

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF  
15315441 CANADA INC.**

Applicant

**FACTUM OF THE APPLICANT  
(Re: D&O Lift Stay, Fees Approval, and Stay Extension)**

November 20, 2024

**STIKEMAN ELLIOTT LLP**  
Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Maria Konyukhova (LSO #52880V)**  
Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

**Philip Yang (LSO #82084O)**  
Tel: (416) 869-5593  
Email: pyang@stikeman.com

Lawyers for the Applicant

TO: THE SERVICE LIST

## PART I - OVERVIEW<sup>1</sup>

1. The F&F Entities obtained relief under the CCAA by an Initial Order dated June 5, 2023, which was amended and restated on June 15, 2023. On June 19, 2023, this Court granted the SISP Order which among other things, approved the SISP and authorized the F&F Entities and the Monitor to immediately commence the SISP.
2. Following completion of the SISP, on August 29, 2023, the F&F Entities sought and obtained the Approval and Reverse Vesting Order which, among other things, approved the Subscription Agreement and the Transactions contemplated therein and approved the Claims Process, as the Transactions generated approximately \$13 million in excess of the secured debt of the F&F Entities.
3. The Transactions closed on September 15, 2023. Among other things, all Excluded Assets, Excluded Contracts, Excluded Leases, and Excluded Liabilities vested absolutely and exclusively in Residual Co., and the F&F Entities were deemed to cease being applicants in these CCAA Proceedings, with Residual Co. becoming an applicant in these CCAA Proceedings.
4. On July 12, 2024, the Applicant sought and obtained an order extending the Stay Period until and including November 29, 2024.
5. This factum is filed in support of Residual Co.'s motion for, among other things: (a) termination of the Claims Process with respect to the adjudication of the D&O Claims; (b) lifting the stay of proceedings to allow the Shareholder Claimants to bring an action against the former D&Os; (c) approval of the the Eighth Report and the activities of the Monitor referred to therein; (d) approving the fees of the Monitor and its counsel; and (e) extending the Stay Period from November 29, 2024, until and including March 31, 2025.

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<sup>1</sup> All capitalized terms used in this factum and not otherwise defined have the meanings given to them in the affidavit of Avininder Grewal sworn on November 15, 2024 (the "**Grewal Affidavit**") and the Eighth Report of the Monitor dated November 15, 2024 (the "**Eighth Report**", and together with all previous Reports of the Monitor, the "**Monitor's Reports**").

## PART II - FACTS

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

### A. Background

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

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

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

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<sup>2</sup> Grewal Affidavit at para. 4.

<sup>3</sup> Grewal Affidavit at paras. 5-7.

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

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

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

11. The Transactions closed on September 15, 2023. Among other things, the following occurred upon closing of the Transactions:

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

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<sup>4</sup> Grewal Affidavit at para. 8.

<sup>5</sup> Grewal Affidavit at para. 9.

<sup>6</sup> Grewal Affidavit at para. 10.

12. As a result of the Transactions, the F&F Entities are continuing to operate, with the majority of employees retaining their employment, majority of their landlords retaining a paying tenant and a majority of their suppliers retaining a paying counterparty. In addition, the Transactions generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.<sup>7</sup>

13. Most recently, on July 12, 2024, the Applicant sought and obtained an order extending the Stay Period until and including November 29, 2024.<sup>8</sup>

#### **B. Update on Applicant's Activities**

14. Following issuance of the last order extending the Stay Period until and including November 29, 2024, the Applicant has been working with the Monitor in good faith and with due diligence towards completing the Claims Process and making a distribution to its creditors. More particularly, the Applicant, together with the Monitor, has continued to reconcile the Claims received.<sup>9</sup>

15. In addition to the Applicant's efforts to advance the Claims Process, it has:

- a. responded to creditor and stakeholder enquiries regarding these CCAA Proceedings;
- b. worked to complete the Applicant's annual corporate filings; and
- c. conserved cash by engaging in discussions and working towards settling 4 Disputed Claims.<sup>10</sup>

#### **C. Activities of the Monitor and Overview of the Monitor's and TGF's Fees and Disbursements**

16. During the relevant periods of time described in the Eighth Report, the Monitor has fulfilled the role of the Monitor as such role is described in the ARIO and prescribed by the CCAA.

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<sup>7</sup> Grewal Affidavit at para. 11.

<sup>8</sup> Grewal Affidavit at para. 15.

<sup>9</sup> Grewal Affidavit at paras. 18-20.

<sup>10</sup> Grewal Affidavit at para. 21.

17. During the relevant periods of time described in the Eighth Report, the Monitor has undertaken, among other things, the following activities:

- a. continued to operate and monitor its telephone hotlines and email account for stakeholder inquiries;
- b. supervised and assisted with activities relating to the Claims Process, which included, among other things:
  - i. engaging in discussions with Claimants and the Claims Officer;
  - ii. litigating certain Notices of Dispute;
  - iii. engaging in discussions with the Shareholder Claimants with respect to this motion; and
- c. continued to engage in discussions with the Monitor's legal counsel, Thornton Grout Finnigan LLP ("**TGF**") and counsel for the Applicant regarding matters related to the Claims Process.<sup>11</sup>

18. The Monitor and TGF have been paid their fees and disbursements at their standard rates and charges by the Applicant, as applicable, from time to time, in accordance with paragraph 33 of the ARIO, as part of the costs of the CCAA Proceedings.<sup>12</sup>

19. The Monitor and TGF have maintained records of their professional time and costs. The Monitor now requests approval of its fees and disbursements for the period of October 1, 2023, to September 30, 2024, and the fees and disbursements of TGF for the period of October 1, 2023, to September 30, 2024 (both periods are collectively referred to as the "**Period**").<sup>13</sup>

20. The total fees and disbursements of the Monitor for the period of October 1, 2023, to September 30, 2024, are \$734,669.45, with fees in the amount of \$645,964.00, disbursements in the amount of \$4,185.95, and HST in the amount of \$84,519.50, as are more particularly described in the Affidavits of Jeffrey Rosenberg sworn January 23, 2024 (the "**2023 Rosenberg**

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<sup>11</sup> Eighth Report at para. 20.

<sup>12</sup> Eighth Report at para. 40.

<sup>13</sup> Eighth Report at para. 41.

**Affidavit**") and November 15, 2024 (the "**Rosenberg Affidavit**"), copies of which are attached to the Eighth Report as Appendices "B" and "C", respectively.<sup>14</sup>

21. The total fees and disbursements of TGF from October 1, 2023, to September 30, 2024, are \$577,087.41, with fees in the amount of \$493,707.00, disbursements in the amount of \$17,273.00, and HST in the amount of \$66,106.41, as more particularly described in the Affidavits of Leanne Williams, sworn January 23, 2024 (the "**2023 Williams Affidavit**"), and November 15, 2024 (the "**Williams Affidavit**", and together with the 2023 Rosenberg Affidavit, the Rosenberg Affidavit, and the 2023 Williams Affidavit, the "**Fee Affidavits**"), copies of which are attached to the Eighth Report as Appendices "D" and "E", respectively.<sup>15</sup>

22. The Monitor and TGF billed amounts at each firm's standard/regular hourly rates, which are consistent with the hourly rates charged by other firms of comparable size and expertise for the provision of similar services regarding significant and complex commercial restructuring and accounting matters.<sup>16</sup>

23. In the Monitor's professional judgement, the accounts requested to be approved on this motion, as set out in the Fee Affidavits, are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Orders issued in the CCAA Proceedings.<sup>17</sup>

#### **D. D&O Claims**

24. The Shareholder Claimants submitted three Disputed Claims which are substantially the same and allege that the former D&Os of FFHC and FFI made negligent misrepresentations, acted in breach of their fiduciary duties, and acted in a manner that unfairly prejudiced the Shareholder Claimants. The aggregate amount being sought by the Shareholder Claimants is \$307,280.<sup>18</sup>

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<sup>14</sup> Eighth Report at paras. 42-44.

<sup>15</sup> Eighth Report at paras. 45-47.

<sup>16</sup> 2023 Rosenberg Affidavit at paras. 4-5; Rosenberg Affidavit at paras. 5-6; 2023 Williams Affidavit at paras. 6-7; Williams Affidavit at paras. 6-7.

<sup>17</sup> Eighth Report at para. 49.

<sup>18</sup> Grewal Affidavit at para. 23.

25. The Applicant made arrangements for the binding of the run-off for the D&O insurance policy in favour of the former D&Os of the F&F Entities, as the former D&Os acted diligently and in the best interests of the F&F Entities' stakeholders throughout the CCAA Proceedings which resulted a going-concern solution for the F&F Entities' business.<sup>19</sup>

26. As there is no separate pool of funds to recover in respect of Claims solely against the former D&Os, the Applicant, following consultation with the Monitor, decided it would be appropriate and in the best interests of the Applicant and its stakeholders, including the Shareholder Claimants, to remove the D&O Claims from the Claims Process so that the D&O Claims may be pursued as against the D&Os outside the CCAA Proceedings.<sup>20</sup>

#### **E. Claims Process**

27. The Monitor, together with the Applicant, has continued to reconcile the Claims received. To date, the Monitor has reconciled and accepted 166 Claims totalling approximately \$36.0 million.<sup>21</sup>

28. To date, 4 Disputed Claims totalling approximately \$8.4 million remain under dispute, excluding the D&O Claims.<sup>22</sup>

### **PART III – ISSUES**

29. This issues to be considered on this motion are whether this Court should:

- a. terminate the Claims Process with respect to the adjudication of the D&O Claims and lift the stay of proceedings in favour of the D&Os solely for the purpose of permitting the Shareholder Claimants to bring an action against the D&Os outside the CCAA Proceedings;

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<sup>19</sup> Grewal Affidavit at para. 25.

<sup>20</sup> Grewal Affidavit at para. 24.

<sup>21</sup> Grewal Affidavit at para. 19.

<sup>22</sup> Grewal Affidavit at para. 20.



- b. approve the Eighth Report and the conduct and activities of the Monitor referred to therein;
- c. approve the fees and disbursements of the Monitor and TGF; and
- d. extend the Stay Period until and including March 31, 2025.

## PART IV – LAW AND ARGUMENT

### A. The Stay Should be Lifted Solely for the Purpose of Permitting the Shareholder Claimants to Pursue the D&O Claims Outside the Claims Process.

30. The lifting of a CCAA stay is discretionary. In determining whether to lift a stay of proceedings, the Court should consider whether there are sound reasons for doing so consistent with the objectives of the CCAA, including a consideration of: (a) the balance of convenience; and (b) the relative prejudice to the parties.<sup>23</sup>

31. In *Algoma*, the Ontario Court of Appeal held that there would be no prejudice to a CCAA debtor by lifting the stay of proceedings if such order explicitly stated that the judgement against the CCAA debtor was only enforceable against the insurance proceeds available to the debtor and not as against the debtor's current or future assets. The Court also concluded that the insurer would not suffer any prejudice.<sup>24</sup>

32. The Court in *Carey* affirmed *Algoma* and found that the existence of third party insurance obviates any prejudice against a CCAA debtor that would arise from lifting a stay of proceedings to allow an action to proceed to a judgment which enforceability is limited to the indemnity provided by that insurance.<sup>25</sup>

33. Similarly, as the Applicant made arrangements for the binding of the run-off for the D&O insurance policy in favour of the former D&Os of the F&F Entities, there is third party insurance which will obviate any prejudice to the Applicant.<sup>26</sup>

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<sup>23</sup> *Timminco Limited (Re)*, [2014 ONSC 5593](#) at [para. 50](#).

<sup>24</sup> *Algoma Steel Corp. v Royal Bank of Canada*, [1992 CanLII 7413](#) (Ont. CA). [*Algoma*]

<sup>25</sup> *Cary Canada Inc. (Re)*, [2006 CanLII 41289](#) (ONSC) at [paras. 6-16](#).

<sup>26</sup> Grewal Affidavit at para. 24.

34. Permitting such relief will increase value for other unsecured creditors participating in the Claims Process, without any resulting prejudice to any interested parties, including the Shareholder Claimants and the D&O insurers.

35. The Shareholder Claimants, the D&Os, and the D&O insurers were provided with notice of this motion.<sup>27</sup>

36. The Monitor supports lifting the stay of proceedings in favour of the D&Os solely for the purpose of permitting the Shareholder Claimants to bring an action against the former D&Os.<sup>28</sup>

**B. The Monitor's Activities in the Eighth Report Should be Approved**

37. A request to approve a monitor's report "is not unusual".<sup>29</sup> There are policy and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during the CCAA Proceedings. Specifically, Court approval:

- a. allows the Monitor to move forward with next steps in the CCAA Proceedings;
- b. brings the Monitor's activities before the Court;
- c. allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- d. enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- e. provides protection for the Monitor not otherwise provided by the CCAA; and
- f. protects the creditors from the delay and distribution that would be caused by:
  - i. re-litigation of steps taken to date, and
  - ii. potential indemnity claims by the Monitor.<sup>30</sup>

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<sup>27</sup> Grewal Affidavit at para. 27; Affidavit of Service of Philip Yang sworn November 18, 2024.

<sup>28</sup> Eighth Report at para. 38.

<sup>29</sup> *Re Target Canada Co*, [2015 ONSC 7574](#) at para 2 [*Target*].

<sup>30</sup> *Target*, *ibid* at [para 22](#).

38. The form of the proposed order, with respect to approval of the Eighth Report and the Monitor's activities described therein, is consistent with the language used in *Target*<sup>31</sup> and subsequent proceedings.<sup>32</sup>

39. In the present case, the Eighth Report and the conduct and activities of the Monitor referred to therein should be approved.

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

### **C. The Monitor's and TGF's Fees Should be Approved**

#### **(i) Jurisdiction of this Court to Pass the Accounts**

41. The jurisdiction of this Court to pass the accounts is confirmed at paragraph 34 of the ARIO, which provides that "The Monitor and its legal counsel shall pass their accounts from time to time before a judge of this court or a referee appointed by a judge."<sup>33</sup>

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

42. The test on a motion to pass accounts is to consider the "overriding principle of reasonableness".<sup>34</sup> The overall value contributed by the Monitor and its counsel is the predominate consideration in assessing the reasonableness of the accounts.<sup>35</sup>

43. There has been adequate disclosure of the activities of the Monitor and TGF in the Fifth Report and throughout the CCAA Proceedings. Based on the record filed in support of the motion and the degree of Court oversight and involvement throughout the CCAA Proceedings, it is respectfully submitted that the Court can and should determine that the Monitor's and TGF's accounts are fair and reasonable.

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<sup>31</sup> *Target*, *ibid* at [paras 7 and 26](#).

<sup>32</sup> See, for example: [Re Clover Leaf Foods](#) (29 September 2020), Toronto CV-20-00641220-00CL (Ont Sup Ct [Commercial List]) Order (Re Approval of Monitor's Activities and Fees and for Stay Extension) at para 3.

<sup>33</sup> [Amended and Restated Initial Order](#) issued by Osborne J. on June 15, 2023, at para 34.

<sup>34</sup> *Nortel Networks Inc.*, [2022 ONSC 6680](#) [*Nortel Inc*] at [para 10](#).

<sup>35</sup> *Re Nortel Networks Corporation et al.*, [2017 ONSC 673](#) [*Nortel Corp*] at [paras 15, 21](#).

**(iii) Factors to Be Considered**

44. The test to be applied in determining whether to approve the Monitor's and TGF's fees is whether they are fair and reasonable. To aid in the determination of whether a court-appointed officer's fees are fair and reasonable, the Ontario Court of Appeal has recognized the following list of non-exhaustive factors:<sup>36</sup>

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

45. These factors are not intended to be an exhaustive list and other factors may be material in any particular case.<sup>37</sup> Certain of the relevant factors are addressed immediately below.

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

46. The extent and value of the assets in this case are significant, including the F&F Entities previously having liabilities in excess of \$86 million of secured and unsecured obligations.<sup>38</sup>

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<sup>36</sup> *Diemer*, *supra* note 14 at [para 33](#); see also *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at [para 23](#).

<sup>37</sup> *Nortel Corp*, *supra* note 13 at [para 14](#).

<sup>38</sup> Affidavit of Stephane Trudel sworn June 5, 2023 at para. 106.

47. The value of the assets in Residual Co. are also significant, with the Transactions having generated approximately \$13 million in proceeds in excess of the secured debt of the F&F Entities.<sup>39</sup>

**(B) *Complications and difficulties encountered***

48. The CCAA Proceedings and the Claims Process during the Period have involved complex issues and a multitude of competing interest from various groups of stakeholders. The Monitor and TGF played critical roles throughout the Applicant's negotiations with various key stakeholders and assisted the Applicant throughout the CCAA Proceedings and the Claims Process by addressing various difficult and complex situations. Such examples include but are not limited to:

- a. FIKA raised issues relating to the payment of post-filing amounts that were not paid by F&F prior to the closing of the Transactions<sup>40</sup>;
- b. FIKA, UCFW, and the Applicant were involved in a dispute before the SLRB as to whether the Labour Claims remained with the F&F Entities or were transferred to Residual Co., which resulted in FIKA having brought motion for a declaration that a certification application was an excluded liability under the Approval and Reverse Vesting Order<sup>41</sup>;
- c. certain plaintiffs in the Pineapple Express Litigation raised issues and brought a motion before the Court to make a determination as to the interpretation of the Approval and Reverse Vesting Order and its effect on the Pineapple Express Litigation<sup>42</sup>; and
- d. There are currently 4 Disputed Claims totalling approximately \$8.4 million, and there were five Disputed Claims from former employees of the F&F Entities (one of which resulted in a claimant appealing the Claims Officer's decision by issuing a notice of motion) which were received in the Claims Process (excluding the D&O

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<sup>39</sup> Grewal Affidavit at para. 11.

<sup>40</sup> Fifth Report at para. 15

<sup>41</sup> Affidavit of Avininder Grewal sworn April 3, 2024, at paras. 18-20.

<sup>42</sup> Affidavit of Avininder Grewal sworn July 8, 2024, at para. 26.

Claims).<sup>43</sup>

**(C) *Time spent***

49. The Monitor and TGF have named the individual professionals who have performed necessary work to advance the CCAA Proceedings during the Period, along with their position, hourly billing rate, total number of hours worked and the total associated professional fees.<sup>44</sup>

50. The time spent, and thus the fees and disbursements of the Monitor and TGF resulting from their activities, are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the Applicant and its stakeholders, including maximizing the amounts available for distribution to the Applicant's creditors, having regard to the complications and challenges that have confronted the Monitor.

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

**(D) *Knowledge, experience, and skill***

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

**(E) *Diligence and thoroughness displayed***

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

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<sup>43</sup> Eighth Report at paras. 23-28.

<sup>44</sup> Fee Affidavits.

**(F) Responsibilities assumed**

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

55. The more significant responsibilities that the Monitor has assumed include:

- a. repaying the secured debt of the Applicant by making a distribution to ACT;
- b. participating in post-closing matters with Residual Co. and FIKA;
- c. supervised and assisted with activities relating to the Claims Process, which included:
  - i. receiving and reviewing Proofs of Claims;
  - ii. engaging in discussions with Claimants;
  - iii. providing copies of the Claims Package to any person upon becoming aware of any circumstance giving rise to a Restructuring Claim;
  - iv. reconciling Claims together with TGF and Stikeman;
  - v. sending Notices of Revision or Disallowance to Claimants where a Claim was revised or disallowed;
  - vi. coordinating and communicating the process as set out by the Claims Officer and facilitating the delivery of applicable materials to the Claims Officer;
  - vii. litigating certain Notices of Dispute;
  - viii. engaging in discussions with the Shareholder Claimants; and
- d. assisted with the Applicant's efforts to preserve cash by engaging in discussions and settling the disputes related to: (i) the Pineapple Express Litigation; (ii) the

Labour Claims; and (iii) an appeal from the Claims Officer's decision brought by a former employee of the F&F Entities.<sup>45</sup>

**(G) Results achieved**

56. The activities of the Monitor and TGF during this Period of the CCAA Proceedings were integral to advancing the CCAA Proceedings. Notably, the activities of the Monitor and TGF have resulted in: (a) the Applicant's preserving cash by engaging in discussions and settling the disputes related to the Pineapple Express Litigation, the Labour Claims, and the appeal from the Claims Officer's decision; and (b) 166 Claims totalling approximately \$36.0 million having been reconciled.<sup>46</sup>

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

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

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

**D. The Stay Extension Should be Granted**

59. The current Stay Period expires on November 29, 2024. Pursuant to s. 11.02 of the CCAA, the court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the court that it has acted, and is acting, in good faith and with due diligence.<sup>47</sup>

60. The Applicant is seeking to extend the Stay Period from November 29, 2024, to and including March 31, 2025. The extension of the Stay Period is necessary and appropriate in the

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<sup>45</sup> Fifth Report at para. 15; Seventh Report at para. 18; Eighth Report at para. 20.

<sup>46</sup> Seventh Report at para. 18; Eighth Report at paras. 20 and 28-29.

<sup>47</sup> CCAA, *supra* [s. 11.02\(2\) and \(3\)](#).



circumstances to allow the Applicant and the Monitor to complete the Claims Process and make a distribution to the Applicant's creditors.<sup>48</sup>

61. The Applicant has acted in good faith and with due diligence since the granting of the Stay Extension, Distribution, and Fees Approval Order. The Applicant has, among other things:

- a. engaged with the Monitor regarding matters relating to the Claims Process;
- b. responded to creditor and stakeholder inquiries regarding these CCAA Proceedings;
- c. conserved cash by engaging in discussions and working towards settling 4 Disputed Claims; and
- d. worked to complete the Applicant's annual corporate filings.<sup>49</sup>

62. No creditors are expected to suffer material prejudice as a result of the extension of the Stay Period to March 31, 2025. The Applicant is not carrying on active operations and is expected to maintain liquidity through the proposed extension of the Stay Period.<sup>50</sup>

63. The Monitor supports the proposed extension of the Stay Period to and including March 31, 2025.<sup>51</sup>

#### **PART V – ORDER SOUGHT**

64. For the reasons set out above, the Applicant respectfully submits that the Court should grant the proposed Order in the form attached to the Applicant's Motion Record.

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<sup>48</sup> Grewal Affidavit at para. 29.

<sup>49</sup> Grewal Affidavit at paras. 17- 22.

<sup>50</sup> Grewal Affidavit at para. 30.

<sup>51</sup> Eighth Report at para. 52.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 20<sup>th</sup> day of November, 2024.

*1s Stikeman Elliott*

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**STIKEMAN ELLIOTT LLP**

**SCHEDULE “A” – LIST OF AUTHORITIES**

1. *Re Target Canada Co*, [2015 ONSC 7574](#).
2. *Nortel Networks Inc*, [2022 ONSC 6680](#).
3. *Nortel Networks Corp (Re)*, [2017 ONSC 673](#).
4. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#).
5. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#).
6. *Nortel Networks Corp, Re*, [2014 ONSC 4777](#).
7. *Blue Range Resources Corp. (Re)*, [2000 ABCA 285](#)
8. *Target Canada Co. (Re)*, [2017 ONSC 327](#)
9. *Re Clover Leaf Foods* (29 September 2020), Toronto CV-20-00641220-00CL (Ont. Sup Ct [Commercial List]) Order (Re Approval of Monitor’s Activities and Fees and for Stay Extension).
10. *Timminco Limited (Re)*, [2014 ONSC 5593](#)
11. *Algoma Steel Corp. v Royal Bank of Canada*, [1992 CanLII 7413](#) (Ont. CA)
12. *Cary Canada Inc. (Re)*, [2006 CanLII 41289](#) (ONSC)

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

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

**Stays, etc. — initial application**

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

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

**Stays, etc. — other than initial application**

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

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

**Burden of proof on application**

**(3)** The court shall not make the order unless

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 15315441 CANADA INC.**

Applicant

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

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

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE APPLICANT**

**STIKEMAN ELLIOTT LLP**

Barristers & Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto, Canada M5L 1B9

**Maria Konyukhova (LSO #52880V)**

Tel: (416) 869-5230  
Email: mkonyukhova@stikeman.com

**Philip Yang (LSO #82084O)**

Tel: (416) 869-5593  
Email: pyang@stikeman.com

Lawyers for the Applicant