOI Proceeding (in such capacity, the “**Proposal Trustee**”).⁴

9. On May 13, 2025, this Court granted the following orders:

(a) an Initial Order that, among other things:

- (i) continued the NOI Proceeding commenced by SAIL under the purview of the CCAA;
- (ii) granted a stay of all proceedings (the “**Stay of Proceedings**”) until May 30, 2025;
- (iii) authorized the Applicants to borrow up to a maximum principal amount of \$1,836,000 under a facility (the “**DIP Facility**”) from RBC (in its capacity as DIP lender, the “**DIP Lender**”) to finance the Applicants’ working capital requirements and to pay the costs and expenses of this proceeding, as

² Affidavit of Andrew Hustrulid sworn September 8, 2025, Applicants’ Motion Record, at Tab 2 [the “**Hustrulid Affidavit**”] at [para. 4](#).

³ Hustrulid Affidavit at [para. 6](#).

⁴ Hustrulid Affidavit at [para. 7](#).

more fully described in the amended and restated interim financing term sheet (the “**Amended DIP Term Sheet**”) between the Applicants and the DIP Lender; and

- (iv) granted the following charges over the Applicants’ property, which charges rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person, with the exception of the mortgage held by Business Development Bank of Canada over the real property municipally known as 17 Shaw Almex Road, Parry Sound, Ontario (the “**Parry Sound Property**”) in respect of which the request to seek priority was expressly deferred:

- (1) first – an administration charge in the amount of \$350,000, as security for the payment of professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to the Applicants, in connection with this CCAA Proceeding; and
- (2) second - a DIP Lender’s Charge as security for the Applicants’ obligations under the Amended DIP Term Sheet, in the maximum principal amount of \$1,836,000 plus fees and interest; and

- (b) an order approving a sale and investment solicitation process (the “**SISP**”).⁵

10. On May 2, 2025, the Proposal Trustee launched the SISP, which was then approved by the Court on May 13, 2025 as noted above. The deadline for bidders to submit a binding offer in the SISP was June 12, 2025. After reviewing the binding offers, the Monitor, in consultation with the DIP Lender, determined that the bid submitted by an affiliate of Rema Tip Top America, Inc.

⁵ Hustrulid Affidavit at [para. 8](#).

represented the highest and best offer received throughout the SISP.⁶

11. On July 18, 2025, the Court entered orders that, among other things, (a) approved the Asset Purchase Agreement and the transactions thereunder; (b) extended the Stay of Proceedings up to and including September 10, 2025; and (c) increased the maximum principal amount that the Applicants could borrow pursuant to an amendment to the Amended DIP Term Sheet and increasing the quantum of the DIP Lender's Charge.⁷ The sale transaction principally closed on August 27, 2025.⁸

B. Status of the Business

12. On the day the transaction contemplated by the Asset Purchase Agreement closed, SAIL transferred its legal ownership in the capital of Shaw Almex Pacific Pty Ltd., Shaw Almex Europe B.V., and Almex Peru S.A.C. to the Purchaser. SAIL's beneficial interests in the capital of Fonmar Group, S.L., Shaw Almex Mine Equip. (Tianjin) Co. Ltd., Shaw Almex Chile SpA and Shaw Almex Indonesia (collectively, the "**Beneficial Subsidiaries**") were transferred to the Purchaser; however, due to certain local and regulatory complexities, the legal ownership in the capital of the Beneficial Subsidiaries was unable to be transferred and remains with SAIL.⁹

13. It is anticipated that the legal ownership of the Beneficial Subsidiaries will be transferred to the Purchaser in the near future. However, in the interim, the consideration relating to these entities is being held in escrow by the Monitor, pending the formal transfer of legal title.¹⁰

14. Since the closing of the transaction, the Applicants have ceased majority of all active operations as the Business was transferred in its entirety to the Purchaser.¹¹

⁶ Hustrulid Affidavit at [para. 10](#).

⁷ Hustrulid Affidavit, [Exhibit "B"](#), Approval and Vesting Order and Justice J. Dietrich's endorsement dated July 18, 2025.

⁸ Hustrulid Affidavit at [para. 12](#).

⁹ Hustrulid Affidavit at [para. 13](#); and Fourth Report of the Monitor dated September 9, 2025 [the "**Fourth Report**"] at [paras. 24-25](#).

¹⁰ Hustrulid Affidavit at [para. 14](#).

¹¹ Hustrulid Affidavit at [para. 15](#).

C. Interim Distribution of Sale Proceeds

15. The Applicants are seeking authorization to distribute funds to their first-ranking secured creditor and DIP Lender, RBC, and also to BDC in connection with their mortgage on the Parry Sound Property formerly owned by SAIL and conveyed as part of the sale transaction. The Monitor has received some of the cash proceeds without being subject to escrow terms from the transaction (the “**Cash Proceeds**”).¹²

16. Counsel to the Monitor has reviewed RBC’s loan and security documentation. Subject to customary qualifications and assumptions, they have concluded that the security granted in favour of RBC is valid and enforceable against SAIL.¹³

17. Counsel to the Monitor has not yet completed a review of BDC’s loan and security documentation in connection with its mortgage, so the Applicants seek authority to make a distribution to BDC subject to a satisfactory opinion in that regard.

18. Based on the foregoing, the Applicants propose that a portion of the Cash Proceeds be used to repay: (i) the outstanding indebtedness owing to RBC under the DIP Facility and a portion of its pre-filing loan agreements, which as at September 5, 2025 totals approximately CAD \$ 21,230,945.80¹⁴ and USD \$514,661.45, plus any accrued interest through the date of settlement; and (ii) subject to receiving a satisfactory opinion confirming the validity and enforceability of BDC’s security interest against the real property formerly owned by SAIL, approximately CAD \$1,931,944.61, plus applicable fees (such distributions to RBC and BDC, the “**Distributions**”).¹⁵

19. Once all post-closing and administrative matters have been addressed, the Applicants intend to return to this Court to seek approval of the final distribution of the remaining proceeds

¹² Hustrulid Affidavit at [para. 24](#).

¹³ Hustrulid Affidavit at [para. 25](#); Fourth Report at [para. 42](#).

¹⁴ This amount includes the total amount outstanding under the DIP Facility.

¹⁵ Hustrulid Affidavit at [para. 26](#).

from the transaction.¹⁶

D. TUV Order

20. On June 18, 2025, the Monitor brought a motion seeking authorization to commence an application that, among other things, declares the transfer of shares pursuant to the Share Purchase Agreement, was a transfer at undervalue and that the transaction is void. Justice J. Dietrich has scheduled this motion (the “**TUV Motion**”) for a hearing on December 4, 2025.¹⁷

21. As part of the TUV Motion, the Monitor intends to seek, among other things, the transfer of shares pursuant to the Share Purchase Agreement was a transfer at an undervalue and an order requiring Real Holdings and Global Holdings to take the necessary steps to effect the voiding of the Impugned Transaction or, in the alternative, a declaration that Global Holdings is in breach of the Share Purchase Agreement and orders Real Holdings and Global Holdings take all necessary steps to effect the return of the shares.¹⁸

22. Accordingly, to facilitate the TUV Motion, the Monitor seeks approval of the TUV Order which will provide: (i) the Monitor with authorization and direction to proceed, pursuant to Section 36.1 of the CCAA, to issue and pursue a claim under Section 96 of the BIA with respect to the Share Purchase Agreement; and (ii) authorization and direction to take certain ancillary steps in connection with the TUV Motion.

¹⁶ Hustrulid Affidavit at [para. 27](#).

¹⁷ Fourth Report at [paras. 27-28](#).

¹⁸ Fourth Report at [para. 29](#).

PART III – ISSUES

23. The issues to be determined by this Court are:

- (a) whether the Extended Stay Period should be approved;
- (b) whether the Distribution should be approved;
- (c) whether the sealing provisions should be approved; and
- (d) whether the TUV Order should be approved.

PART IV – LAW & ARGUMENT

A. The Court Should Approve the Extended Stay Period

24. The Stay of Proceedings is set to expire on September 10, 2025. The Stay Extension Order seeks to extend the Stay of Proceedings up to and including January 31, 2026.

25. Section 11.02(2) of the CCAA gives this Court the authority to grant an extension of the stay of proceedings for any period “it considers necessary”.¹⁹ To do so, this Court must be satisfied that circumstances exist that make the order appropriate and that the Applicants have acted, and are acting, in good faith and with due diligence.²⁰ A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.²¹

26. The Applicants have acted and are continuing to act in good faith and with due diligence. Since the granting of the Approval and Vesting Order, the Applicants have, among other things, assisted the Monitor with the closing of the transaction and regularly communicated with employees and other stakeholders to keep them informed of developments in the CCAA Proceeding and the transaction.

¹⁹ CCAA, [s 11.02\(2\)](#).

²⁰ CCAA, [s 11.02\(3\)](#).

²¹ *Ted Leroy Trucking [Century Services] Ltd (Re)*, 2010 SCC 60 at [para 14](#).

27. The Applicants believe the Extended Stay Period is necessary and appropriate in the circumstances. The requested extension of the Stay of Proceedings will provide the Applicants with the breathing space and operational stability to complete the transfer of legal ownership of the Beneficial Subsidiaries, address outstanding matters related to the Contempt Motion and TUV Motion and prepare the materials necessary to seek Court approval of, among other things, the final distribution of proceeds from the transaction and the termination of the CCAA Proceeding. Addressing the distribution of proceeds from the sale transaction through this CCAA Proceeding will be more coherent and efficient than if creditors were permitted to commence individual enforcement proceedings in respect of amounts claimed.²²

28. With the assistance of the Monitor, the Applicants have prepared a weekly cash flow forecast for the period ending the week of January 30, 2026 (the “**Revised Cash Flow Forecast**”).²³

29. The Revised Cash Flow Forecast demonstrates that the Applicants are expected to have sufficient liquidity to fund their obligations and costs of the CCAA Proceedings through the Extended Stay Period.²⁴

30. The Monitor is supportive of the proposed Extended Stay Period.²⁵

B. This Court Should Authorize the Distributions

31. The Monitor is seeking authority to distribute the Cash Proceeds received from the transaction to their first-ranking general secured creditor and DIP Lender, RBC, and BDC.

32. Section 11 of the CCAA provides that a court may “*subject to the restrictions set out in [the CCAA] ... make any order it considers appropriate in the circumstances.*” The Court has

²² Hustrulid Affidavit at [para. 18](#).

²³ Hustrulid Affidavit at [para. 22](#).

²⁴ Hustrulid Affidavit at [para. 23](#); and Fourth Report at [para. 48](#).

²⁵ Fourth Report at [para. 50](#).

inherent jurisdiction to fill in the gaps of the CCAA to give effect to its objects.²⁶

33. With respect to the proposed Distributions, the Monitor's counsel has reviewed RBC's loan and security documentation, and subject to standard assumptions and qualifications, confirmed that such security documentation is valid and enforceable against SAIL.

34. The Applicants and Monitor are not aware of any opposition to the proposed Distributions, nor of any material prejudice or compelling reason not to proceed with the proposed Distributions.

C. This Court Should Approve the Sealing Provision

35. The Applicants seek an order sealing the Confidential Supplements, being a breakdown of the purchase price from the Asset Purchase Agreement and the Revised Cash Flow Forecast.

36. Pursuant to subsection 137(2) of the *Courts of Justice Act*, this Court has the jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.²⁷

37. The test for a sealing order was established by the Supreme Court of Canada in *Sierra Club*²⁸ and subsequently in *Sherman Estate*.²⁹ The test involves three prerequisites which must be satisfied:

- (a) whether court openness poses a serious risk to an important public interest;
- (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and
- (c) whether, as a matter of proportionality, the benefits of the order outweigh its

²⁶ CCAA, [s. 11](#); and *Nortel Networks Corporation (Re)*, 2009 CanLII 39492 (ON SC) at [para. 30](#).

²⁷ *Courts of Justice Act*, RSO 1990, c C.43, *supra* [s. 137\(2\)](#).

²⁸ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.

²⁹ *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII), [2021] 2 SCR 75.

negative effects.³⁰

38. The requirements set forth in *Sherman Estate* are satisfied:

- (a) public disclosure of the Confidential Supplements poses a serious and immediate risk to the interests of stakeholders. In particular, disclosure of the Purchaser's valuation of the Beneficial Subsidiaries prior to legal transfer of those shares would be highly prejudicial to any future marketing efforts that may become necessary should the transfer not be completed. Such disclosure would compromise the integrity of any further sale process and significantly impairs the Applicants' ability to maximize value for the benefit of stakeholders;
- (b) the sealing order sought is necessary to mitigate this risk. No reasonable alternative measures exist that would adequately protect the commercially sensitive information contained in the Confidential Supplements. The scope of the sealing provision is appropriately limited and remains subject to further order of this Court; and
- (c) the benefits of granting the sealing provision outweigh any potential negative effects. The proposed relief protects the confidentiality of commercially sensitive information during a critical stage of the restructuring process, while preserving the transparency of the proceedings to the greatest extent possible under the circumstances.

³⁰ *Ibid* at [para 38](#).

D. The TUV Order Should be Approved

39. The Monitor seeks approval of the TUV Order which, among other things, authorizes the Monitor to continue and commence a proceeding under Section 96 of the BIA with respect to the Share Purchase Agreement.

40. Section 36.1 of the CCAA grants this Court with jurisdiction to authorize the Monitor to proceed with the TUV Motion.³¹ No specific test has developed under the CCAA to determine whether a Monitor should be authorized pursue a claim under Section 36.1 of the CCAA. However, this Court has recognized that Section 36.1 of the CCAA provides the Monitor with the power to pursue a claim that would otherwise be available to a trustee in bankruptcy under Sections 95 to 101 of the BIA.³²

41. Although Section 36.1 of the CCAA could be interpreted to require a plan of compromise or arrangement to be pursued concurrent with the TUV Motion, the Applicants and the Monitor submit that Section 36.1 of the CCAA should be an available tool in a circumstance where the plan of compromise or arrangement remains a possibility.

42. As noted by Morawetz J. (as he then was) in *Aero Inventory*, the Court's approach should be pragmatic when determining issues that arise in proceedings where the CCAA overlaps with the BIA. The policy objective should be to ensure that there is an appropriate review mechanism for pre-filing transaction in all circumstances. In the current case, practicality suggests that the TUV Motion be reviewed within the CCAA Proceeding even if no plan of compromise or arrangement has been proposed at this time.³³

³¹ CCAA, [s. 36.1](#).

³² *Verdellen v. Monaghan Mushrooms Ltd*, 2011 ONSC 5820 at [para. 46](#); *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, Order of Justice Conway dated December 15, 2023 [[CV-23-00696017-00CL](#)]; *In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc., et al*, Transfer at Undervalue Proceeding Approval Order of Justice Hainey dated December 3, 2018 [[CV-17-11846-00CL](#)]; and *Cash Store Financial Services (Re)*, 2014 ONSC 4326 at [para. 108](#).

³³ *Tucker v. Aero Inventory (UK) Limited*, 2011 ONSC 4223 ("*Aero Inventory*") at [paras. 156-157](#) and [163](#).

The Court Should Authorize the Monitor's Claim to Proceed

43. No specific test has developed under the CCAA to determine whether a Monitor should be authorized pursue a claim under Section 36.1 of the CCAA.

44. The proposed TUV Order is a discretionary order and the Monitor submits the requested order requires the Court to assess whether the order sought advances the policy objectives underlying the CCAA and furthers efforts to achieve the remedial purpose of the CCAA.³⁴

45. In the current case, the Monitor seeks the return of the shares that were improperly removed from the Applicants' estate, with the aim of ensuring that their value can be fairly and equitably redistributed among the Applicants' creditors, in accordance with the applicable priority scheme. This objective is clearly remedial in nature, falls squarely within the framework contemplated by the CCAA, and aligns fully with the overarching policy goals of the legislation; namely, maximizing value for stakeholders and ensuring fairness in the restructuring process.

PART V – RELIEF REQUESTED

46. Based on the foregoing, the Applicants request the Stay Extension Order, substantially in the form appended at tab 3 to the Applicants' motion record, and the TUV Order, substantially in the form appended at tab 4 to the Applicants' motion record.

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.

Simran Joshi

Simran Joshi (LSO #89775A)

³⁴ *Century Services, supra*, at [para. 70](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th DAY OF SEPTEMBER, 2025.

/s/ Reconstruct

RECONSTRUCT LLP

SCHEDULE "A"

List of Authorities

1. <i>Ted Leroy Trucking [Century Services] Ltd (Re)</i> , 2010 SCC 60
2. <i>Nortel Networks Corporation (Re)</i> , 2009 CanLII 39492 (ON SC)
3. <i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , 2002 SCC 41
4. <i>Sherman Estate v. Donovan</i> , 2021 SCC 25 (CanLII) , [2021] 2 SCR 75
5. <i>Verdellen v. Monaghan Mushrooms Ltd</i> , 2011 ONSC 5820
6. <i>In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.</i> , Order of Justice Conway dated December 15, 2023 [CV-23-00696017-00CL]
7. <i>In the Matter of a Plan of Compromise or Arrangement of Sears Canada Inc., et al</i> , Transfer at Undervalue Proceeding Approval Order of Justice Hainey dated December 3, 2018 [CV-17-11846-00CL]
8. <i>Cash Store Financial Services (Re)</i> , 2014 ONSC 4326
9. <i>Tucker v. Aero Inventory (UK) Limited</i> , 2011 ONSC 4223

SCHEDULE "B"**Statutory Authorities****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.

Stays, etc. — other than initial application

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

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

Burden of proof on application

11.02(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.

Application of [sections 38](#) and [95](#) to [101](#) of the [Bankruptcy and Insolvency Act](#)

36.1 (1) [Sections 38](#) and [95](#) to [101](#) of the [Bankruptcy and Insolvency Act](#) apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in [sections 38](#) and [95](#) to [101](#) of the [Bankruptcy and Insolvency Act](#)

(a) to “date of the bankruptcy” is to be read as a reference to “day on which proceedings commence under this Act”;

(b) to “trustee” is to be read as a reference to “monitor”; and

(c) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor company”.

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

Transfer at undervalue

96 (1) On application by the trustee, a court may declare that a transfer at undervalue is void as against, or, in Quebec, may not be set up against, the trustee — or order that a party to the transfer or any other person who is privy to the transfer, or all of those persons, pay to the estate the difference between the value of the consideration received by the debtor and the value of the consideration given by the debtor — if

- (a)** the party was dealing at arm’s length with the debtor and
 - (i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and that ends on the date of the bankruptcy,
 - (ii)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, and
 - (iii)** the debtor intended to defraud, defeat or delay a creditor; or
- (b)** the party was not dealing at arm’s length with the debtor and
 - (i)** the transfer occurred during the period that begins on the day that is one year before the date of the initial bankruptcy event and ends on the date of the bankruptcy, or
 - (ii)** the transfer occurred during the period that begins on the day that is five years before the date of the initial bankruptcy event and ends on the day before the day on which the period referred to in subparagraph (i) begins and
 - (A)** the debtor was insolvent at the time of the transfer or was rendered insolvent by it, or
 - (B)** the debtor intended to defraud, defeat or delay a creditor.

Establishing values

(2) In making the application referred to in this section, the trustee shall state what, in the trustee's opinion, was the fair market value of the property or services and what, in the trustee's opinion, was the value of the actual consideration given or received by the debtor, and the values on which the court makes any finding under this section are, in the absence of evidence to the contrary, the values stated by the trustee.

Meaning of *person who is privy*

(3) In this section, a ***person who is privy*** means a person who is not dealing at arm's length with a party to a transfer and, by reason of the transfer, directly or indirectly, receives a benefit or causes a benefit to be received by another person.

[Courts of Justice Act, RSO 1990, c C.43](#)

Sealing documents

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED

Court File No. CV-25-00743136-00CL

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Proceedings commenced at Toronto

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