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

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

FACTUM
OF FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS MONITOR OF SHAW-ALMEX INDUSTRIES LIMITED AND SHAW ALMEX FUSION, LLC
(Re: Determination of Share Purchase Agreement, Transfer at Undervalue)

December 1, 2025

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PART I: OVERVIEW

1. The facts on this motion are straightforward. Mr. Timothy Shaw, the principal of both Shaw-Almex Industries Limited ("**SAIL**") and Shaw Almex Global Holdings Limited ("**Global Holdings**"), transferred shares—and indirectly, valuable real property—away from SAIL to his personal holding company at a time when SAIL's financial circumstances were deteriorating and insolvency was on the horizon. In exchange for SAIL "selling" these shares to Global Holdings, it received from Global Holdings an unsecured, interest-free promise that it would be paid over the next 20 years by a company without a bank account. Predictably, no cash was ever paid to SAIL, and the intercompany transfers that purported to set-off the purchase price are insufficient.

2. FTI Consulting Canada Inc. ("**FTI**"), in its capacity as the Court-appointed monitor (the "**Monitor**") of SAIL and Shaw Almex Fusion, LLC, seeks on this motion to set aside SAIL's aforementioned transaction with Global Holdings as a transfer at undervalue (a "**TUV**").

PART II: THE FACTS

3. The facts with respect to this motion are more fully set out in the Fifth Report of the Monitor dated September 27, 2025 ("**Fifth Report**"), which was supplemented on October 7, 2025 (the "**First Supplemental Report**") and again on November 25 (the "**Second Supplemental**

Report"). All references to dollars ($) are references to Canadian dollars.[1] Capitalized terms used in this factum that are not otherwise defined have the meanings given to them in the Fifth Report of the Monitor. For this Court's ease, included at Annex "1" is a corporate chart detailing the parties involved in this motion.

A. THE PARTIES ON THIS MOTION

(1) The SAIL Corporate Group

4. SAIL was the parent company of a global business engaged in the manufacturing of conveyor belt vulcanizing equipment, technology, services and expertise. SAIL's head office was a leased premises in Stoney Creek, Ontario (the "**Glover Road Property**"), and it owned a manufacturing facility in Parry Sound, Ontario.[2]

5. SAIL also carried on business operations in Spain via its wholly owned subsidiary Fonmar Group S.L. ("**Fonmar OpCo**"). Fonmar OpCo operated (and continues to operate under new ownership following a CCAA sale of SAIL's assets) from a manufacturing facility in Jaén, Spain (the "**Spanish Real Property**"). Title to the Spanish Real Property is held by Fonmar S.A. ("**Fonmar RealtyCo**").[3] Prior to December 30, 2021, SAIL held (directly or indirectly) all of the shares of Fonmar RealtyCo.

(2) The Global Holdings Corporate Group

6. Global Holdings is the parent company of a real estate holdings business.[4] Global Holdings' subsidiaries held real properties in regions including Australia and South Africa at all

[1] Dollar and euro amounts reported in this factum may have been rounded and should therefore be understood to be approximations.
[2] Motion Record of the Monitor dated September 27, 2025 (the "**Motion Record**") at Tab 2: Fifth Report of the Monitor dated September 27, 2025 (the "**Fifth Report**") at para. 19.
[3] *Ibid* at paras. 20-23, 31 and 33.
[4] *Ibid* at para. 26.

relevant times.[5] Global Holdings' head office is the Glover Road Property.[6] Global Holdings has a different creditor group that SAIL, although there is some overlap.

7. With one exception of the short period between December 30 and December 31, 2021 (discussed below), Global Holdings held and continues to hold 100% of the shares of Shaw Almex Spain Real Holdings, S.L. ("**Real Holdings**"). Since December 30, 2021, to present, Real Holdings has held 100% of the shares of Fonmar RealtyCo, which in turn holds title to the Spanish Real Property. From approximately 2018 to 2025, Real Holdings also held title to a residential property in Jaén, Spain (the "**Jaén Home**").[7] The Jaén Home is an approximately two-acre "land parcel for mountain farming"[8] with a "small cabin or villa".[9]

(3) Mr. Timothy Shaw and Mr. Ryan Neufeld

8. SAIL and Global Holdings are connected through common ownership and control. At all relevant times, Mr. Shaw was the sole common shareholder of SAIL and the sole shareholder of Global Holdings.[10] He was a director or administrator[11] of each of SAIL, Fonmar OpCo, Global Holdings, Real Holdings, and Fonmar RealtyCo, the President and Secretary of SAIL and Global Holdings, and SAIL's CEO until his termination in May 2025.[12]

9. At all relevant times, Mr. Ryan Neufeld was employed by both SAIL and Global Holdings as their CFO. He is also named as an authorized representative of Fonmar OpCo, Real Holdings, and Fonmar RealtyCo.[13]

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[5] References to the "relevant times" refer to December 31, 2021 (the date of the Impugned Transaction), and the period surrounding December 31, 2021, as required by the context.
[6] Fifth Report, *supra* note 2 at para. 24.
[7] *Ibid* at paras. 28-33.
[8] *Ibid* at Appendix "R".
[9] Transcript from the cross-examination of Timothy Shaw conducted November 26, 2025 (the "**Shaw Examination**") at p. 51 l. 23-24.
[10] *Ibid* at p. 10 l. 12-14, p. 21, l. 3-5.
[11] A position under Spanish law, similar to a director.
[12] Fifth Report, *supra* note 2 at paras. 35-37.
[13] *Ibid* at paras. 42-44.

B. SAIL'S CCAA PROCEEDINGS

10. SAIL experienced financial hardship and operational challenges in the last five years. The following excerpt from its audited financial statements shows the deterioration in its financial circumstances for the period 2020 to 2022:

	All amounts in $ thousands		
	2020[14]	**2021**[15]	**2022**[16]
Sales	35,330	33,623	28,148
Earnings (loss) before taxes	529	(5,687)	(9,907)
Net earnings (loss)	25	(5,549)	(14,066)
Cash flow from operating activities	2,942	(1,154)	(3,761)
Assets	33,523	31,669	25,763
Liabilities	23,988	27,719	35,906
Equity	9,535	3,950	(10,143)

11. SAIL does not have audited financial statements for 2023, 2024 or 2025. The Monitor understands that in those years, SAIL's situation worsened.[17] On March 29, 2025, SAIL filed a notice of intention to make a proposal ("**NOI**") pursuant to the provisions of the *Bankruptcy and Insolvency Act*.[18] On May 13, 2025, this Court granted an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*[19] (the "**CCAA**") with respect to SAIL and its affiliate Shaw Almex Fusion, LLC.[20]

12. Notwithstanding the date of SAIL's NOI filing, SAIL was indisputably balance sheet insolvent by December 31, 2022. At that time, its audited financial statements included a going-

[14] *Ibid* at Appendix "W": Non-Consolidated Financial Statements of Shaw-Almex Industries Limited and Independent Auditor's Report thereon for the year ended December 31, 2021 (the "**2021 FS**").
[15] *Ibid*.
[16] Fifth Report, *supra* note 2 at Appendix "X": Non-Consolidated Financial Statements of Shaw-Almex Industries Limited and Independent Auditor's Report thereon for the year ended December 31, 2022 (the "**2022 FS**").
[17] Reply Motion Record of the Monitor dated November 25, 2025 (the "**Reply Motion Record**") at Tab 2: Second Supplement to the Fifth Report of the Monitor dated November 25, 2025 (the "**Second Supplemental Report**") at para. 41.
[18] RSC 1985, c B-3 [***BIA***].
[19] R.S.C. 1985, c. C-36 [***CCAA***].
[20] Fifth Report, *supra* note 2 at para 18.

concern statement.[21] Going back even further, SAIL's financial statements for 2021 do not, on their face, show balance sheet insolvency, but the Monitor is of the view that SAIL's assets in 2021 would be materially less than book value if they were adjusted to reflect their then-fair market value ("**FMV**").[22] In 2021, SAIL was incurring significant losses and had a negative operating cash flow. SAIL ended 2021 with negative working capital and it had three sizeable obligations that were either in non-compliance or default:

(a) SAIL had a demand operating facility with HSBC Canada / Royal Bank of Canada ("**RBC**") under which approximately $8.6 million had been drawn, and SAIL was not in compliance with one of the non-financial covenants;[23]

(b) SAIL had a term loan with BDC Capital Inc. ("**BDC**") in the principal amount of $4.7 million, and SAIL was not in compliance with one of its non-financial covenants and no waiver had been issued by BDC;[24] and

(c) SAIL had guaranteed one of Global Holdings' loans, which had $1 million outstanding, and which loan was in default.[25]

13. SAIL's financial circumstances further deteriorated in the following twelve months. By December 31, 2022, its finances reflected the following negative changes:

(a) an increased in its allowance for doubtful accounts by $500,000 (from $34,002 to $534,002), notwithstanding that the accounts receivable balance decreased by $2.6 million during this period;

(b) an increase in its reserve for intercompany receivables by $1.6 million; and

[21] 2022 FS, *supra* note 16 at p. 2.
[22] Fifth Report, *supra* note 2 at para. 75.
[23] 2021 FS, *supra* note 14 at p. 12 note 9.
[24] *Ibid* at p. 13 note 11, p. 23 note 20.
[25] *Ibid* at p. 16 note 14.

(c) a $2.5 million impairment on investments.[26]

14. From 2020 to 2023, as SAIL moved deeper into insolvency, Mr. Shaw made net withdrawals of funds. From 2024 to 2025, Mr. Shaw reversed course and made net contributions. These contributions coincided with SAIL initiating an out-of-court sales process. Mr. Shaw, as the sole common shareholder, stood to be one of the primary beneficiaries of a successful sale; however, to consummate a sale, SAIL required liquidity. And that is when Mr. Shaw made net contributions—when they would provide the prospect of a return if a sale was consummated.[27]

15. No out-of-court sale materialized. SAIL was forced to commence insolvency proceedings in March 2025, during which proceedings SAIL's business was substantially sold.[28] Mr. Shaw was not involved in the CCAA sales process. Throughout these CCAA proceedings, Mr. Shaw has engaged in conduct that frustrated the Applicants' restructuring efforts. For months after the commencement of the NOI proceeding, he (or his agents, representatives, or others acting on his behalf) retained possession and control of certain of the Applicants' property despite multiple requests for its return. The Proposal Trustee and, subsequently, the Monitor had to engage in extensive efforts to secure the Applicants' property, including by seeking a court order and bringing a motion to find Mr. Shaw in contempt.[29]

C. THE IMPUGNED TRANSACTION: STRIPPING VALUE FROM SAIL

(1) Steps Leading to the Impugned Transaction

16. In 2021, SAIL and Global Holdings engaged in a series of transactions that ultimately led to the transfer of the Spanish Real Property from SAIL to Global Holdings. This began in February 2021, when Fonmar RealtyCo and Fonmar OpCo entered into a lease agreement pursuant to which

[26] Fifth Report, *supra* note 2 at para. 73; see also 2022 FS, *supra* note 16.
[27] Second Supplemental Report, *supra* note 17 at paras. 38-41.
[28] Fifth Report, *supra* note 2 at para 4.
[29] *Ibid* at paras. 38-40.

Fonmar Opco pays Fonmar RealtyCo rent in the amount of €9,500 per month (€114,000/year). This was a significant rent increase: in 2020, Fonmar OpCo paid approximately €18,719 in rent for the *entire year*.[30]

17. On December 30, 2021, Real Holdings authorized the issuance of 2,400,600 shares (the "**Shares**") at a price of €1 per share. SAIL subscribed for all of the Shares, which diluted Global Holdings' existing equity interest in Real Holdings (3,050 shares). SAIL "paid" for the Shares by contributing to Real Holdings 100% of the shares of Fonmar RealtyCo. Fonmar RealtyCo's shares were assigned the value of €2,400,600.[31] As observed by Mr. Víctor de Cambra Antón, the Monitor's Spanish law expert, while non-monetary contributions are permitted under Spanish law, "this course of action is unusual and uncommon".[32]

18. On December 31, 2021, SAIL purported to sell the Shares to Global Holdings pursuant to a share sale and purchase agreement dated December 31, 2021 (the "**SPA**", and such transaction, the "**Impugned Transaction**"). Only one day after acquiring the Shares, SAIL had sold them back to Global Holdings. Global Holdings reverted to being Real Holdings' sole shareholder, but now with indirect title to the Spanish Real Property. Under the SPA, Global Holdings agreed to pay SAIL €2,400,600 (the "**Purchase Price**"). The Monitor only has a partially complete copy of the executed SPA. It has an unexecuted but complete Microsoft Word version, which it believes to be the final form of agreement that shows the missing sections.[33] The Monitor also notes that although

[30] Fifth Report, *supra* note 2 at para. 33. The 2020 rent payment(s) are recorded in SAIL's general ledger in Canadian dollars ($28,637 for the year), but they were likely paid in euros. The Monitor does not have insight into the actual payment(s) made. The figure in euros is based on the Bank of Canada's average exchange rate in 2020.
[31] Supplemental Motion Record of the Monitor dated October 7, 2025 (the "**Supplemental Motion Record**") at Tab 2: Supplemental to the Fifth Report of the Monitor dated October 7, 2025 (the "**First Supplemental Report**") at Appendix "B": Affidavit of Meredith Veto affirmed October 3, 2025 ("**Veto Affidavit**") at Exhibit "4".
[32] Supplemental Motion Record, *ibid*, at Tab 1: Affidavit of Spanish Foreign Law Expert affirmed October 2, 2025 at Exhibit "A": Legal Report on Spanish Law dated October 2, 2025 ("**Spanish Law Expert Report**") at para. 8.
[33] Shaw Examination, *supra* note 9 at p. 59 l. 22 to p. 62 l. 10; Fifth Report, *supra* note 2 at para. 46. The incomplete SPA is in the Fifth Report at Appendix "P" (the "**Executed SPA**"), and the Microsoft Word SPA at Appendix "Q" (the "**Word SPA**").

the executed SPA is dated December 31, 2021, the covering notarial certificate states that it was executed on January 28, 2022,[34] indicating backdating for reasons unexplained in the record.

(2) Consideration Received by SAIL was Conspicuously Less than the Fair Market Value of the Consideration Given by SAIL

19. The Purchase Price under the SPA was payable over a period of 20 years in annual installments of €120,030, with annual payments made in the last quarter of each year.[35] The SPA does not provide interest on the annual installment payments, nor does it provide any security or guarantee to secure payment of the Purchase Price.

20. The Purchase Price was arrived at without properly valuing the Shares. No professional valuator was retained—not even a real estate appraiser to assess the value of the Spanish Real Property or the Jaén Home, the two tangible assets underlying the Shares.[36] With respect to the Spanish Real Property, it had been appraised on May 8, 2015, for a value of €3,014,106.05, and again on November 10, 2017, for a value of €3,382,557.87 (a ~12% increase) in connection with certain loans.[37] No appraisals were conducted after 2017.[38] Mr. Shaw explained the rationale for not obtaining a current appraisal for the Spanish Real Property as follows:

> Q. Why didn't the company obtain an appraisal of the Spanish property prior to the December 31 share purchase transaction?
>
> A. Because it was not an arm's length transaction that required that level of due diligence.[39]

[34] Executed SPA, *ibid*.
[35] Fifth Report, *supra* note 2 at para. 47; Word SPA, *supra* note 33 at s. 3. Per the Bank of Canada's exchange rate on December 31, 2021, €2,400,600 was approximately $3,454,703.46.
[36] Shaw Examination, *supra* note 9 at p. 40 l. 22 to p. 41 l. 7, p. 44 l. 5 to l. 17, p. 53 l. 11 to l. 13, p. 74 l. 24 to p. 75 l. 2.
[37] Fifth Report, *supra* note 2 at paras. 54 to 57, Appendix "T" and Appendix "U" (*English translation*: First Supplemental Report, *supra* note 31 at Appendix "A"—Exhibit "3" and Appendix "C"—Exhibit "5").
[38] Shaw Examination, *supra* note 9 at p. 40 l. 24.
[39] *Ibid* at p. 49 l. 6 to l. 11.

21. Mr. Shaw has taken the position that the value of the Spanish Real Property *decreased* in value.[40] He based his opinion on conversations with (a) Mr. Andres Foncillas, an individual who "owns property in Jaén" and who formerly acted as a financial advisor and tax auditor for Fonmar; and (b) speaking with his management team in Spain, being the financial controller and managing director. To Mr. Shaw's knowledge, none of these individuals are realtors or property appraisers.[41] Although Mr. Shaw referred to discussions with a "Spanish realtor" in his affidavit,[42] on examination he explained that the "realtor" was in fact Mr. Foncillas, a non-realtor.[43] Mr. Shaw also claims that an academic article attached to his affidavit provides insight on the Spanish Real Property's value;[44] however, Mr. Shaw only became aware of this article within the last year (*i.e.*, he was not aware of it in 2021), and the article is of limited relevance because it does not actually compare real estate prices in 2017 with prices in 2021.[45]

22. As a result of Mr. Shaw failing to obtain an updated appraisal or valuation for the Spanish Real Property, there is no contemporaneous evidence on the record to show its value. The Monitor requests that this Court draw an adverse inference against Global Holding as a result of this failure.

23. The second tangible asset in the Real Holdings' structure is the Jaén Home. The Jaén Home was purchased by Real Holdings in 2018 for €120,000 from the former owner of the Fonmar business.[46] No negotiations took place in arriving at that price.[47] In or around May or June 2025, the Jaén Home was sold to Mrs. Pamela Shaw, the spouse of Mr. Shaw, for approximately

[40] Responding Motion Record of Timothy Shaw dated November 20, 2025 at Tab 1: Affidavit of Mr. Timothy Shaw affirmed November 20, 2025 (the "**Shaw Affidavit**"), para. 35; Shaw Examination, *supra* note 9 at p. 41 l. 17 to p. 42 l. 3.
[41] Shaw Examination, *supra* note 9 at page 42 line 2 to page 44 line 17.
[42] Shaw Affidavit, *supra* note 40 at para. 48.
[43] Shaw Examination, *supra* note 9 at p. 48 l. 9 to l. 17.
[44] Shaw Affidavit, *supra* note 40 at para. 46.
[45] Shaw Examination, *supra* note 9 at p. 45 l. 4 to p. 48 l. 8.
[46] Fifth Report, *supra* note 2 at para. 51; Shaw Examination, *supra* note 9 at p. 52 l. 15 to l. 24.
[47] Shaw Examination, *supra* note 9 at p. 52 l. 15 to p. 53 at l. 13.

€120,000.[48] No appraisals have been conducted on the Jaén Home,[49] so its FMV is uncertain. however, Real Holdings' financial statements for 2021 provide an indication of value. Those statements report "Property, Plant and Equipment" (which is clarified in the notes as land, buildings and furniture) worth €172,800.11.[50] The Monitor believes that the Jaén Home is Real Holdings' only asset that fits this category.[51]

24. Business valuations can take into account cash flow, and Real Holdings has a source of income: rent paid by Fonmar OpCo to Fonmar RealtyCo. Mr. Shaw could not recall on his cross-examination if he gave consideration to this income when determining the Purchase Price.[52]

25. The Monitor has found evidence from October 2021 that the outstanding mortgage balance on the Spanish Real Property was approximately €981,957.22.[53] On this basis, the Monitor has conservatively estimated that the Shares were worth approximately €2,520,600.65 as of December 31, 2021. This valuation relies on a number of assumptions, including the conservative assumptions that (a) the value of the Spanish Real Property was €3,382,557.87 (*i.e.*, its 2021 value was the same as its 2017 appraised value), and the value of the Jaén Home was €120,000 (*i.e.*, its 2018 purchase price was FMV and it did not appreciate afterwards).[54]

(3) The Value Received by SAIL

26. The Purchase Price payable by Global Holdings for the Shares was €2,400,600. But this is the *nominal* Purchase Price. Because the Purchase Price is payable over a 20-year period in equal instalments, the *real* Purchase Price is less due to factors including (a) the time value of money;

[48] Fifth Report, *supra* note 2 at para. 51.
[49] Shaw Examination, *supra* note 9 at p. 53 l. 11 to l. 13.
[50] First Supplemental Report, *supra* note 31 at Appendix "B"—Exhibit "2".
[51] *Ibid*; Fifth Report, *supra* note 2 at para. 58.
[52] Shaw Examination, *supra* note 9 at p. 77 l. 12 to l. 20.
[53] Fifth Report, *supra* note 2 at para. 59 and Appendix "V".
[54] *Ibid* at paras. 52-53, 57, 61.

(b) the impact of inflation; and (c) the risk of non-payment associated with the deferred receipt of the Purchase Price. These factors combine to erode the Purchase Price's real value.[55]

27. The real Purchase Price can be determined by calculating its net present value. The net present value is a single measure of what a series of future payments is truly worth today. It ranges from €1,021,883 to €1,376,735 depending on the discount rate used:

Discount Rate	**6%**	**8%**	**10%**
Nominal Purchase Price (€)	2,400,600	2,400,600	2,400,600
NPV of Purchase Price (€)	1,376,735	1,178,472	1,021,883
NPV as % of Purchase Price	57%	49%	43%

28. If the FMV of the Shares is €2,520,600.65, then based off the net present value calculations, the consideration received by SAIL in exchange for transferring the Shares is approximately 45.5% to 59.5% *less* than the FMV.

(4) Global Holdings Failed to Make Payments Under the SPA

29. The Purchase Price was payable over a 20 year period in annual installments of €120,030, with annual payments made in the last quarter of each year.[56] The SPA does not contemplate other payment terms such as set-off or advanced payments. When Global Holdings entered into the SPA and agreed to pay the Purchase Price, it did not have a bank account. It had, in effect, no ability to pay cash, and it never did transfer cash to SAIL in satisfaction of the Purchase Price.

30. Mr. Shaw claims that the Purchase Price was to be paid by set-off.[57] No documents have been produced to support this claim, but the record shows that in practice SAIL and Global Holdings did engage in set-off: SAIL paid Global Holdings' expenses and would in turn set-off such payments against the rent it owed Global Holdings on the Glover Road Property. Based on

[55] *Ibid* at paras. 63-65.
[56] *Ibid* at para. 47; Word SPA, *supra* note 33 at s. 3. Per the Bank of Canada's exchange rate on December 31, 2021, €2,400,600 is approximately $3,454,703.46.
[57] Shaw Affidavit, *supra* note 40 at para. 26.

SAIL's general ledger, Global Holdings owed SAIL $3.02 million immediately prior to the Impugned Transaction. When the Impugned Transaction occurred, SAIL added the total amount of the Purchase Price to its general ledger as an amount owing by Global Holdings, thus increasing the total amount owing by Global Holdings to SAIL to $6.47 million. If all amounts owed or owing by SAIL to Global Holdings for the period December 31, 2021, through to the start of these CCAA proceedings are set-off against one another, there remains an outstanding debt of $1.01 million owing by Global Holdings to SAIL. However, these "set-off" transactions have not been verified as valid legal or equitable set-off. Further, the Monitor does not have comfort around transactions being properly recorded in the ledger and it has not confirmed the validity of ledger transactions.[58]

PART III: THE ISSUES

31. The issues before the Court are:

(a) Is the SPA void as a TUV? The Monitor submits that it is.

(b) If the SPA is not void as a TUV, is the SPA enforceable against third parties, including the Monitor? The Monitor submits it is not.

(c) If the SPA is not void as a TUV and is enforceable against the Monitor, did Global Holdings breach the SPA and should the Shares be returned to SAIL? The Monitor submits that it did and the Shares should be returned to SAIL.

PART IV: LAW & ARGUMENT

A. THE IMPUGNED TRANSACTION IS A TUV AND VOID PURSUANT TO SECTION 96 OF THE BIA

32. The Impugned Transaction is void as a TUV because (a) SAIL received conspicuously less than the FMV for that disposition; (b) the transfer occurred less than five years before these CCAA proceedings; (c) the transfer was made to a related party; and (d) SAIL intended to defraud, defeat

[58] Fifth Report, *supra* note 2 at paras. 86-87, 98.

or delay a creditor. In addition, SAIL was insolvent when the transfer occurred. For clarity, the Monitor needs only to demonstrate SAIL intended to defraud, defeat or delay a creditor ***or*** that SAIL was insolvent when the transfer occurred.

33. The BIA defines a TUV as a "disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor".[59] In case law, a TUV has been summarily described as "an underhanded strategy to reduce a debtor's assets and thereby avoid creditors".[60]

34. Under s. 96 of the BIA, a trustee (or a Monitor, via s. 36.1 of the CCAA which incorporates s. 96 of the BIA) can seek to set aside TUVs. *Ernst & Young Inc. v Aquino* is the leading authority on the application of s. 96 of the BIA. The trial judge's decision,[61] which was affirmed in both the Court of Appeal and the Supreme Court of Canada, explained that the framework in s. 96 contemplates a two-stage exercise. First, the Court must determine whether a trustee has met its burden of proving a TUV. This requires proving (a) a transfer in the form of a "disposition of property" or "provision of services"; and (b) that the subject debtor received insufficient consideration in return for the transfer.[62]

35. Second, once a TUV has been proven, a court must determine whether the TUV falls within a class of impeachable transactions: (a) transactions at arm's length (s. 96(1)(a)); (b) transactions not at arm's length and which occurred within one year of the bankruptcy (s. 96(1)(b)(i)); or

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[59] BIA, s. 2.
[60] *Ernst & Young Inc. v Anwar*, 2025 SKKB 62 at para 65 [***Anwar***].
[61] 2021 ONSC 527 [***Aquino***], aff'd 2022 ONCA 202, 2024 SCC 31 [***Aquino SCC***].
[62] *Anwar*, *supra* note 60 at para 71-72; *Aquino*, supra note 61 at para 109; *Aquino SCC*, *supra* note 61 at para 32.

(c) transactions not at arm's length and which occurred more than one year but less than five years before the bankruptcy s. 96(1)(b)(ii).[63]

(1) The SPA is a Transfer Under Value

36. For the Monitor to establish that the Impugned Transaction is a TUV, it must show that the consideration received by SAIL for the Shares is "conspicuously less than the fair market value".[64] Absent evidence to the contrary, the value is the value stated by the Monitor.[65]

37. In *Peoples Department Stores Inc. (Trustee of) v Wise*,[66] a case involving, among other issues, a reviewable transaction under (now repealed) s. 100 of the BIA, the Supreme Court of Canada considered what discrepancy between FMV and the consideration received would be "conspicuous". Justices Major and Deschamps, writing for the Court, explained that conspicuousness is determined by the Court having regard to all relevant factors. It is not a question of whether the transaction was conspicuous to the parties at the time of the transaction. While the Court did not set a particular percentage that definitively sets the threshold for a conspicuous difference, the percentage difference is a factor. They noted that a discrepancy of more than 17% was conspicuous, but that a discrepancy of 6% might not be.[67]

38. Case law establishes that the time for determining the amount paid as consideration "is the date of the transfer".[68] In the present case, the FMV of the Shares was €2,520,600.65 as of December 31, 2021. Global Holding agreed to pay €2,400,600 for the Shares at the time, which when discounted over a 20-year payment period is €1,021,883 to €1,376,735. This means that the consideration received by SAIL on the date of the Impugned Transaction was approximately

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[63] *Anwar*, *ibid* at para 73; *Aquino SCC*, *ibid* at paras 38-41.
[64] BIA, s. 2 "transfer at undervalue".
[65] BIA, s. 96(2).
[66] 2004 SCC 68 [***Peoples***].
[67] *Ibid* at paras 85-88.
[68] *Jovkovic v. Da Silva*, 2022 ONSC 2691 at para 16, aff'd 2023 ONCA 137.

59.5% to 45.4% lower than the FMV. Such a discrepancy exceeds the 17% discrepancy cited in *Peoples*. It rises to the level of conspicuous.

(2) The Impugned Transaction is Void under subsection 96(1)(b)(ii)(A) or (B)

39. The Impugned Transaction falls within the third class of impeachable transactions: it occurred between related parties less than five years before SAIL's insolvency. To establish an impeachable transaction in this third class, the Monitor must show that the debtor was insolvent at the time of the transfer or rendered insolvent by it (s. 96(1)(b)(ii)(A)), ***or*** that the debtor intended to defraud, defeat, or delay a creditor (s. 96(1)(b)(ii)(B)). The tests in this third class are disjunctive; nevertheless, the Monitor submits that both tests are satisfied. The Impugned Transaction is therefore void as against the Monitor.

(3) SAIL and Global Holdings are Related Parties

40. Section 4(5) of the BIA provides that persons who are related to each other are deemed not to deal at arm's length while so related. Entities are related to each other if, amongst other things, both are controlled by the same person.[69] The Monitor submits that SAIL and Global Holdings are related parties and that the Impugned Transaction triggers a review under s. 96(1)(b) of the BIA. Mr. Shaw acknowledged on examination that SAIL and Global Holdings did not operate at arm's length,[70] and the record shows common ownership and control between both entities.[71]

(4) The Impugned Transaction Occurred within Five Years of the NOI Proceedings

41. Under s. 96(1)(b) of the BIA, the insolvency look-back period is five years for a non-arm's length transaction from the date of the initial bankruptcy event. SAIL's "initial bankruptcy event" was the date it commenced its NOI proceedings, being March 29, 2025. SAIL continued its

[69] BIA, s. 4(2)(c)(i).
[70] Shaw Examination, *supra* note 9 at p. 49 l. 9-11, p. 85 l. 6-8.
[71] Fifth Report, *supra* note 2 at para. 69.

proceedings under the CCAA on May 13, 2025.[72] The Impugned Transaction took place on December 31, 2021, being three years and three months before the NOI proceeding, and three years and four months before the CCAA proceedings.[73]

(5) SAIL was Insolvent or Rendered Insolvent by the Impugned Transaction

42. Subsection 96(1)(b)(ii)(A) of the BIA requires that the debtor be insolvent at the time of the transfer or have been rendered insolvent by the transfer. The insolvency element of the test for a TUV contemplates two basic types of insolvency: cash flow insolvency and balance sheet insolvency. Proof of either type is sufficient for s. 96 of the BIA.

43. The concepts of cash flow insolvency and balance sheet insolvency are rooted in the definition of an "insolvent person", where the first two sub-paragraphs have generally been regarded as the "cash flow" tests and the third sub-paragraph is seen as a "balance sheet" test.[74] The sub-paragraphs of "insolvent person" are disjunctive, and thus a person who meets the criteria for any one of them is an "insolvent person" under the BIA definition.

44. A solvency determination based on the balance sheet test requires reviewing the "evidence relating to the fair value of the assets and what they might realize if disposed of at a fairly conducted sale under legal process",[75] *i.e.*, a liquidation analysis should be taken to assess FMV.

45. The BIA does not prescribe how soon after a TUV a debtor must be insolvent for it to be "rendered insolvent" for the purposes of s. 96(1)(b)(ii)(A). The verb "render" does not have a precise meaning in this context.

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[72] BIA, s. 2 "date of the initial bankruptcy event"; Fifth Report, *supra* note 2 at para. 70.
[73] Fifth Report, *supra* note 2 at para. 71.
[74] *Anwar*, *supra* 60 at para 82.
[75] *Re King Petroleum Ltd.* (1978), 29 CBR (NS) 76 (Ont SC) at p. 81; see also *Re Stelco Inc.*, 2004 CanLII 24933 (ONSC) at paras. 43-50, 64-65, leave to appeal ref'd [2004] OJ No 1903 (CA), [2004] SCCA No. 336.

46. SAIL's balance sheet dated December 31, 2021 (which reflects the removal of the Shares from SAIL's assets earlier that day) shows total assets of $31.7 million and total liabilities of $27.7 million. This is a narrow $4 million differential that, in the Monitor's submission, eliminated if SAIL's assets are adjusted to reflect FMV, *i.e.*, if a liquidation analysis is conducted. FTI, in its capacity as Proposal Trustee, conducted such analysis at the outset of the NOI proceeding, and it gained further data points on SAIL's FMV as a result of the SISP. On this basis, the Monitor is of the view that the FMV of SAIL's assets as of December 31, 2021, measured on a liquidation basis was less than the balance showed in the 2021 financial statement.[76]

47. Even if SAIL was not balance sheet insolvent as of December 31, 2021, it's financial statements plainly portray a business in distress. Its net loss in 2021 was $5.5 million, compared to a net earning of $24,677 the year prior. SAIL ended the year with negative working capital in the amount of $564,496 (indicating it was cash crunched and at risk of not meeting its short-term obligations), and it had three sizeable obligations that were either in non-compliance or default as set out in paragraph 12 above. It could not have come as a surprise that twelve months later, on December 31, 2022, SAIL was balance sheet insolvent. Its total assets had decreased to $25.8 million and its total liabilities had increased to $35.9 million, reflecting $10.1 million of net liabilities.[77] The 2022 financial statements include a going-concern statement.[78]

48. Accordingly, the Monitor submits that SAIL was more likely than not insolvent at the time of or was rendered insolvent by the Impugned Transaction.

[76] Fifth Report, *supra* note 2 at para 75.
[77] Fifth Report, *supra* note 2 at paras 73 and 74.
[78] Second Supplemental Report, *supra* note 17 at para. 34; 2022 FS, *supra* note 16 at p. 2.

(6) The Impugned Transaction was Intended to Defraud, Defeat, or Delay Creditors

49. The jurisprudence establishes that the intent to defraud, defeat or delay a creditor can be established through "badges of fraud". Where a transaction displays one of the badges of fraud, this is usually be enough to establish the debtor's illegal purpose unless the debtor can provide an innocent explanation.[79] Relevant badges of fraud identified by courts include: (a) the transferor continuing in possession; (b) use of the goods as the transferor's own, including selling them; (c) some benefit being retained under the settlement by the settlor; (d) a close relationship existing between the parties to the conveyance; (e) the conveyance amounting to a trust of the goods; (f) the consideration being grossly inadequate; and (g) unusual haste to make the conveyance.[80]

50. In *Indcondo Building Corp. v Sloan*, the Court examined the badges of fraud and determined that the analysis should involve examining all of the surrounding circumstances, including whether the debtor knew or ought to have known that it was in serious financial jeopardy, and the payment would have a "material adverse impact on his ability to pay his creditors".[81]

51. Multiple badges of fraud are present with the Impugned Transaction:

(a) Mr. Shaw was the ultimate beneficial owner of the Shares both before and after the Impugned Transaction;

(b) the net present value of the Purchase Price was approximately 45.4% to 59.5% lower than the FMV;

(c) no diligence was performed to value the Shares (*e.g.*, no appraisers were retained);

(d) the Impugned Transaction was ostensibly conducted on December 31, 2021, but it was likely backdated from January 28, 2022, for unexplained reasons;

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[79] *Aquino*, supra note 61 at para 155.
[80] *Ibid* at para 153, citing to *Montor Business Corporation v Goldfinger*, 2016 ONCA 406 at paras 72-73.
[81] *Indcondo Building Corp. v Sloan*, 2014 ONSC 4018 at paras 81, 85, 136, aff'd 2015 ONCA 752.

(e) the SPA provides for a 20-year payment term that is both unsecured and interest free, which is not standard practice for arm's length agreements;[82]

(f) Global Holdings had no bank account from which to pay the Purchase Price; and

(g) shortly before the Impugned Transaction, Fonmar OpCo entered into a new rental agreement with Fonmar RealtyCo that significantly increased its rent, resulting in €9,500 of value per month being extracted SAIL's corporate group and moved to Global Holdings' corporate group.[83]

52. Mr. Shaw's disregard for the interests of SAIL's creditors is apparent in how he approached two representations given by SAIL in the SPA. The first representation stated that SAIL is "unlikely to become insolvent for the following two years".[84] Mr. Shaw explained in examination that *no thought* was given to this representation:

> Q. And presumably you carefully considered this clause prior to executing the Share Purchase Agreement?
>
> A. No, I didn't.
>
> Q. And what due diligence, if any, did you do to ensure that SAIL was unlikely to become insolvent within the next two years?
>
> A. I'm not sure how in the midst of the COVID epidemic I would have made a determination of the future thinking of the next two years of insolvency for a company which I didn't believe was insolvent, so I'm not sure what you would expect me to have done in that case.[85]

53. The second representation given by SAIL was that "[t]here is no pledge or any other kind of charge or third party right that can impede the free transmission of the Shares".[86] Mr. Shaw confirmed that he was aware of SAIL's security agreements with both RBC and BDC when giving

[82] Fifth Report, *supra* note 2 at para. 64
[83] *Ibid* at para. 33.
[84] Word SPA, *supra* note 33 at s. 4.1(i)(c).
[85] Shaw Examination, *supra* note 9 at p. 95 l. 23 to p. 96 l. 11.
[86] Word SPA, *supra* note 33 at s. 4.1(ii)(b).

this representation.[87] The RBC Agreement required, amongst other things, that SAIL obtain RBC's consent prior to entering "into any agreement for the purchase or sale of any property outside the normal course of business".[88] The BDC Agreement provided that so long as amounts remained unpaid, SAIL required BDC's consent to "[t]ransfers of any property or assets from the Borrower[89] or any Corporate Guarantor[90] to any related party which is not the Borrower or a Corporate Guarantor". Global Holdings was explicitly named as a related party.[91]

54. Separate from the two aforementioned agreements, Global Holdings was a borrower under a loan agreement with BDC, as lender, and SAIL, as guarantor, dated December 17, 2021. This agreement (entered into two weeks prior to the Impugned Transaction) provided that throughout the term of the loan, "[n]on-trade transfers are not permitted between the Borrower and/or the Corporate Guarantors", and BDC's consent was required to "sell or otherwise transfer a substantial part of their business or any substantial part of their assets".[92]

55. Mr. Shaw claims without supporting evidence that RBC and BDC were "fully aware" of the Impugned Transaction.[93] The Monitor disputes this fact, but even if it is assumed true, it does not speak to *consent*. There is no evidence on record that RBC or BDC consented to the Impugned Transaction, as required under the applicable loan agreements. Both RBC and BDC have denied providing such consent.[94] When Mr. Shaw was asked about the particulars of the meetings where RBC and BDC were purportedly informed of the Impugned Transaction, he stated that he "can't recall" the dates, that he does "not typically, no" keep notes of his meetings, and that he does not

[87] Shaw Examination, *supra* note 9 at p. 97 l. 7-25.
[88] Fifth Report, *supra* note 2 at para. 79(a) and Appendix "Z" at Schedule A, s. V(a)(iv) and (vi).
[89] This refers to SAIL.
[90] This refers to various subsidiaries of SAIL including Fonmar OpCo.
[91] Fifth Report, *supra* note 2 at para. 79(b) and Appendix "AA" at p. 10.
[92] Fifth Report, *supra* note 2 at para. 81 and Appendix "BB" at p. 7 and Schedule "A", Section III – Covenants.
[93] Shaw Affidavit, *supra* note 40 at para. 41.
[94] Fifth Report, *supra* note 2 at para. 79; Second Supplemental Report, *supra* note 17 at paras. 50-53.

have any notes specific to the meetings with RBC or BDC. When asked if SAIL sought consent, Mr. Shaw stated: "That would have been done by Mr. Neufeld and I do not recall."[95]

56. The Monitor is not aware of a genuine commercial justification for the Impugned Transaction. Mr. Shaw claims that the Impugned Transaction was in preparation for the sale of the business; in his telling, there are purportedly benefits to separating operating companies from real estate companies and that in 2017 a prospective purchaser, Semperit, had made clear that it only wanted SAIL's business and not its real estate.[96] This justification does not withstand scrutiny.

57. First, the Impugned Transaction was consummated years after discussions with Semperit had taken place. There is no evidence on the record of any other prospective purchasers, let alone prospective purchasers demanding that real estate be split from the operating business. Second, the goal of keeping the Spanish Real Property in a dedicated real estate corporation had already been met: Fonmar RealtyCo was exactly that. If an eventual purchaser did not want real estate assets, Fonmar RealtyCo could have been excluded from the purchase transaction easily enough.

58. Mr. Shaw has further claimed that the Spanish Real Property was the only real property not in Global Holdings' structure.[97] This is not a justification for the Impugned Transaction, and in any event it is false since SAIL was the direct owner of SAIL's factory in Parry Sound in 2021 and it remained the direct owner until its sale in these CCAA proceedings.[98]

59. Accordingly, the Monitor submits that the Impugned Transaction was clearly an effort to transfer value away from SAIL's creditors for Mr. Shaw's own benefit. There was no genuine commercial reason or justifications for consummating the Impugned Transaction.[99]

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[95] Shaw Examination, *supra* note 9 at p. 104 l. 22, p. 105 l. 7-21, p. 106 l. 23 to p. 107 l. 3.
[96] Shaw Affidavit, *supra* note 40 at paras. 18-20.
[97] *Ibid* at para. 20.
[98] Shaw Examination, *supra* note 9 at p. 20, l. 1-22.
[99] Fifth Report, *supra* note 2 at para. 77.

(7) The Appropriate Remedy for the TUV is the Return of the Shares

60. This Court has the authority under s. 96(1) of the BIA to declare the Impugned Transaction void as against the Monitor. The Court has previously reversed share transfers where they constitute a TUV.[100] In the alternative, also in reliance on s. 96(1) of the BIA, this Court should order that Global Holdings pay to the estate of SAIL the amount of €2,520,600.65, being the conservatively estimated value of the Shares at the time of the Impugned Transaction, plus interest.

B. THE SPA IS UNENFORCEABLE AND/OR WAS BREACHED BY GLOBAL HOLDINGS

61. If the Impugned Transaction is not a TUV, then the Monitor submits that (a) in the alternative, the SPA does not transfer of ownership of the Shares under Spanish law; and (b) in the further alternative, the SPA was breached by Global Holdings. In such circumstances, the Impugned Transaction is not enforceable against third parties like the Monitor and SAIL continues to hold legal title to the Shares, or the Shares ought to be returned to SAIL as a remedy.

(1) This Court Has the Jurisdiction to Determine the Enforceability of the SPA

62. Notwithstanding the fact that the SPA is governed by Spanish law, this Court has the jurisdiction to determine whether the Impugned Transaction is enforceable as against the Monitor.

(i) *This Court is Empowered to Make "Any Order that it Considers Appropriate"*

63. Section 11 of the CCAA gives the Court the authority to grant "any order that it considers appropriate in the circumstances."[101] The Supreme Court of Canada has described this broad judicial discretion—which plays a prominent role in CCAA restructurings—as the "true 'engine'" driving the statutory scheme of the CCAA.[102] In exercising its discretion under the CCAA, the Court is to keep three baseline considerations in mind: (a) the appropriateness of the order being

[100] *Albert Gelman Inc. v 1529439 Ontario Limited*, 2020 ONSC 7917; aff'd 2021 ONCA 784.
[101] CCAA, s. 11.
[102] *Montréal (City) v Deloitte Restructuring Inc.*, 2021 SCC 53 at para 48.

sought; (b) due diligence and; (c) good faith on the applicant's part.[103] With respect to the appropriateness of the order being sought, the question is whether the order "will usefully further efforts to achieve the remedial purpose of the CCAA".[104] The Supreme Court of Canada expanded this remedial purpose in *Montreal (City) v. Deloitte Restructuring Inc.*, writing:

> […] These remedial objectives include the following: avoiding the social and economic losses resulting from the liquidation of an insolvent company; **maximizing creditor recovery; ensuring fair and equitable treatment of the claims against the debtor company**; preserving going-concern value where possible; protecting jobs and communities affected by the company's financial distress; and enhancing the credit system generally […][105] [*emphasis added*]

64. Returning the Shares to SAIL increases the value of SAIL's estate, in turn increasing creditor recovery. This is the only fair and equitable outcome. To decide otherwise would allow a related party to keep a multi-million-euro property that was stripped from SAIL while it was insolvent or verging on insolvency. Accordingly, the Monitor submits that this Court can invoke its broad and inherent jurisdiction to determine if the SPA is enforceable as against the Monitor.

(ii) *The "Single Proceeding" Model Dictates that this Court is the Correct Forum for Resolving this Dispute*

65. Canadian courts have consistently held that disputes relating to CCAA debtors should be resolved by the CCAA court. This is founded on the "single proceeding" model, which favours litigating disputes involving a debtor in one jurisdiction.[106] The leading authority on the single proceeding model is the Supreme Court of Canada's decision in *Sam Lévy & Associés Inc. v Azco Mining Inc*., where the trustee-in-bankruptcy in a Québec proceeding brought a petition in Québec to recover assets from service provider in British Columbia.[107] The underlying contracts were

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[103] *Ibid* at para 85.
[104] *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60 at para 70.
[105] *Montréal (City) v Deloitte Restructuring Inc.*, *supra* note 102 at paras 85-86.
[106] *Nortel Networks Corp., Re*, 2015 ONSC 1354 at para 22.
[107] 2001 SCC 92 [***Sam Lévy***].

governed by British Columbia law. The service provider moved to transfer the petition to British Columbia on the basis that it was the proper forum. The Supreme Court of Canada confirmed that the Québec court was the proper forum. Justice Binne, writing for the Court, explained the "single proceeding" (or "single control") model as follows:

> In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or "single control" (Stewart, supra, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a "stranger to the bankruptcy", has the burden of demonstrating "sufficient cause" to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of "locality of a debtor" in s. 2(1). The trustee in that locality is mandated to "recuperate" the assets, **and related proceedings are to be controlled by the bankruptcy court of that jurisdiction**. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.[108] [*emphasis added*]

66. The single proceeding model has been consistently applied in CCAA cases. In *Re Essar Steel Algoma Inc*., this Court confirmed that the adjudication of a dispute related to the termination of a supply contract could be determined in Ontario notwithstanding the supply contract being governed by Ohio law, the supplier entities existing under Ohio or Delaware law, and pending litigation on the supply contract in Ohio.[109] The Québec court similarly applied the single proceeding model in *Re Montréal, Maine & Atlantic Canada Co.* when a US-insurer brought a

[108] *Ibid* at para. 76; see also *Newfoundland and Labrador v AbitibiBowater Inc*., 2012 SCC 67 at para. 21 of where the Supreme Court described the single proceeding model as "[o]ne of the central features of the CCAA scheme"; see also *Peace River Hydro Partners v Petrowest Corp*., 2022 SCC 41 at para 54 where the Supreme Court of Canada wrote that "[t]he central role of courts in ensuring the equitable and orderly resolution of insolvency disputes is reflected in the 'single proceeding model'."

[109] 2016 ONSC 595 at paras 3, 16.

motion to lift the stay to adjudicate the debtor's insurance claim in Maine, the insurance contract's governing jurisdiction.[110] The Court dismissed that motion.

67. More recently, the single proceeding model was applied in the receiverships of *Re Petrowest Corporation*[111] and *Re Mundo Media Ltd.*,[112] when the British Columbia and Ontario court, respectively, determined that they had the jurisdiction to override forum selection clauses. Both cases were upheld on appeal. In the case of *Re Petrowest Corporation*, Côté J. emphasized the utility of bringing all of an insolvent debtor's disputes into one forum, i.e. the insolvency court:

> The single proceeding model is intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights. In other words, the single proceeding model protects the clear "public interest in the expeditious, efficient and economical clean-up of the aftermath of a financial collapse" [*citation omitted*].[113]

68. Here, there are compelling reasons to adjudicate disputes arising from the SPA in Ontario:

(a) Global Holdings is not a "stranger to the bankruptcy".[114] At the time of the Impugned Transaction, Global Holdings and SAIL were controlled by the same principal, Mr. Shaw. Due to the nature of the intercompany set-off between Global Holdings and SAIL, each entity is both a creditor and debtor of the other;

(b) Global Holdings and SAIL exist under Ontario law and are registered at the same address. Mr. Shaw and Mr. Neufeld, their principles, reside in Ontario;[115]

(c) the SPA was signed in Ontario and notarized by an Ontario notary public;[116] and

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[110] 2013 QCCS 5194 at paras 14, 20, and 29.
[111] *Petrowest Corporation v Peace River Hydro Partners*, 2019 BCSC 2221; aff'd 2020 BCCA 339; aff'd 2022 SCC 41.
[112] *Royal Bank of Canada v Mundo Media Ltd.*, 2022 ONSC 2147; aff'd 2022 ONCA 607.
[113] *Petrowest Corporation v Peace River Hydro Partners*, 2022 SCC 41 at para 55.
[114] *Sam Lévy*, supra note 107 at para 39.
[115] Fifth Report, *supra* note 2 at paras. 24, 36, 44; Shaw Examination, *supra* note 9 at p. 7 l. 17-19, p. 12 l.25 to p. 13 l. 3.
[116] Fifth Report, *supra* note 2 at Appendix "P".

(d) Global Holdings has retained Ontario counsel and is fully capable of asserting and protecting its rights in Ontario. There is no evidence that it will suffer any prejudice if this Court rather than the Spanish court determines the enforceability of the SPA.

69. Accordingly, this Court can adjudicate matters arising the SPA.

(iii) *This Court has Jurisdiction Under General Principles of Private International Law*

70. In *Club Resorts v Van Breda*, the Supreme Court of Canada set out a non-exhaustive list of presumptive connecting factors that, *prima facie*, entitle a court to assume jurisdiction over a dispute. These factors include the defendant being domiciled or a resident in the province; (b) the defendant carrying on business in the province; and (c) a contract connected with the dispute being made in the province.[117] If one presumptive factors exists, the court should assume that it is properly seized of the matter. The defendant can then rebut the presumption.[118] Here, there is a *prima facie* case that Ontario is the proper jurisdiction for determining matters related to the SPA for the reasons set out in paragraph 68 above. Accordingly, Ontario is the appropriate jurisdiction to determine the SPA.

(2) The SPA is Unenforceable under Spanish Law

71. Mr. de Cambra, a commercial law specialist lawyer registered with the Illustrious Bar Association of Madrid (Spain), has provided this Court with an expert report on matters of Spanish law. In his report, he explains that a share purchase agreement under Spanish law is a binding agreement between the parties to the agreement, but it does not, by itself, effect the transfer of title. To effect a title transfer, certain formal requirements must be met, such as the agreement's execution in a public deed, the accreditation of the intervening parties' representation, and the

[117] *Van Breda v Village Resorts Ltd.*, 2012 SCC 17 at para 90.
[118] *Van Breda* paras 94-98.

notarial verification of the ownership of the transferred participants. Compliance with these requirements is necessary for a buyer to be recognized as a shareholder.[119]

72. The deed of constitution for Real Holdings, which includes Real Holdings' by-laws, provide further requirements: Real Holdings "shall only recognize as a shareholder the person who is recorded in the Shareholders' Register Book", shares may only be transferred once the appropriate registrations are made with the Commercial Registry, and "[t]ransfers of company shares […] must be executed in a public deed".[120]

73. The Monitor has not been able to locate a copy of the notarial public deed or the shareholder register book of Real Holdings. Global Holdings has not produced either document.

74. Mr. Shaw claims that the Impugned Transaction was structured with the advice of Spanish legal counsel, being Mr. Luis Giménez Godosar.[121] When contacted, Mr. Godosar advised that he did not even know that the SPA had been executed until May 2025, and that he was not aware of a public deed being executed.[122] This implies that the necessary steps under Spanish law to give effect to the SPA likely did not take place.

75. As a result, under Spanish law the SPA "may generate legal effects between" SAIL and Global Holdings, but due to non-compliance with the legal and statutory requirements, "it lacks full effectiveness vis-à-vis [Real Holdings] and third parties".[123] The Monitor therefore submits and requests a declaration from the Court that the Shares were not transferred to Global Holdings and SAIL remains the legal owner of the Shares.

[119] Spanish Law Expert Report, *supra* note 32 at p. 3.
[120] *Ibid* at p. 4.
[121] Shaw Affidavit, *supra* note 40 at para. 27.
[122] Second Supplemental Report, *supra* note 17 at para. 13.
[123] Spanish Law Expert Report, *supra* note 32 at p. 14.

(3) Global Holdings is in Breach of the SPA

76. Article 1445 of the Spanish civil code defines purchase and sale contracts under Spanish law as a contract pursuant to which "one of the contracting parties undertakes to deliver a specific object and the other to pay a certain price for it".[124] There are no restrictions regarding the form or timing of payment, but the purchase price must be certain.[125]

77. In the present case, payment was certain on the face of the SPA: €120,030 per annum, paid in the last quarter of each year.[126] Such payments, however, were never made—Global Holdings' lack of a bank account would have certainly made it difficult to pay.[127] Between December 31, 2021, and the commencement of these CCAA proceedings, SAIL never recorded a single entry in its general ledger showing the payment of €120,030, whether as a cash payment, as part of an intercompany set-off transaction, or otherwise.[128]

78. In Mr. Shaw's telling, the Purchase Price was to be paid by (a) setting off rent owed by SAIL to Global Holdings on the Glover Road Property; and (b) setting off proceeds received from real property transactions.[129] Global Holdings, however, has not established that set-off (either legal or equitable) applies in this case. Mutuality of debts, for example, has not been proven, nor has a contractual right to set-off been proven (the SPA does not contemplate set-off).

79. Even if set-off could apply to the Purchase Price, Global Holdings has not proven that the Purchase Price was, in fact, set-off. The "evidence" that the Monitor has for set-off comes from SAIL's general ledger, which shows amounts owing between SAIL and Global Holdings. But the ledger may not be complete or have properly recorded all transactions—a particular concern for

[124] *Ibid* at p. 3.
[125] *Ibid* at p. 7.
[126] Word SPA, *supra* note 33 at s. 3 3.
[127] Shaw Affidavit, *supra* note 40 at para. 25.
[128] Fifth Report, *supra* note 2 at para. 94.
[129] Shaw Affidavit, *supra* note 40 at para. 26.

2023, 2024 and 2025 when SAIL does not have audited financial statements. This makes it difficult to confirm the validity or appropriateness of the transactions recorded in the general ledger.[130] Unless and until the general ledger is proven to be reliable, this Court should give it little weight.

80. Even if the amounts in the general ledger are assumed to be accurate and all amounts owed or owing by SAIL to Global Holdings for the period December 31, 2021, to the commencement of the CCAA proceedings are set-off against one another, there remains an outstanding debt of $1.01 million owing by Global Holdings to SAIL.[131] Mr. Shaw claims that because the outstanding balance dropped by more than the Purchase Price (from a high of $6.47 million on December 31, 2021), then the Purchase Price was paid.[132] But this assumes that the Purchase Price was required to be paid down in advance of any other amounts owing by Global Holdings to SAIL, including the pre-Impugned Transaction balance of $3.02 million. Mr. Shaw's logic also makes the assumption that the Purchase Price was paid down in advance of the payments that SAIL continued to make on behalf of Global Holdings after the Impugned Transaction.[133] There is, however, no ability based on the record to determine which amounts owing by Global Holdings to SAIL would be set-off by against the Purchase Price as opposed to any other debts.[134]

81. Mr. Shaw stated that "it was never Global Holdings' and SAIL's intention" that the Purchase Price would be paid in annual instalments over 20 years,[135] suggesting that advanced payments were contemplated. However, the SPA does not contemplate advanced payments. As Mr. de Cambra explained, it may not be a requirement under Spanish law to expressly provide for

[130] Second Supplemental Report, *supra* note 17 at para. 28.
[131] Fifth Report, *supra* note 2 at para. 98.
[132] Shaw Affidavit, *supra* note 40 at para. 34
[133] Second Supplemental Report, *supra* note 17 at para. 29.
[134] Fifth Report, *supra* note 2 at para 97.
[135] Shaw Affidavit, *supra* note 40 at para. 33.

advanced payments in a SPA, but they "should be" and it is "quite unusual" for them not to be if they are intended to be made.[136]

82. In addition, the payment terms under the SPA carried no interest, security, or guarantees. While such terms may be allowed under Spanish law, Mr. de Cambra cautions that "[a]n excessively long deferral of payment, without interest or guarantees, may indicate the parties' true intention in the transaction" and, with respect to the 20-year term, "[i]t would not be particularly difficult to demonstrate that such a deferral, coupled with the absence of interest, could constitute a fraudulent arrangement."[137]

83. Due to failing to comply with the SPA's payment obligations, the Monitor submits that Global Holdings is in breach of the SPA.

(4) The Remedy for a Breaching the SPA is the Return of the Shares

84. Under Spanish law, a buyer's failure to make payment is a serious and fundamental breach of contract. In such cases, a seller can exercise its rights under Art. 1124 of the Spanish civil code, which, among other things, allows for contractual termination, which implies the ineffectiveness of the contract and the reversion of the ownership of the transferred shares.[138]

PART V: RELIEF REQUESTED

85. For the foregoing reasons, the Monitor respectfully submits that this Court should (a) declare the SPA void as a TUV; (b) in the alternative, declare that the SPA is not enforceable against third parties, including the Monitor; or (c) in the further alternative, declare the Global Holdings breached the SPA and that the Shares ought to be returned to SAIL.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1ST DAY OF DECEMBER, 2025.

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[136] Transcript from the cross-examination of Víctor de Cambra Antón conducted November 26, 2025 (the "**de Cambra Examination**") at p. 21 l. 20 to p. 22 l. 16.
[137] Spanish Law Expert Report, *supra* note 32 at p. 7.
[138] *Ibid* at p. 9, 14-15.

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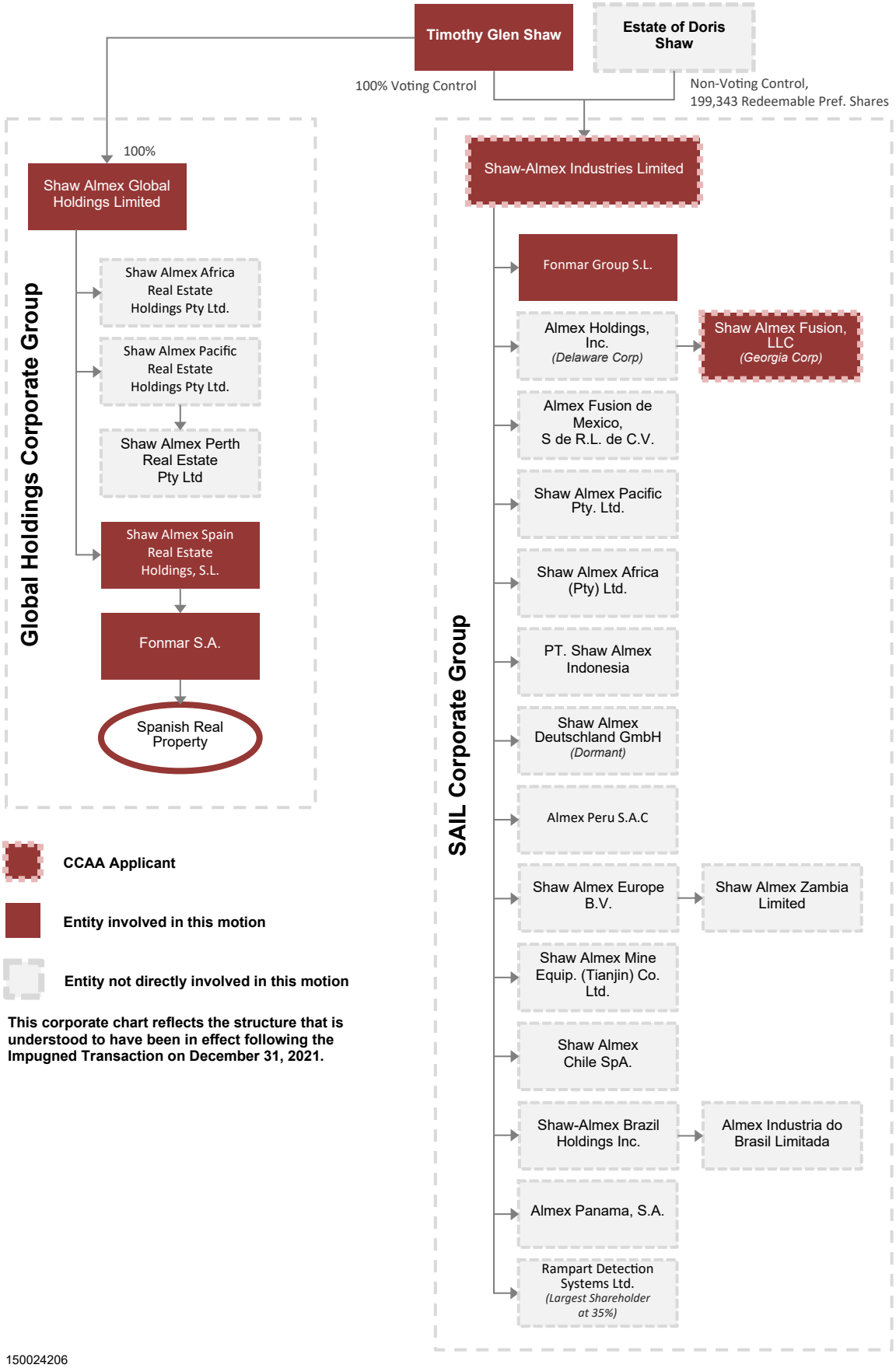
ANNEX "A"



CCAA Applicant

Entity involved in this motion

Entity not directly involved in this motion

This corporate chart reflects the structure that is understood to have been in effect following the Impugned Transaction on December 31, 2021.

SCHEDULE "A"

List of Authorities

1. *Albert Gelman Inc. v 1529439 Ontario Limited*, 2020 ONSC 7917
2. *Aquino v Bondfield Construction Co.*, 2024 SCC 31
3. *Century Services Inc. v Canada (Attorney General)*, 2010 SCC 60
4. *Ernst & Young Inc. v Anwar*, 2025 SKKB 62
5. *Ernst & Young Inc. v Aquino*, 2021 ONSC 527
6. *Ernst & Young Inc. v Aquino*, 2022 ONCA 202
7. *Indcondo Building Corp. v Sloan*, 2014 ONSC 4018
8. *Indcondo Building Corp. v Sloan*, 2015 ONCA 752
9. *Jovkovic v. Da Silva*, 2022 ONSC 2691
10. *Jovkovic v. Da Silva*, 2023 ONCA 137
11. *Montor Business Corporation v Goldfinger*, 2016 ONCA 406
12. *Montréal (City) v Deloitte Restructuring Inc.*, 2021 SCC 53
13. *Newfoundland and Labrador v AbitibiBowater Inc*., 2012 SCC 67
14. *Nortel Networks Corp., Re*, 2015 ONSC 1354
15. *Pantziris v 1529439 Ontario Limited*, 2021 ONCA 784
16. *Peace River Hydro Partners v Petrowest Corp*., 2022 SCC 41
17. *Peoples Department Stores Inc. (Trustee of) v Wise*, 2004 SCC 68
18. *Petrowest Corporation v Peace River Hydro Partners*, 2019 BCSC 2221
19. *Petrowest Corporation v Peace River Hydro Partners*, 2020 BCCA 339
20. *Petrowest Corporation v Peace River Hydro Partners*, 2022 SCC 41
21. *Re Eagle River International Ltd.*, 2001 SCC 92

22. *Re Essar Steel Algoma Inc.*, 2016 ONSC 595

23. *Re King Petroleum Ltd.* (1978), 29 CBR (NS) 76 (Ont SC)

24. *Re Montréal, Maine & Atlantic Canada Co.*, 2013 QCCS 5194

25. *Re Mundo Media Ltd.*, 2022 ONCA 607

26. *Re Stelco Inc.*, [2004] OJ No 1903 (CA)

27. *Re Stelco Inc.*, [2004] SCCA No. 336

28. *Re Stelco Inc.*, 2004 CanLII 24933 (ONSC)

29. *Royal Bank of Canada v Mundo Media Ltd.*, 2022 ONSC 2147

30. *Van Breda v Village Resorts Ltd.*, 2012 SCC 17

PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.

Nicholas Avis LSO#: 76781Q

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.
[…]

Preferences and Transfers at Undervalue
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 ———————————**

Definitions
2 In this Act, […]

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

(a) an assignment by or in respect of the person,

(b) a proposal by or in respect of the person,

(c) a notice of intention by the person,

(d) the first application for a bankruptcy order against the person, in any case

(i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or

(ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,

(e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or

(f) proceedings under the *Companies' Creditors Arrangement Act*; (ouverture de la faillite)

[…]

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable)

[…]

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (opération sous-évaluée)

[…]

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.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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(Returnable December 4, 2025)

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