Court File No. CV-25-00738613-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTERPOINT GP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC.

Applicants

RESPONDING RECORD OF THE APPLICANTS
(HILCO MOTION)
(RETURNABLE JULY 15, 2025)

July 13, 2025

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TO: THE SERVICE LIST

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TAB	**DOCUMENT**
1.	Affidavit of Michael Culhane sworn July 13, 2025.
A.	Endorsement of Justice Osborne dated March 29, 2025.

TAB 1

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AFFIDAVIT OF MICHAEL CULHANE
(Sworn July 13, 2025)

I, Michael Culhane, of the City of New York, in the State of New York, MAKE OATH AND SAY:

1. I am the Chief Operating Officer and Chief Financial Officer of Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI ("**Hudson's Bay**" or the "**Company**"), and certain other Applicants.[1]

2. I, together with other members of management, have been responsible for overseeing the Applicants' liquidity management and restructuring efforts. As such, I have knowledge of the matters to which I hereinafter depose, except where otherwise stated. I have also reviewed the records, press releases, and public filings of Hudson's Bay Canada and have spoken with certain of the directors, officers and/or employees of Hudson's Bay Canada, as necessary, together with the Monitor and Reflect. Where I have relied upon such information, I believe such information to be true.

3. All capitalized terms used in this affidavit and not otherwise defined have the meanings given to them in my affidavits sworn on May 26, 2025, and June 16, 2025, and the affidavits of

[1] The Applicants include the following entities: Hudson's Bay, HBC Canada Parent Holdings Inc., HBC Canada Parent Holdings 2 Inc., HBC Bay Holdings I Inc., HBC Bay Holdings II ULC, The Bay Holdings ULC, HBC Centerpoint GP Inc., HBC Holdings GP Inc., Snospmis Limited, 2472596 Ontario Inc., and 2472598 Ontario Inc. (collectively, the "**Applicants**").

Jennifer Bewley sworn on March 7, 2025, March 14, 2025 (the "**Second Bewley Affidavit**"), March 21, 2025, April 17, 2025, and May 7, 2025. All references to monetary amounts in this affidavit are in Canadian dollars unless otherwise indicated.

4. I swear this affidavit in response to the motion brought by Hilco (as defined below) (the "**Hilco Motion**") seeking an order, among other things, expanding the powers of the Monitor, directing the termination of the Central Walk APA, and directing the immediate disclaimer of all remaining Leases subject to the Central Walk APA that are not subject to any other potential transaction.

5. I have reviewed the affidavit of Ian Fredericks sworn on July 8, 2025, in support of the Hilco Motion (the "**Fredericks Affidavit**"). The Fredericks Affidavit contains a large number of seemingly intentional inaccuracies and mischaracterizations. This affidavit is not intended to respond to every such instance but instead addresses some of the more blatant inaccuracies and mischaracterizations contained in the Fredericks Affidavit.

I. OVERVIEW

6. Hilco's relationship with the Applicants goes back approximately two decades. Hilco wears multiple hats in these CCAA Proceedings through separate corporate vehicles that are all under common control. These roles include serving as: (a) a pre-filing secured lender and agent; (b) a provider and financer of consignment goods (both pre and post filing); (c) a DIP Lender; (d) the appraiser of inventory on behalf of the lenders; and (e) the lead liquidator in the joint venture forming the Liquidation Consultant (collectively and in each such capacity, "**Hilco**"). Mr. Fredericks is the Chief Executive Officer of Hilco and certain of its subsidiaries and affiliates, including ReStore (as defined below) in its capacities as the FILO Agent and the DIP Agent, as well as the Chief Executive Officer and President of Hilco Merchant (as defined below), the lead Liquidation Consultant.

7. As a result of its multiple points of involvement with the Applicants, Hilco had and continues to have unique and extensive visibility, input and influence into each of the monetization processes and the CCAA Proceedings generally. Hilco exercised significant influence over, was involved in and sometimes led, amongst other matters, the negotiation of the Sale Guidelines, the timing and parameters of the Liquidation Sale, the timing of various disclaimers of Leases and the timing and parameters of the Lease Monetization Process and the SISP. The FILO Lenders' financial advisor, Richter Consulting Inc. ("**Richter**"), has been provided with weekly cash flow

variance reporting since the commencement of the CCAA Proceedings and has frequently spoken with the Monitor with respect to such reporting, and the Monitor has responded to numerous questions and information requests. In addition, Hilco and Richter each received regular updates from Reflect, including regarding the ongoing asset monetization efforts and the status of the CCAA Proceedings generally.

8. It is neither fair nor credible for Hilco to feign surprise or seek to criticize the Applicants for matters that were foreseeable, inevitable and/or, in many instances, driven by or contributed to by Hilco's own conduct and commercial decisions. Indeed, many of the results about which Hilco now complains are a direct consequence of Hilco's own actions taken in its various capacities or were outcomes Hilco knew or should have known could occur when Hilco agreed to and participated in the various processes that it now criticizes.

9. Hilco has participated in all motions in these CCAA Proceedings, had notice of the relief sought and an opportunity to speak to such relief, and when unsuccessful in respect of the RFA (as defined below), chose not to appeal such decisions.

10. In the Fredericks Affidavit, Hilco picks and chooses particular numbers from the cashflows and financial results reflected therein (in the 13-week increments provided for in the CCAA Proceedings), mischaracterizes the results, and ignores other information and reasonable assumptions, all in an apparent effort to claim that it did not expect or anticipate costs in the CCAA Proceedings it was fully aware would arise and undermine the Applicants' diligent and responsible management of its affairs during these CCAA Proceedings. A more detailed response clarifying the Company's financial position suggested by Hilco is described herein.

11. Hilco contends that the Liquidation Sale was not conducted in a value-maximizing manner and that most of the projected costs for removal of FF&E at the Company's retail stores (the "**Stores**") could have been significantly reduced with proper management. Hilco knowingly omits the fact that Hilco was the lead liquidator of the Liquidation Consultant, a consortium of the five largest and most experienced liquidation firms with significant experience in a variety of retail and other liquidations in Canada and the United States responsible for the Liquidation Sale. Hilco, as the lead liquidator, had day-to-day oversight and responsibility for the Liquidation Sale, including inventory flow into Stores, purchase of consignment and augment inventory, inventory discounting and sales process, the sale, pricing and discounting of FF&E, and the timing and condition in which it left the Stores.

12. Hilco, as the lead Liquidation Consultant, failed to achieve its own Store FF&E sales expectations by approximately $6.3 million (as compared to its forecast provided to the Company) and abandoned significant amounts of FF&E in the Stores at the conclusion of the Liquidation Sale, the timing of which Hilco determined, resulting in increased projected FF&E disposal costs of approximately $7.9 million, for an estimated overall negative financial consequence to Hudson's Bay and its stakeholders (including the FILO Lenders) of approximately $13.4 million, when compared to the Draft Fifth Cash Flow (as defined below). Amazingly, Hilco now blames the Company for its failure to achieve the results it forecasted it would achieve. Having participated in the negotiation of the Liquidation Sale Approval Order and the Sale Guidelines, Hilco was fully aware that Hudson's Bay was responsible for removing all FF&E and leaving the Stores in broom-swept condition. In short, having determined to end the Liquidation Sale and FF&E sales earlier than projected and permitted and abandon the remaining FF&E in the Stores, resulting in Hudson's Bay having to incur costs to clean up the Stores to comply with the Sale Guidelines, Hilco now complains about the resulting cost. Had the FF&E been sold as projected by Hilco, material FF&E removal costs would have been avoided.

13. Hilco also fails to outline the incredible fees, expense reimbursement and profit on additional inventory that, in its capacity as Liquidation Consultant and consignment vendor and financer, earned during the Liquidation Sale it led, including through its ability to sell augmented and consignment inventory in the Liquidation Sale. To date, Hilco has earned approximately $16 million in liquidation fees and approximately $14 million in expense reimbursements, for a total of approximately $30 million. Hilco also made a gross profit (known only to Hilco) on over $87 million of proceeds of consignment and augment goods which Hilco was able to introduce into the Liquidation Sale.

14. At the heart of Hilco's Motion is its dissatisfaction with the Company's continued pursuit and advancement of the sale of 25 CW Leases pursuant to the Central Walk APA, and Hilco's inability to persuade the Company's other senior lender, the Pathlight Lenders (collectively with the Pathlight Agent, "**Pathlight**"), whose priority collateral consists of a substantial majority of the subject CW Leases, to contribute to the cost of maintaining the CW Leases pending a determination on the Central Walk APA. Having previously insisted that the Court respect the provisions of the ABL/Pathlight Intercreditor Agreement (the "**Intercreditor Agreement**"), Hilco is now, in effect, seeking to have the Court resolve what is properly an intercreditor dispute between Hilco, as the FILO Agent, and Pathlight by alleging mismanagement by the Company, seeking to

enhance the powers of the Monitor, and asking the Court to make a premature decision on the Central Walk APA.

15. Hilco and Pathlight are sophisticated lenders that negotiated the terms of the 70-page Intercreditor Agreement. The parties either put their minds to and agreed to the allocation of proceeds from collateral realizations and the sharing of costs, and are in a position to enforce those provisions, or they did not. I can only infer that Hilco did not contemplate addressing collateral maintenance cost allocations in a situation of the type now existing in these CCAA Proceedings that differs from how such costs are currently being borne, and Hilco is therefore now attempting to have the Court and/or a Monitor with enhanced powers solve a problem of its own making. The consequences of those negotiations are entirely between those two lenders. Hudson's Bay, unable to get clear alignment between its senior lenders, is caught in an intercreditor dispute. Granting additional powers to the Court-appointed Monitor is unnecessary, will not result in material savings to the Company's estate and will not resolve the intercreditor dispute.

16. The question of which lender represents the fulcrum creditor in the CCAA Proceedings drives both Hilco's and Pathlight's views of which party should most influence material monetization decisions going forward. While it is impossible at this time to determine with certainty which lender is the fulcrum creditor, the Applicants, in consultation with its financial advisor, believe that it is more likely than not that Pathlight holds the fulcrum position, assuming proceeds from the pension surplus are realized.

17. The Applicants have attempted to approach these CCAA Proceedings with a clear recognition of their obligation to consider and appropriately balance the interests of all stakeholders, rather than advancing the interests of any one party to the detriment of others. Contrary to Hilco's assertion that the Applicants' stakeholders will not be prejudiced by the relief sought on Hilco's Motion, such relief is aimed squarely at promoting Hilco's interests without regard for, and to the detriment of, the interests of other creditors and stakeholders.

II. HILCO'S INVOLVEMENT WITH HUDSON'S BAY AND THE CCAA PROCEEDINGS

A. Hilco's Roles

18. Hilco is a large, sophisticated, advisory and investment firm specializing in asset monetization, restructuring and valuation services across various industries. ReStore Capital,

LLC ("**ReStore**") is an investment manager operating as part of Hilco. ReStore is the agent of a syndicate of pre-filing FILO lenders (collectively, the "**FILO Lenders**"). Prior to the CCAA filing, certain subsidiaries or affiliates controlled by Hilco were also part of a joint venture with Gordon Brothers providing inventory to Hudson's Bay through a consignment arrangement. ReStore was also a DIP Lender to Hudson's Bay and acted as the DIP Agent.

19. Hilco Consumer – Retail ("**Hilco Retail**") is the retail platform of Hilco, which does business in Canada through Hilco Merchant Retail Solutions, ULC ("**Hilco Merchant**"). Hilco Merchant, together with certain other parties, is the Liquidation Consultant. Hilco Merchant was the lead liquidator responsible for conducting the Liquidation Sale. Hilco Valuation Services also conducted inventory appraisal services for the Company's lenders prior to the CCAA Filing.

20. Ian Fredericks is the Chief Executive Officer of ReStore, the FILO Agent and the DIP Agent, as well as the Chief Executive Officer and President of Hilco Retail, the Liquidation Consultant. In other words, Hilco and Mr. Fredericks are involved as both a lender to Hudson's Bay and led the Liquidation Sale. For all intents and purposes, the various Hilco entities are all one in the same.

B. Hilco's Influence on the CCAA Proceedings

(i) DIP Financing

21. Prior to the initial filing, the Applicants reached out to 12 potential lenders for DIP financing. The Company received two financing proposals in amounts sufficient to allow the Company to implement a going concern restructuring strategy, including a proposal from a syndicate of lenders led by Hilco (the "**Restructuring DIP**"). However, on the date the CCAA Proceedings were commenced, the syndicate of lenders refused to advance the Restructuring DIP and the Applicants entered into an interim DIP Term Sheet for $16 million with Hilco and certain other FILO Lenders, which was approved by the Court in the Initial Order. My understanding is that the syndicate was uncomfortable with the amount of collateral available to support the Restructuring DIP.

22. Following approval of the interim DIP Term Sheet at the CCAA application, the Applicants attempted to negotiate a further DIP facility that would permit the Applicants to pursue a going-concern restructuring. However, Hilco and the other potential DIP Lenders were not satisfied that the Applicants would be able to pay off the FILO Credit Facility and the DIP financing. Therefore,

Hilco and the other DIP Lenders were only willing to advance a total of $23 million of DIP financing (inclusive of, and not in addition to, the $16 million interim DIP facility) on condition that the Applicants immediately commence a Liquidation Sale.

23. Hilco has known from the outset of the CCAA Proceedings that there was some question whether the Liquidation Sale alone would be sufficient to pay off the FILO Credit Facility and therefore proceeds from the SISP and the Lease Monetization Process would be crucial to its recovery.

(ii) Hilco's Influence on the Conduct of the Monetization Processes

24. In its capacities as FILO Agent, FILO Lender, DIP Lender, proposed Agent under the restructuring framework agreement dated as of March 25, 2025 (the "**RFA**") the Court declined to approve, lead Liquidation Consultant, and appraiser, Hilco had significant input into, influence over and involvement in various matters within the CCAA Proceedings and the monetization processes, including but not limited to:

(a) The terms of, timing and parameters of the various monetization processes, including start and finish dates;

(b) Organizing four of the most prominent North American retail liquidators (Hilco, Gordon Brothers, Tiger and GA Capital) to submit a joint bid for the liquidation, with the fifth major Liquidator, SB360, joining the syndicate thereafter. These parties represented the only liquidators operating in North America who could have provided the liquidation services required by the Company. As all major liquidators were party to a single bid, the Company was left with limited alternatives or bargaining power on the economics of the arrangements;

(c) Significant involvement (as lead Liquidation Consultant and DIP Lender) in the negotiation and/or review of the Liquidation Consulting Agreement, Liquidation Sale Approval Order and Sale Guidelines; and

(d) As lead Liquidation Consultant, day-to-day control and oversight of the Liquidation Sale, including marketing, discount rates and cadence, supply of inventory into Stores including consignment and augment inventory levels, FF&E sales, pricing and discounting, and condition of the Stores at the conclusion of the Liquidation Sale.

25. Hilco retained separate counsel to represent it in the many roles it played in the CCAA Proceedings, including Blake Cassels & Graydon LLP to represent Hilco as FILO Agent and DIP Lender and Cassels Brock & Blackwell LLP to represent Hilco as Liquidation Consultant. Hilco and/or its counsel was involved in the negotiation and/or review of the Liquidation Consulting Agreement, Liquidation Sale Approval Order and Sale Guidelines and was represented at each of the motions in these CCAA Proceedings (in some cases, by both sets of counsel). Hilco received notice of the various motions and had an opportunity to participate in each of the motions. At no time did Hilco seek leave to appeal any decision rendered in these CCAA Proceedings.

26. Hilco retained Richter as financial advisor to assist with its review of the financial information prior to and during the CCAA Proceedings. Richter was provided with information throughout the course of the CCAA Proceedings, including (a) cashflows (both draft and final versions) and updates on asset monetization processes and having opportunities to review them and frequently discuss with the Monitor, including receipt of weekly cash flow variance reporting, and (b) daily updates on sales and FF&E reports as well as a dashboard that summarized the Company's cash position, daily sales and liquidation to date sales, inventory and gross margin. In addition, I am advised by Adam Zalev of Reflect that Reflect had regular discussions with Hilco and the FILO Lenders to update them on the CCAA Proceedings.

III. THE CCAA PROCEEDINGS

A. The Liquidation Sale

27. Hilco's assertion that the Applicants failed to manage the Liquidation Sale in a value-maximizing manner is particularly misguided, given that many of the alleged increases in costs and complications about which Hilco now complains are a direct result of Hilco's conduct. As set out below, Hilco's attempt to take credit for increased inventory sales relative to forecasts, while simultaneously blaming the Company for the lower than projected FF&E sales and attendant removal costs, is disingenuous and ignores the broader factual context.

28. As set out in the Second Bewley Affidavit, the Liquidation Consultant is a contractual joint venture initially comprised of four leading liquidators: Hilco, Gordon Brothers, Tiger and the GA Group. Following approval of the Consulting Agreement, on April 2, 2025, Hudson's Bay was advised that the Liquidation Consultant had further syndicated the role by including SB360 Capital Partners, LLC, resulting in the Liquidation Consultant being comprised of the five largest leading liquidators operating in Canada and the United States.

29. The negotiation of the Liquidation Consulting Agreement and Sale Guidelines were undertaken by Hilco as the lead Liquidation Consultant, represented by counsel. I understand from Elizabeth Pillon of Stikeman Elliott LLP that counsel for the Liquidation Consultant was closely involved in negotiations with the Company, the Monitor, and Landlords with respect to the Liquidation Consulting Agreement, Liquidation Sale Approval Order and Sale Guidelines.

30. In addition, Hilco as DIP Lender and its counsel, also had an opportunity to review and comment on the Liquidation Consulting Agreement, including in respect of the Stores to be included and excluded from the Liquidation Sale, and sales timelines. Two sets of counsel for Hilco, as Liquidation Consultant and DIP Lender, attended the motions where the Liquidation Consulting Agreement was approved and subsequently amended.

31. Representatives of Hilco as Liquidation Consultant were involved on a daily basis in the Liquidation Sale, including the warehouse sale at the Etobicoke Distribution Centre. Pursuant to the budgets prepared by Hilco as Liquidation Consultant and agreed to by the Company, Hilco deployed supervisory staff at each of the Stores (one supervisor per Store for merchandise sales and one for every two Stores for FF&E sales). These costs were fully reimbursable to it by the Company. At its sole discretion, Hilco determined the augment inventory to be brought into the Stores, along with inventory from the distribution centres or other sources, the discount cadences to be applied to merchandise inventory (with input from Hudson's Bay), when the sale of FF&E would commence and the prices to be sought for such FF&E goods. All signing decisions and floor presentation decisions were made by Hilco. For example, typically the augment inventory was presented first in the aisles or front of the pads deemphasizing the Hudson's Bay inventory.

32. Hudson's Bay and Reflect, financial advisor to the Applicants, reviewed the status of the Liquidation Sale and communicated on a regular basis with Hilco as Liquidation Consultant in respect of the same. This included the timing for completion of the Liquidation Sale in particular Stores, and the subsequent timing for the disclaimer of Store Leases in circumstances where the Stores were not subject to any offers received in the SISP or Lease Monetization Process.

33. The Liquidation Consulting Agreement also provided that the Liquidation Consultant would be responsible for the sale of the FF&E and were eligible to receive a 15% fee in respect of such FF&E sales. The Liquidation Consultant in its sole discretion determined the timing and pricing for FF&E sales, discount cadences, potential sources of bulk sale buyers and other potential purchasers.

34. I am informed by Ms. Pillon that key to Hilco as Liquidation Consultant was the ability to introduce augmented or additional inventory into the Liquidation Sale and Hilco was prepared to litigate this issue in advance of commencing the sale, if required. The Liquidation Consultant, Hudson's Bay, the Monitor and the Landlords were ultimately able to resolve this issue through negotiations. The Liquidation Consulting Agreement gave the Liquidation Consultant the ability to include up to $35 million (at cost) of augmented merchandise. In practice, the Liquidation Consultant's focus on augmented merchandise ultimately required significant additional support and resources from Hudson's Bay during the sale in coordinating goods for sale, and prolonged use of FF&E to display goods, which slowed the pace of the FF&E sales.

35. Hudson's Bay also sold a variety of consignment and licensee goods, including consignment goods previously provided by Hilco, Gordon Brothers and GA Group prior to the commencement of the CCAA Proceedings. The Liquidation Consulting Agreement was also negotiated to provide for the ability for consignment and licensee goods to continue to be supplied and included in the Liquidation Sale, in addition to the augmented merchandise limit. Once the Liquidation Sale had started, the majority of negotiations with consignment vendors with respect to the inclusion of such goods was through Hudson's Bay and/or its advisors. However, the Liquidation Consultant earned 5-8% commissions on such goods sold through the Liquidation Sale, as well as a margin on the consignment goods supplied directly by Hilco as consignment vendor.

36. The manner in which the Liquidation Consultant Agreement is structured provides for an expense reimbursement mechanism for costs incurred by the Liquidation Consultant in carrying out its roles, including for costs such as supervisors' costs, advertising and marketing costs**,** travel expenses, legal fees, and any FF&E disposal costs, if incurred. In summary, nearly 100% of Hilco's staffing costs related to the project were reimbursed to it by the Company pursuant to the Liquidation Consulting Agreement.

37. While Hilco contends that it is suffering substantial prejudice to its financial position in these CCAA Proceedings, a conservative estimate of the fees and other amounts earned by the Liquidation Consultant through liquidator fees from the Liquidation Sale total approximately $16 million as well as expense reimbursements of approximately $14 million paid to date, for a total of approximately $30 million. Hilco earns 5-8% on consignment goods sold through existing vendors of Hudson's Bay. Additionally, Hilco made a profit margin on augmented and consignment goods it provided to the Company (over $87 million of sales). The Company earned

6.5% on such augment sales and the Liquidation Consultant's profit margins on these sales are not disclosed to the Company. The Company estimates Hilco has profited well in excess of $40 million through the Liquidation Sale when taking into account their fees, expense reimbursement, and profit margins on augment and consignment sales.

(i) End of Sale, Sale Guidelines, and FF&E Matters

38. Paragraph 8 and 9 of the Court-approved Sale Guidelines (which were negotiated with the involvement of the Liquidation Consultant) state:

> "8. At the conclusion of the Sale in each Store, Consultant shall arrange that the premises for each Store are in "broom-swept" and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than FF&E (as defined below) for clarity) may be removed without the applicable Landlord's written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. **In addition to the foregoing, Merchant shall remove all of its personal property including, without limitation, any inventory, trade fixtures, furnishings, furniture and equipment from each Store**. With the consent of the applicable Landlord, any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of such Landlord. Nothing in this paragraph shall derogate from or expand upon Consultant's obligations under the Consulting Agreement." [Emphasis Added].
>
> "9. Subject to the terms of paragraph 8 above, Consultant may also sell existing furniture, fixtures and equipment owned by Merchant and located in the Stores during the Sale that are (i) fully owned by Merchant; (ii) owned jointly by Merchant and one or more third-party vendors of Merchant, as directed by Merchant with the consent of the Monitor and agreed to by such third-parties; or (iii) fully owned by a third party if agreed to by such third-party and Merchant with the consent of the Monitor (collectively, the "FF&E"). For greater certainty, FF&E does not include any fixtures and affixed equipment that comprise all or any portion of the Stores' mechanical, electrical, plumbing, security, HVAC, fire suppression and fire alarm or sprinkler systems. Merchant and Consultant may advertise the sale of FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the applicable Landlord. Additionally, the purchasers of any FF&E sold during the Sale shall only be permitted to remove such FF&E either through the back shipping areas designated by the applicable Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if such FF&E can fit in a shopping bag, with the Landlord's supervision as required by the Landlord and in accordance with the Initial Order and the Approval Order. Consultant shall repair

> any damage to the Stores or the shopping mall resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from the Consultant."

39. Hilco directed that all representatives of the Liquidation Consultant vacate all Stores by June 7, 2025, leaving the majority of FF&E clean up work to be completed by Hudson's Bay.

40. I am advised by Reflect that at the conclusion of any Liquidation Sale, the Liquidation Consultant documents the status of the Stores prior to their departure at the end of the Liquidation Sale. Hilco took such photos prior to its personnel leaving Stores, and as such, it is not clear why Hilco would suggest that the condition of the Stores or the status of unsold FF&E was unknown to them.

41. Hilco projected sales attributable to Store FF&E in the Liquidation Sale to be approximately $17 million (excluding sales taxes). However, Store FF&E sales receipts were approximately $10.7 million (excluding sales taxes), resulting in a shortfall relative to Hilco's expectations by approximately $6.3 million (37%). A number of factors and decisions made by the Liquidation Consultant contributed directly to the reduction including: (a) delayed start time and reduced overall timeline for sale of FF&E (from the originally planned 55 days to less than 30 days in total); (b) failure to discount FF&E appropriately and aggressively to ensure sales (despite repeated requests by Hudson's Bay and its advisors for greater discounting); (c) failure to secure more bulk buyers; and (d) extended use of FF&E to display augmented goods late in the sales process, making it more challenging to sell the FF&E.

42. Because the cash flow projections with respect to the Applicants appended to the Third Report of the Monitor dated May 9, 2025 (the "**Fourth Cash Flow**") contemplated that most of the FF&E would be sold, there were only typical and non-material FF&E removal costs included in the Fourth Cash Flow. However, as a direct result of the Liquidation Consultant's underperformance with respect to FF&E sales relative to its own projections reflected in the Fourth Cash Flow, the Company is required to incur the costs of removing the unsold FF&E, the cost of which is now estimated to be $7.9 million in the draft cash flow projections prepared with the assistance of the Monitor dated June 17, 2025 (the "**Fifth Draft Cash Flow**"), This cannot come as a surprise to Hilco given its role as lead liquidator of the Liquidation Consultant and its involvement in negotiating the Sale Guidelines.

43. The Fredericks Affidavit also suggests that Hilco was not asked to assist with the removal of FF&E, and if they had been, the expenses for the removal of FF&E would have been

significantly less if the Liquidation Consultant were present in the Stores when the request for removal was made. The rationale from Mr. Fredericks in this regard is that a third party removing the FF&E would expect to profit from such removal while the Liquidation Consultant would have removed the FF&E at its cost.

44. These statements ignore the fact that Hilco had dedicated FF&E supervisors on-site throughout the Liquidation Sale. Discussions were occurring on a regular basis between Hilco, Hudson's Bay and their advisors regarding the sale of FF&E, and the need to remove FF&E from the Stores if not sold. Hilco also advised Hudson's Bay and its advisors that Hilco utilizes the same FF&E removal companies in Canada as suggested by Hudson's Bay, and that Hilco likely would not be able to remove the FF&E at a lower cost. Also as explained above, any costs incurred by Hilco in satisfying its role as Liquidation Consultant (including with respect to removal of FF&E) would have been reimbursed through the expense reimbursement mechanism in the Liquidation Consulting Agreement.

45. Since the completion of the Liquidation Sale, and abandonment of FF&E by Hilco, Hudson's Bay and Reflect have been coordinating the FF&E removal directly and in consultation with the Landlords. The estimated costs of FF&E removal, as outlined in the Fifth Draft Cash Flow, have since been reduced relative to initial estimates through: (a) obtaining additional quotes from contractors assisting with the removal, and in some cases working directly with Landlords; (b) entering into arrangements with bulk consumers to remove the FF&E at no consideration for or cost to Hudson's Bay; and (c) ongoing discussions with landlords who in some cases have maintained unsold FF&E for future tenant use or otherwise.

(ii) Signage

46. The Fredericks Affidavit, at paragraph 81, references the estimated costs of signage removal and conflates the estimated costs by referencing the total estimated costs of FF&E removal. The estimated cost of signage removal currently stands at approximately $3.8 million.

47. The negotiation of the Liquidation Consulting Agreement and Sale Guidelines were undertaken during the time between the granting of the Initial Order and the ARIO, at which time the Liquidation Consulting Agreement was approved. The tight timing was driven by Hilco's requirement to have the Liquidation Sale commence as at March 24, 2025. Hudson's Bay, the Monitor, Hilco, and various Landlords' counsel negotiated extensively during this short period to attempt to arrive at terms to commence the Liquidation Sale on the shortened timeframe.

Ultimately, approval of the Liquidation Consulting Agreement was able to be sought on a consensual basis with the Landlords and Hilco without any delay to Hilco's required start date.

48. In his affidavit, in suggesting that Hudson's Bay has failed to support the signage obligations, Mr. Fredericks ignores earlier discussions directly with Hilco and counsel on the signage issues. I am advised by Ms. Pillon and do believe that during the course of the negotiations of the Sale Guidelines involving the Landlords and Hilco, the concept of removal of external signage was discussed in the context of paragraphs 8 and 9 of the Sale Guidelines. Paragraphs 8 and 9 of the Sale Guidelines provide, in part, that "Merchant shall remove all of its personal property including without limitation, any inventory, trade fixtures, furnishings, furniture and equipment from each Store." and "Consultant shall repair any damage to the Stores or the shopping mall resulting from the removal of any FF&E by Consultant or by third party purchasers of FF&E from the Consultant", respectively. I am advised by Ms. Pillon that external signage was also removed in a number of other retail liquidations (which some or all of the Liquidation Consultants were involved with) including Nordstroms, Sears and Target, and so it should not have come as a surprise that signage removal would be required by the Landlords.

49. Further, the Canadian Tire APA involving the sale of the Company's intellectual property, also provides through to August 31, 2025, to address use of the Company's trademarks for signage purposes:

> **5.8. Post-Closing Limited Licenses**
>
> "Following the Closing Time, to the extent that any Trademarks remain present as signage at any Applicant's store locations or is otherwise used by an Applicant in connection with the winding down of the operations thereof, the Purchaser hereby agrees to grant at the reasonable direction of the Vendor to any purchaser of a lease in respect of any such store location and/or the applicable Applicant, as applicable, a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use all such Trademarks solely for such purposes until the earlier of (i) the date that the applicable purchaser of a lease in respect to the store location or the Applicant, as applicable, has ceased to use such Trademarks (as signage or otherwise) and (ii) August 31, 2025, with any such license to be substantially in the form attached hereto as **Schedule "F"** (hereinafter collectively referred to as the "**Post-Closing Limited Trademark License(s)**")."

50. At this time, in response to demands by Hilco to do so, signage removal has been put on pause by the Company r while the Company and its lenders discuss this issue further and assess the requirements to remove the exterior signage. The Company has had a number of direct

discussions with individual Landlords regarding exterior signage. Prior to putting a hold on signage removal at Hilco's demand, Hudson's Bay has had some success in arranging for removal at a lower cost than reserved in the Fifth Draft Cash Flow through alternative contractors as well as Landlords' involvement.

B. The Central Walk APA Should not be Terminated

51. At the outset, I note that the Applicants are pursuing the CW Transaction to maximize stakeholder recoveries. Hilco seeks to prematurely terminate the Central Walk APA.

52. The Central Walk APA and the Affiliate Lease Assignment Agreement were the culmination of the Applicants, with the assistance of its advisors and in consultation with the Monitor, following and adhering to the Lease Monetization Process and the SISP. With respect to the vast majority of the Leases subject to the Central Walk APA, the Applicants did not have any alternative transactions with a higher prospect of completion.

53. The Company entered into the Central Walk APA with the support of Hilco as well as Pathlight. I am informed by Adam Zalev at Reflect that on May 22, 2025, Mr. Fredericks was advised that the Company intended to enter into an agreement with Central Walk, pursuant to which 25 Leases would be assigned subject to Landlord consent or Court order. Mr. Fredericks was also provided with a breakdown of the number of such Leases that are the priority collateral of the FILO Lender and the Pathlight Lenders pursuant to the Intercreditor Agreement. On that same date, Mr. Fredericks advised that he was "signed off" on the Company entering into the Central Walk APA.

54. The Central Walk APA, if completed, is expected to generate significant recoveries from the sale of the 25 CW Leases. In addition, Hudson's Bay has already received $6 million in connection with the completion of the sale of three Leases to Central Walk pursuant to the Affiliate Lease Assignment Agreement which was approved by this Court on June 23, 2025. The successful completion of the CW Transaction therefore represents significant potential recoveries to the Applicants' creditors.

55. Hilco's criticism of the costs associated with pursuing the CW Transaction fails to consider the fact that the Company intentionally negotiated to separate the three CW Leases subject to the Affiliate Lease Assignment Agreement approved by this Court on June 23, 2025, from the 25 Leases subject to the Central Walk APA.

56. The separation of the CW Leases into two separate agreements was therefore designed to generate $6 million of proceeds from the three CW Leases to mitigate anticipated costs, including rent, incurred by the Company in advancing the larger Central Walk APA. Hudson's Bay recognized and identified the potential difficulties or delays which could be faced given that Central Walk may not be viewed as an established retailer by the Landlords. However, Hilco, the Pathlight Agent, and the Monitor, supported the Applicants pursuing the transaction.

57. To the extent Hilco is upset that Pathlight has refused to share the rent costs related to pursuing the CW Transaction beyond the conclusion of the Liquidation Sale, that is entirely an intercreditor issue between Hilco and Pathlight. The fact that a substantial majority of proceeds from the Affiliate Lease Assignment Agreement and Central Walk APA transactions would ultimately be distributable to Pathlight, is an intercreditor issue between Hilco and Pathlight. Hilco and Pathlight are both experienced, sophisticated lenders who negotiated a 70-page Intercreditor Agreement to govern their relationship. Hilco recently had an opportunity to deal with these issues and protect itself from these reasonably foreseeable circumstances when it entered into the Intercreditor Agreement in December 2024.

58. In addition, the question of which lender is actually incurring the rent costs of maintaining the CW Leases will not be known until it is determined who the fulcrum creditor is. The issue of the approximately $28 million "make-whole" payment that Hilco seeks in addition to its outstanding loan balance, also remains to be resolved. Hilco and Pathlight both claim to be the fulcrum creditor, but that will not be known with certainty for some time. The Fourth Cash Flow, the Fifth Draft Cash Flow, and all previous cash flow projections prepared in these CCAA Proceedings are based on highly conservative assumptions and were not prepared on the same basis that a net realization analysis would be. This approach is both prudent and appropriate, as it is better to adopt cautious estimates and ultimately outperform expectations than to rely on overly optimistic projections that risk falling short.

59. When considering the likely ultimate range of recoveries to the lenders, positive adjustments are likely to be made to future cash flow forecasts. These adjustments include, among other things, receipts from the closing of the Affiliate Lease Assignment Agreement, another Lease assignment transaction that the Company intends to seek Court approval for on July 31, 2025, proceeds from the Art Collection, as well as a holdback adjustment, and a general decrease in disbursements for, among other things, final Store closure costs. The exact amount and timing of receipts of anticipated proceeds remain uncertain. For that reason, such receipts

were not included in the Draft Fifth Cash Flow and will not be included in future forecasts until there is additional certainty.

60. In addition, the Company has notified Telus Health (Canada) Ltd., the Pension Administrator, that the Company is asserting a claim of an interest in the pension surplus for the benefit of its creditors. It is possible, and appears likely, that given the quantum of the pension surplus, Hilco and the other FILO Lenders will eventually be paid in full.

61. Therefore, it is reasonable to assume that the Pathlight Lenders are very likely to be the fulcrum secured creditor and are the parties assuming the financial risk associated with the Company advancing the CW Transaction. Pathlight supports the CW Transaction.

C. Hilco's Mischaracterization of Financial Data

62. The Fredericks Affidavit attempts to paint a picture of mismanagement through the picking and choosing of discrete financial information. Hilco's statements are misleading for the following reasons:

(a) Hilco often compare figures drawn from different cash flow forecasts prepared over the course of these CCAA Proceedings. Each of these forecasts, by definition, covered different time periods and incorporated different receipts and disbursements. Comparing figures across multiple forecasts without accounting for these differences does not provide an accurate or fair representation of the Company's finances. For example, Hilco states that Hudson's Bay generated approximately $54 million more in net receipts than forecast when compared to the Fourth Cash Flow, but fails to acknowledge other disbursements related to that increase, particularly approximately $10 million in sales tax remittances from increased sales, and increased Store payroll costs, including a $4 million bonus paid to Store employees that was approved by Hilco;

(b) In presenting certain financial results, Hilco has selectively chosen a time period to avoid capturing proceeds while capturing costs which are directly attributable to the ignored proceeds. For example, Hilco claims Hudson's Bay will have spent over $100 million more than it will have generated in proceeds from May 3, 2025 to September 12, 2025, but fails to recognize that over $30 million of the disbursements in that period are related to sales tax remittances from sales

receipts received prior to May 3, 2025, as well as consignment and augment payments for sales made prior to May 3, 2025 in the tens of millions; and

(c) Hilco ignores the fact that a majority of the "increased costs" relate to the Liquidation Sale, a process which was controlled by Hilco, as discussed above.

63. Moreover, Hilco cannot credibly claim to be surprised at the results of the Liquidation Sale. Hilco had full transparency into the Applicants' inventory levels since before the filing date. Hilco was the lead Liquidation Consultant and oversaw the Liquidation Sale. Richter, Hilco's financial advisor, was frequently provided with financial information throughout the CCAA Proceedings by the Monitor, including cash flow variance reporting on a weekly basis. In addition, Reflect was in regular communication with Hilco and the FILO Lenders throughout the CCAA Proceedings, speaking with Hilco at least, if not more than, on a weekly basis regarding all aspects of the CCAA Proceedings.

64. Exhibit "H" of the Fredericks' Affidavit does not provide an accurate comparison between the Fourth Cash Flow and the Fifth Draft Cash Flow. At a high level, the comparison fails to:

(a) Acknowledge that the Fifth Draft Cash Flow was provided to Richter and the FILO Lenders in draft and was subject to material change. Since providing the Fifth Draft Cash Flow, the Company, the Monitor, Reflect, Richter and Hilco have all worked collaboratively to identify potential cost savings that will have a material impact on the cash flow forecast;

(b) The Fourth Cash Flow was presented for a 13-week forecast period. All parties involved understood there would be expenses related to winding down the business after the 13-week forecast period;

(c) The increased disbursements are largely related to concession and consignment payments, the Liquidation Consultant's share of additional consultant goods, sales tax remittances, and the Liquidation Consultant fees and expenses, which can all be directly attributed to increased sales receipts during the same period; and

(d) The Fifth Draft Cash Flow does not include cash receipts of other areas outside the liquidation, such as the Affiliate Lease Assignment Agreement and other lease transactions, proceeds from the Art Collection, and realization of the pension surplus, all of which have costs included in the cash flow.

65. Variances between the Fourth Cash Flow and the Draft Fifth Cash Flow were detailed in a bridge analysis prepared by the Monitor that was provided to and presented to Hilco, Pathlight, and their respective advisors at a meeting held at the office of Bennett Jones LLP on June 26, 2025. In addition, in the weekly cash flow variance reporting provided by the Monitor to Richter, it was repeatedly explained that multiple substantial positive disbursement variances were attributable to timing and were expected to reverse in future weeks. These included variances related to the timing of payments in respect of Participating Concession Vendors, sales taxes, and shared services.

IV. MONITOR'S POWERS SHOULD NOT BE ENHANCED

66. As set out above, the Applicants have been acting in good faith and have managed their affairs prudently during the CCAA Proceedings such that it is not appropriate at this time for the Court to effectively appoint a *de facto* receiver over the Applicants by enhancing the Monitor's powers in these CCAA Proceedings.

A. Hudson's Bay is Properly Governed

67. The Board of Directors of Hudson's Bay (the "**Board**") has acted appropriately and in the best interest of the Company and its stakeholders, with a clear focus on maximizing recoveries from the estate. It is important to note that the members of the Board do not receive any compensation for their services. As a result, the Board's oversight does not impose any additional cost on the Company's creditors.

68. The Company's employees are dedicated to existing work streams that are either directed toward maximizing recoveries or completing an orderly wind-down of the business. As these work streams conclude and certain functions are no longer required, employees have been terminated in consultation with the Monitor.

69. Management costs have been steadily decreasing over the course of these CCAA Proceedings. With the closing of all Stores by June 1, 2025, and the completion of certain monetization transactions at the end of June 2025, positions have been quickly eliminated with the oversight and in consultation with the Monitor to ensure that staffing levels remain appropriate. Total headcount was reduced from approximately 8,374 as of May 31, 2025, to 113 as of July 11, 2025. Headcount will be further reduced after July 15, 2025.

70. Finally, professional fees will necessarily continue to be incurred in connection with the administration and wind-down of the Applicants' estates. The Applicants believe that enhancing the Monitor's powers in these CCAA Proceedings will not reduce such costs and may actually result in increased costs to the detriment of the Applicants' creditors.

B. No Concerns Raised by the Monitor in Respect of Company Cash Flow

71. I am advised by Philip Yang of Stikeman Elliott LLP that Justice Osborne's Endorsement dated March 29, 2025, in refusing to approve the RFA, provided for enhanced reporting requirements on the part of the Monitor. Justice Osborne ordered and directed the Monitor to take on the following obligations:

(a) "[P]ursuant to section 23(1)(b) of the CCAA and the direction of this Court, the Monitor shall continue to review on an ongoing basis the Company's cash-flow statement(s) as to their reasonableness and report to the Court with respect thereto. This applies to current and future cash flow statements, including but not limited to the cash flow statement at Appendix "E" to the Supplement to the First Report of the Monitor dated March 21, 2025 (the "Current Cash Flow Forecast");

(b) the Court recognizes that it is usual and expected that that cash flow statements are updated from time to time as an insolvency proceeding progresses. The Monitor shall advise the Court by way of a Report or Supplement, on notice to the Service List, of updated cash flow statements or material variances from existing cash flow statements, in the usual course and on a timely basis as appropriate;

(c) in addition, and without in any way restricting the above, the Monitor will advise the Court, on notice to the Service List, if at any time (whether an updated cash flow statement has been prepared by the Company or not), in the professional opinion of the Monitor, actual results vary from the then Current Cash Flow Forecast by 15% or more;

(d) in further addition, the Company shall not, without the consent of the Monitor, who shall, where appropriate, seek the advice and direction of this Court on notice to the Service List, and except in accordance with Orders of this Court already made in this proceeding, make any investments or acquisitions of any kind, direct or indirect, in any other business or otherwise. The Monitor may, as is usual, consult with stakeholders, as appropriate. This specifically includes the Lenders; and

(e) the Monitor shall continue, among its other duties and responsibilities, to monitor cash receipts and disbursements by the Company. The Company should not make any disbursements other than those that are necessary and appropriate. These would include, in particular, any expenditure of cash or commitment to spend by the Company that is not contemplated by the Liquidation Sale Order, the Lease Monetization Order or the SISP already made in this proceeding, or as may be otherwise ordered by the Court on notice to the Service List."

72. Justice Osborne's Endorsement dated March 29, 2025, is attached hereto as **Exhibit "A"**.

73. I am advised by Mr. Yang that the Monitor has not sought the advice and directions of the Court in respect of any of the enhanced reporting requirements placed on the Monitor by this Court, as outlined above. The Monitor has also supported the Applicants' requested relief for stay extensions throughout these CCAA Proceedings and has opined that the Applicants have acted in good faith and with due diligence in these CCAA Proceedings.

74. For the reasons set out above, I believe that it is in the best interests of the Applicants and their stakeholders that this Court dismiss the Hilco Motion in its entirety.

75. I swear this affidavit in response to the Hilco Motion and for no other or improper purpose.

SWORN remotely via videoconference, by Michael Culhane, stated as being located in the City of New York, in the State of New York, before me at the City of Toronto, in Province of Ontario, this 13th day of July, 2025, in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely. DocuSigned by: 3612... Commissioner for Taking Affidavits, etc. Philip Yang | LSO #82084O	DocuSigned by: ... **MICHAEL CULHANE**

EXHIBIT "A"
referred to in the Affidavit of
MICHAEL CULHANE
Sworn July 13, 2025

DocuSigned by:
36124C4218DD47C...

Commissioner for Taking Affidavits
PHILIP YANG | LSO #82084O

CITATION: Hudson's Bay Company, Re, 2025 ONSC 1897
COURT FILE NO.: CV-25-00738613-00CL
DATE: 20250329

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 **HUDSON'S BAY COMPANY** ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTERPOINT GP INC., HBC YSS 1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP INC., SNOSPMIS LIMITED, 2472596 ONTARIO INC., and 2472598 ONTARIO INC., Applicants

BEFORE: Peter J. Osborne J.

COUNSEL: *Ashley Taylor, Elizabeth Pillon, Maria Konyukhova, Britnney Ketwaroo, Philip Yang and Nick Avis*, for the Applicants
Davis Bish, for Cadillac Fairview
Evan Cobb, for Bank of America
Linc Rogers and Caitlin McIntyre for Restore Capital LLC
Chad Kopach, for EY in the Receivership of Woodbine Mall Holdings Inc.
Lou Brzezinski, Alexandra Teodorescu and Nadav Amar, for TK Elevator (Canada) Ltd.
Haddon Murray, for Cominar Real Estate Investment Trust & Chanel ULC
Matthew Gottlieb, Andrew Winton and Annecy Pang, for KingSett Capital Inc.
Sean Zweig, Michael Shakra and Thomas Gray, for the Court-appointed Monitor
Trevor Courtis and Heather Meredith, for Bank of Montreal and Desjardins Financial Security Life Assurance Company
Gilles Benchaya and Mandy Wu, for Restore Capital LLC and Bank of America
James D. Bunting, for Ivanhoe Cambridge Inc.
Robert J. Chadwick, Joseph Pasquariello and Andrew Harmes, for RioCan Real Estate Investment Trust
Tushara Weerasooriya, Jeffrey Levine and Guneev Bhinder, for B.H. Multi Com Corporation, B.H. Multi Color Corporation & Richline Group Canada Inc.
Gregg Galardi, US Counsel for File Agent (Restore Capital LLC) as DIP Lender
Isaac Belland, for LVMH Moet Hennessy Louis Vuitton SA
Jake Harris, for the DIP Lenders
Matthew Cressatti, for the Trustees of the Congregation of Knox's Church, Toronto

D.J. Miller and Andrew Nesbitt, for Oxford Properties Group, OMERS Realty Management Corporation, Yorkdale Shopping Centre Holdings Inc., Scarborough Town Centre Holdings Inc., Montez Hillcrest Inc., Hillcrest Holdings Inc., Kingsway Garden Holdings Inc. Oxford Properties Retail Holdings Inc., Oxford Properties Retail Holdings II Inc., OMERS Realty Corporation, Oxford Properties Retail Limited Partnership, CPPIB Upper Canada Mall Inc., CPP Investment Board Read Estate Holdings Inc.
Calvin Horsten, for Toronto-Dominion Bank
Stuart Brotman and Jennifer L. Caruso, for Royal Bank of Canada
George Benchetrit, for Nike Retail Services Inc. and PVH Canada Inc.
Linda Galessiere, for Ivanhoe Cambridge II Inc./Jones Lang LaSalle Incorporation, Morguard Investments Limited and Salthill Property Managements Inc.
Steven Weisz and Dilina Lallani, for Ferragamo Canada Inc.
David Ullman and Brendan Jones, for Bentall Green Oak, Primaris REIT, Quadreal Property Group
David Preger and Stephen Posen, for 100 Metropolitan Portfolio, Mantella & Sons
Shayne Kukulowicz and Monique Sassi, for the Proposed Liquidator
Andrew J. Hatnay, Robert Drake and Abir Shamim, for certain HBC Employees and Retirees
Ken Rosenberg, Max Starnino, Emily Lawrence and Evan Snyder, for The Financial Services Regulatory Authority of Ontario
Sam Rogers, for Investment Management Corporation of Ontario
Kelly Smith Wayland, for the Department of Justice (Canada)
Blake Scott, for UNIFOR Local 240 & 40
Howard Manis for Villeroy & Boch Tableware Ltd.
Mitch Koczerginski for Cherry Lane Shopping Centre Holdings Inc. and TBC Nominee Inc.
Lindsay Miller, for West Edmonton Mall Property
Yiwei Jin, for United Food & Commercial Workers, Int'l Union Local 1006A
David Rosenblat, for Pathlight
Pavle Masic, for Samsonite Canada
Sarah Pinsonnault, for Québec Revenue Agency

HEARD: March 26 & 27, 2025

ENDORSEMENT

OSBORNE J.

1. At the hearing in this matter on March 21, 2025, the Applicants sought approval of a Restructuring Support Agreement ("RSS") between and among the Loan Parties, the ABL Agent, the FILO Agent and the Term Loan Agent. Numerous stakeholders, and particularly various

landlords with which the Company has leases, advised that they intended to oppose the RSS but requested an adjournment of the motion.

2. Since the draft RSS had been served on the Service List just prior to the commencement of the hearing, stakeholders had not had any reasonable opportunity to review it and consider their position, with the result that I adjourned the approval motion until Wednesday of this week.

3. As set out in the Affidavit of Philip Yang sworn March 26, 2025 on which the Applicants rely, the Applicants had engaged with their pre-filing lenders (the "Lenders") and landlords in the intervening period in an attempt to find common ground.

4. The Applicants, the ABL Agent, the FILO Agent and the Term Loan Agent entered into a restructuring framework agreement on March 25, 2025 (the "RFA"), which is effectively an updated and amended version of the RSS which the Applicants hoped would address many of the concerns expressed by stakeholders.

5. On this motion, the Applicants seek approval of the RFA. That position is strongly supported by the Pre-Filing Lenders (and particularly Restore Capital, LLC, the FILO Agent, and Pathlight) and is recommended by the Monitor. Approval is still opposed, however, by a number of stakeholders and principally the landlords.

6. As I observed in my Endorsement dated March 26, 2025, the Applicants submit that the RFA will allow the Company to continue to use its cash and inventory which is subject to the security of the Lenders. Distilled to its core, the argument is that the collateral for the indebtedness owing to the secured lenders is the very inventory now being sold to generate liquidity. While that liquidity is accretive to a successful restructuring, it results from the corresponding erosion of the security for the outstanding secured debt of the Company.

7. However, the landlords submit that there are no benefits to the Applicants derived from the RFA, and particularly no benefits that justify the onerous terms and obligations of the Applicants in the RFA given that DIP financing is no longer required.

8. The motion was heard on Wednesday and Thursday of this week. In the circumstances, it is critical that this decision be released as soon as possible and accordingly, it is somewhat summary in nature.

9. Defined terms in this Endorsement have the meaning given to them in my earlier Endorsements made in this proceeding, the motion materials and/or the Reports of the Monitor, unless otherwise stated.

10. For the reasons that follow, I decline to approve the RFA and the motion is dismissed.

11. The RFA has been provided in full and unredacted form to stakeholders, and is in the motion record. Accordingly, I need not summarize the entire RFA here.

12. In the main, it provides that the Lenders, who assert that they have priority ranking security interests in the merchandise in inventory at Hudson's Bay, will consent to the continued sale of that merchandise, but only in accordance with the terms of the RFA.

13. The Applicants, the Lenders and the Monitor candidly acknowledge that the RFA is "not perfect" and represents a negotiated solution to a significant disagreement about an important issue (the sale of merchandise that constitutes collateral to the Lenders).

14. They submit that it avoids ongoing conflict with those Lenders and this in turn will increase much-needed stability and predictability during a crucial period of this restructuring. They characterize the RFA as a positive step because it permits the ongoing liquidation sale that I approved last week to continue, but imposes various "guardrails" within which the Company must operate if it is to have the confidence of the Lenders.

15. I accept that there are positive attributes to the proposed RFA. It would require Hudson's Bay to comply with an agreed-upon Budget, subject to Permitted Variances (effectively a tolerance of up to 15%). Compliance with the Budget would, the Lenders submit, "ensure that funds are spent in a responsible manner, cognizant of all the circumstances of the case", and approval of the RFA would avoid "uncertainty, instability, cost and value destruction inherent in a contested *CCAA* process."

16. I also acknowledge that counsel for the Lenders confirmed on the second day of the hearing of these motions that in response to concerns expressed by the Court, the Lenders were agreed that section 12 of the proposed RFA should be amended to further extend the deadline by which, if the Loan Parties have not received a firm commitment in respect of a Permitted Restructuring Transaction in connection with the Excluded Stores from April 7 to April 30. That would align the dates with the deadlines provided in the SISP Order.

17. However, in my view, on balance, the RFA is neither necessary nor appropriate at this time for a number of reasons, including these:

a. as submitted by a number of the landlords, and as acknowledged in candour by the Lenders, the object and structure of the proposed RFA generally are consistent with what would typically accompany a DIP financing commitment.

   With the relatively modest interim DIP Facility approved in the Initial Order now having been repaid, and in the absence of any further commitment by the Lenders to provide DIP financing on terms agreed by the Applicants, I am not persuaded that it is appropriate in the circumstances of this case to grant these rights and protections to the Lenders, and to the exclusion of other stakeholders;

b. I acknowledge that, as submitted by the Lenders, the Company requires the continued use of collateral to pursue the ongoing liquidation sales and to permit the possibility of a restructuring transaction, including by way of the SISP and Lease Monetization Process.

However, it is not unusual in CCAA proceedings that assets of the debtor, including assets in which secured creditors assert a security interest and even a first ranking security interest, may, as appropriate in the particular circumstances of any given case and under the auspices of the Court-appointed Monitor and pursuant to Court order, sell, dispose of or encumber those assets.

Those secured creditors are not automatically entitled to a veto over the sale of such collateralized assets, and nor are they entitled to unilaterally impose terms on the sale of such assets. Such terms may be imposed if the Court considers that they are necessary and appropriate. I am not so persuaded here;

c. the proposed RFA would provide that the Company shall use its cash solely for the list of enumerated purposes and in the enumerated sequence set out in the RFA.

It would also provide that weekly variance reporting is required to be made by the Company to the Lenders (through their agent) as well as to the Monitor, essentially comparing actual receipts and disbursements as against the Budget (see more on the Budget below) and setting out all variances "on a line-item and aggregate basis in comparison to the [corresponding] amounts in the Budget; each such variance report to be promptly discussed with the [lenders] and each such variance report to include reasonably detailed explanations for any material variances".

In my view, it is the role of the Monitor, and one I expect the Monitor here to fulfil, to ensure that cash and other liquid assets of the Company are used only for appropriate purposes, in a manner accretive to the maximization of value in the *CCAA* proceeding, and in accordance with the terms of any relevant Court orders.

In this case, and at this time, that should be sufficient to give the Lenders comfort about the manner in which assets, including assets pledged as collateral for their secured loans, are dealt with.

It follows from this that if, for example, the Company sought to utilize cash on hand for a purpose inconsistent with the maximization of value in this proceeding, or in breach of the terms of any relevant Court orders, or in any other manner that the Monitor determined was not appropriate, I would expect the Monitor to seek the advice and directions of this Court with respect to those issues, and any proposed expenditure of cash by the Company that the Monitor felt was inappropriate, including but not limited to expenditures that would constitute material variances or a material adverse change in the Company's projected cash flow or financial circumstances (see s. 23(1)(d) of the *CCAA*).

It further follows that I do not think it appropriate to grant the control and veto rights to the Lenders contemplated by the RFA, particularly in circumstances where, as here, the security review of the loan and security documents underpinning the security interests of the Lenders remains ongoing by the Monitor (even

recognizing, as I do, that there is no basis before the Court at the present time to inform a reasonable belief that the security is not valid);

d. I am reinforced in the above-noted point by the fact that the RFA would permit the use of cash, intercompany advances, distributions or other payments only in accordance with a defined Budget attached to the RFA as Schedule "C".

   However, the Budget is not attached to the version of the RFA filed in the materials. It has not been shared with other stakeholders or the Court. For this reason alone, I would be reluctant to approve the RFA given its significant and substantial dependence on the Budget without having had the opportunity to review the Budget.

   While I accept the submission of the Lenders, the Applicants and the Monitor that the Budget is generally consistent with the cash flow projection appended to the Supplement to the Monitor's First Report, and while I understand the commercial sensitivity and potential risk to the ongoing SISP and Lease Monetization Process, the concern remains;

e. I am reinforced further still in the above point by the fact that, as highlighted for the parties during the hearing of this motion, the ARIO provides a "comeback" right pursuant to which any party may seek the advice and directions of this Court on seven days' notice.

   Moreover, the Commercial List routinely accommodates urgent motions or case conferences in ongoing *CCAA* proceedings on much shorter notice than that, where circumstances so require. This proceeding has already proven to be such an example;

f. the RFA would specify that all proceeds of Collateral must be applied in accordance with the priority waterfall set out at Schedule "D". Notwithstanding that the revised version of the RFA would make such distribution subject to further order of the Court, I see no reason to impose a mandatory distribution waterfall at this time. As and when a distribution is sought, all stakeholders will have the ability to make submissions with respect to any appropriate waterfall of such distributions;

g. the proposed RFA would provide that in the event the Company has Excess Cash (defined as cash from sales in excess of $15 million), it must be deposited with the Monitor and may be advanced to the Lenders to satisfy post-filing payment obligations incurred in accordance with the Budget. The submission was that cash on hand in excess of $35 million would be paid over.

   In my view, that is not appropriate or necessary at this time. Again, where a distribution is sought, the party seeking such distribution can bring a motion for such relief and the Court can make such directions are appropriate, having heard from the Monitor and other stakeholders;

h. the RFA would further provide that Excess Cash should be used, within three weeks of the date of the approval of the RFA, to cash collateralize all letter of credit obligations in an amount equal to 104% of the face amounts thereof, together with other related terms. Again, in my view, it is not appropriate to grant such prospective relief at this time, so early in the Liquidation Sale and SISP, and while events remain so fluid;

i. the RFA would impose numerous defined Negative Covenants on the Company setting out various things it would be prohibited from doing without the consent of the Lenders. Among the most problematic of these Negative Covenants is 14(k), which would prohibit and prevent the Company from seeking to obtain, or failing to oppose, any motion for approval by this Court of any Restructuring Transaction other than a Permitted Restructuring Transaction.

   The practical effect of that Negative Covenant would be contrary to the purpose and objective of the ongoing SISP, among other things, and would unduly restrict the Company from supporting (or failing to oppose) any proposed transaction that will be subject to Court approval on notice to all stakeholders anyway. In my view, it is inappropriate to place such a restriction on the Company now, in the context of an ongoing SISP, and in respect of a hypothetical, future, and as-yet unknown possible transaction.

   My concern with respect to this point is materially increased by the fact that the definition of "Permitted Restructuring Transaction" means a transaction that provides for repayment in full, in cash on closing, of all outstanding indebtedness to the Lenders. This would mean that the Company could not even bring forward for consideration by the Court and other stakeholders any possible transaction that did not provide for repayment in full of all prefiling secured debt.

   Evaluation and consideration of any proposed transaction is for another day: that is the whole point of the SISP - to generate any and all offers and fully canvass the market as to possible opportunities for Hudson's Bay. I am uncomfortable restricting the market intended to be created by the SISP and effectively pre-judge the creativity and ingenuity of participants in that process;

j. the RFA requires the Company to meet certain Milestones set out on Schedule "D", the failure of which would give certain rights to the Lenders. Those Milestones include the fact that the Court shall have made a distribution order by May, 15, 2025 and the distribution shall be completed within two days thereafter. I am not prepared to pre-determine today whether such an order will be appropriate or reasonable at a future date; and

k. finally, the RFA would provide for various Events of Default, the occurrence of which would give the Lenders various enumerated Remedies. In my view, it is not appropriate to "pre-authorize" such Remedies. If the Lenders are of the view that

additional Remedies are appropriate and should be ordered by this Court, I am quite confident that they will move for such relief promptly.

Indeed, if ironically, one of the Remedies would be the ability for the Lenders to apply to the Court for the appointment of a Receiver over the Company or the Collateral. I say "ironically" because during the hearing of this motion, the Lenders submitted that if this Court declined to approve the RFA, the Lenders would do just that - promptly seek the appointment of a Receiver.

18. I need not make any determination as to whether such a statement referred to in the last point immediately above was, in the submission of the landlords and others, in the nature of a threat, or whether it was, in the submission of the Lenders, merely an information point for the consideration of the Court. It does not matter. For all of the above reasons, in my view, approval of the RFA at this time is not appropriate. If the Lenders or any other party bring a motion in this proceeding, the Court will consider it at that time, based on the evidence in the record.

19. I recognize the submission of the Lenders that the obligations imposed on the Company by the RFA are, at least in some respects, not overly onerous, and that they are appropriate. The Lenders submit that they will be the fulcrum creditors in this proceeding, and subject to the completion of the security review now ongoing by the Monitor will be the first ranking secured creditors in any event. The protections are appropriate, they argue, given that the practical if unfortunate reality is that they are the creditors most economically affected by the success or failure of this *CCAA* proceeding, and in particular the SISP and the Lease Monetization Process already approved.

20. However, and as stated above, the controls already in place, the obligations on the Applicants as parties to this proceeding, and the oversight of the Court-appointed Monitor, are sufficient to protect the interests of the Lenders while balancing those interests against the rights of other stakeholders during this interim period when so many factors remain at play, significant unknowns remain, and the SISP and Lease Monetization Process are ongoing.

Result and Disposition

21. For all of the above reasons, I decline to approve the RFA. The motion is dismissed.

22. For greater certainty and clarity, I further order and direct (to the extent necessary) that:

a. pursuant to section 23(1)(b) of the *CCAA* and the direction of this Court, the Monitor shall continue to review on an ongoing basis the Company's cash-flow statement(s) as to their reasonableness and report to the Court with respect thereto. This applies to current and future cash flow statements, including but not limited to the cash flow statement at Appendix "E" to the Supplement to the First Report of the Monitor dated March 21, 2025 (the "Current Cash Flow Forecast");

b. the Court recognizes that it is usual and expected that that cash flow statements are updated from time to time as an insolvency proceeding progresses. The Monitor

shall advise the Court by way of a Report or Supplement, on notice to the Service List, of updated cash flow statements or material variances from existing cash flow statements, in the usual course and on a timely basis as appropriate;

c. in addition, and without in any way restricting the above, the Monitor will advise the Court, on notice to the Service List, if at any time (whether an updated cash flow statement has been prepared by the Company or not) if, in the professional opinion of the Monitor, actual results vary from the then Current Cash Flow Forecast by 15% or more;

d. in further addition, the Company shall not, without the consent of the Monitor, who shall, where appropriate, seek the advice and direction of this Court on notice to the Service List, and except in accordance with Orders of this Court already made in this proceeding, make any investments or acquisitions of any kind, direct or indirect, in any other business or otherwise. The Monitor may, as is usual, consult with stakeholders, as appropriate. This specifically includes the Lenders; and

e. the Monitor shall continue, among its other duties and responsibilities, to monitor cash receipts and disbursements by the Company. The Company should not make any disbursements other than those that are necessary and appropriate. These would include, in particular, any expenditure of cash or commitment to spend by the Company that is not contemplated by the Liquidation Sale Order, the Lease Monetization Order or the SISP already made in this proceeding, or as may be otherwise ordered by the Court on notice to the Service List.

23. Order to go to give effect to these reasons.

Osborne J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF MICHAEL CULHANE
(Sworn July 13, 2025)

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ONTARIO
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RESPONDING RECORD OF THE APPLICANTS (HILCO MOTION) (RETURNABLE JULY 15, 2025)

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