

CITATION: *In Re Hudson's Bay Company*, 2025 ONSC 1530
COURT FILE NO.: CV-25-00738613-00CL
DATE: 20250310

**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, Maria Konyukhova, Philip Yang and Brittney Ketwaroo, for the Applicants

Sean Zweig and Preet Gill for Alvarez & Marsal Canada Inc., the Proposed Monitor

Linc Rogers and Caitlin McIntyre for Restore Capital LLC, Proposed DIP Lender

Evan Cobb for Bank of America

David Rosenblatt for Pathlight Capital LP

HEARD: March 7, 2025

RELEASED: March 10, 2025

REASONS FOR JUDGMENT

OSBORNE J.

1. It is hard not to have a sense of melancholy when considering the Application before me. Hudson's Bay is the oldest company in North America and a very prominent Canadian department store. It was founded in 1670. Now, approximately 355 years later, it is insolvent and seeks protection from its creditors.
2. At the conclusion of the initial hearing of this Application on Friday, I granted the requested relief with reasons to follow. These are those reasons.

The Application

3. The Applicants, Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI ("Hudson's Bay" or the "Company"), HBC Canada Parent Holdings Inc. ("Hudson's Bay Parent 1"), HBC Canada Parent Holdings 2 Inc. ("Hudson's Bay Parent 2"), The Bay Holdings ULC ("The Bay Holdings"), HBC Bay Holdings I Inc. ("Hudson's Bay Holdings 1") and HBC Bay Holdings II ULC ("Hudson's Bay Holdings 2"), HBC Centerpoint GP Inc. ("Centerpoint GP"), HBC YSS 1 LP Inc. ("YSS 1 LP"), HBC YSS 2 LP Inc. ("YSS 2 LP"), HBC Holdings GP Inc. ("Hudson's Bay Holdings GP"), Snospmis Limited ("Snospmis"), 2472596 Ontario Inc. ("596 Ontario"), 2472598 Ontario Inc. ("598 Ontario", and collectively, the "Applicants" or the "Companies") bring this Application pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "*CCAA*").
4. Today, the Applicants seek an Initial Order providing for:
 - a. an urgent stay of proceedings (the "Stay of Proceedings") for the permitted initial ten-day period (the "Initial Stay Period") under s. 11.02(2) of the *CCAA*;
 - b. an extension of the Stay of Proceedings to certain Non-Applicant Stay Parties (as defined below);
 - c. the appointment of Alvarez & Marsal Canada Inc. as monitor (the "Proposed Monitor");
 - d. the approval of a DIP Agreement and authority to access the DIP Facility;
 - e. authority to maintain the existing Cash Management System;
 - f. authority to pay certain pre-filing amounts to Critical Suppliers; and
 - g. approval of an Administration Charge, a Directors' Charge and a DIP Lenders' Charge,

together with certain other relief necessary to preserve the Applicants' business and stakeholder value during the Initial Stay Period.

5. The Applicants rely on the Affidavit of Jennifer Bewley sworn March 7, 2025. Ms. Bewley is the Chief Financial Officer of Hudson's Bay and holds a number of other offices within the Applicants' corporate structure. The Applicants also rely on the Pre-Filing Report of the Proposed Monitor.
6. Defined terms in this Endorsement have the meaning given to them in the Application materials and/or the Pre-Filing Report, unless otherwise stated. All references to currency are expressed in Canadian dollars.

Background to the Application

7. Hudson's Bay currently operates, across seven provinces, 88 full-line Hudson's Bay-branded stores, three stores operating under a licence agreement as "Saks Fifth Avenue", and 13 stores operating under a licence agreement as "Saks OFF 5TH". It leases four distribution centres, one of which is in British Columbia with the remaining three in Ontario. It has approximately 9,364 employees, of whom 647 are employed subject to collective bargaining agreements. It has pension plans with both defined benefit and defined contribution elements.
8. When Hudson's Bay was founded in 1670, it was granted a right of sole trade and commerce over an expansive area of land known as Rupert's Land, which included what is today all of Manitoba, most of Saskatchewan, the southern parts of Alberta and Nunavut, and the northern parts of Ontario and Québec.
9. By the middle of the nineteenth century, Hudson's Bay evolved into a mercantile business selling a wide variety of products from furs to fine homeware in shops across Canada. Hudson's Bay officially became a Canadian company in 1970, when it rechartered under Canadian law.
10. Today, Hudson's Bay and its subsidiaries collectively operate as a premier North American department store retailer with significant real estate assets in Canada. In 2012, the Company completed an initial public offering of its common shares, which traded on the Toronto Stock Exchange. One year later, it acquired Saks Incorporated which then operated luxury department stores in the United States under the banners "Saks Fifth Avenue" and "Saks OFF 5TH".
11. The retail landscape in Canada and across North America has evolved dramatically and rapidly over the decades since those events. So-called "brick-and-mortar" stores have struggled to compete with e-commerce players, resulting in a decline in traffic at those stores. This trend has had a material negative impact on Hudson's Bay and its financial and operating results as well as its real estate assets.

12. As a result of these challenges, Hudson's Bay was taken private on March 3, 2020 by a group of then-existing shareholders. Saks Inc., together with its US subsidiaries, became a sister company and affiliate of Hudson's Bay. Between 2020 and 2024, Hudson's Bay and Saks Global shared the same ownership group and refinanced as a single credit group for credit facility purposes, while trade creditors and other service providers (with certain exceptions) transacted with each business separately.
13. The challenges noted above were exacerbated significantly by the Covid 19 pandemic and associated lockdown which resulted in a further significant decline in foot traffic at Hudson's Bay stores across Canada. The lasting impacts of the pandemic, including the widespread and continuing trend towards remote work, has decreased further still foot traffic at retail stores, and increased associate economic pressures.
14. The Company's flagship downtown stores have been disproportionately impacted since they have historically relied on office workers and commuters for a significant proportion of their revenue. At the same time, these locations represent some of Hudson's Bay's highest cost operations due to rent and other expenses.
15. Notwithstanding repeated and continuing efforts by the Company to address its financial and operational challenges since its privatization, including the pursuit of an aggressive e-commerce expansion strategy to counteract the impact of the decline in foot traffic at retail stores, and cost-cutting, the challenges have continued.
16. In December, 2024, Saks Global acquired Neiman Marcus. That transaction significantly reduced the funded debt obligations on Hudson's Bay's Canadian business, which then became separately financed with standalone credit facilities.
17. Recent and continuing uncertainty in financial markets, together with trade tensions with the United States and the threat of tariffs, have created even more challenging conditions for refinancing and business operations.
18. Earlier this year, Hudson's Bay had advanced discussions with potential lenders, pursuant to which, it was hoped, the Company could refinance some or all of its Credit Facilities and improve its liquidity position. Regrettably, those were not successful, and the potential lenders were ultimately unwilling to provide further financing, resulting in the liquidity crisis facing the Company today.
19. Put simply, Hudson's Bay is out of money and cannot meet its financial obligations as they come due. It therefore brings this Application today seeking the relief set out above.

Jurisdiction

20. Subsection 9(1) of the *CCAA* provides that an application for a stay of proceedings under the *CCAA* may be made to the court that has jurisdiction in the province in which the head office or chief place of business of the company in Canada is situated.

21. In *Nordstrom Canada Retail, Inc.*, 2023 ONSC 1422 (“*Nordstrom*”) at paras. 15 and 27, this Court found that the company’s “chief place of business” was Ontario, notwithstanding the fact that the debtor was incorporated and had significant business operations in British Columbia. In determining whether the court had jurisdiction over the proceedings, this Court considered multiple factors, including the location of the company’s assets, employees and sales. The Court found that there was sufficient evidence establishing Ontario as the proper jurisdiction based on the following:

[...] 8 of the 13 Nordstrom Canada retail stores are located in Ontario, while approximately 1,450 out of Nordstrom Canada's 2,500 full and part- time employees work in Ontario. Further, during fiscal year 2022, store sales in Ontario totalled \$220 million, compared to \$148 million in British Columbia and \$77 million in Alberta.

22. Here, 41 of the Applicants’ 90+ stores are located in Ontario - more than in any other province - and its head office is in Toronto. Approximately 51.6% of the Applicants’ employees are also located in Ontario, and its pension plan is registered with the Financial Services Regulatory Authority of Ontario.

23. I am satisfied that this Court has jurisdiction to grant the relief sought.

24. Further, and while this Court has broad discretion pursuant to section 11 of the *CCAA* to make any order it considers appropriate in the circumstances, section 11.001 requires that the relief sought on an initial application be limited to what is “reasonably necessary for the continued operations of the debtor company in the ordinary course of business” during the initial 10 day period.

25. This provision is intended to “limit the decisions that can be taken at the outset of a *CCAA* proceeding to measures necessary to avoid the immediate liquidation of an insolvent company, thereby improving participation of all players”. See: *Lydian International Limited (Re)*, 2019 ONSC 7473 (“*Lydian*”) at para 25. Whether any particular relief is necessary to stabilize a debtor company’s operations during the initial stay period is inherently a factual determination, based on all of the circumstances of a particular debtor: *Boreal Capital Partners Ltd et al. (Re)*, 2021 ONSC 7802 at para 16.

The Applicants are Insolvent

26. The *CCAA* applies to a “debtor company” or affiliated debtor companies where the total amount of claims against the debtor or its affiliates exceeds \$5 million. The Applicants are each a “company” for the purposes of s. 2 of the *CCAA* as they do business in or have assets in Canada: *Lydian* at para. 35-36.

27. The *CCAA* defines “company” in s. 2(1) as, among other things, “[a]ny company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and any incorporated company having assets or doing business in Canada, wherever incorporated [...]” The Applicants, as corporations existing under the laws of the Province of Ontario and British Columbia, meet the definition of “company”.
28. A “debtor company” means, *inter alia*, a company that is insolvent: *CCAA*, ss. 2 and 3(1). The *CCAA* defines a “debtor company” as, among other things, any company that is insolvent or has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (“*BIA*”).
29. The term “insolvent” is not defined in the *CCAA* and therefore a determination of whether a company is insolvent requires consideration of the definition of “insolvent person” in the *BIA*, as:
- a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and
- a) who is for any reason unable to meet his obligations as they generally become due,
 - b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
 - c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.
30. Each of the above factors is disjunctive.
31. Courts have also considered the expanded concept of insolvency adopted in *Stelco Inc., Re*, 2004 CarswellOnt 1211 at para. 26 (“*Stelco*”), in which this court held that a debtor is insolvent where there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured. This approach to the insolvency criteria has been applied in other cases, including *Target Canada Co. (Re)*, 2015 ONSC 303 (“*Target*”) at para. 26; *Just Energy Corp. (Re)*, 2021 ONSC 1793 (“*Just Energy*”) at paras. 48 to 51; and *Nordstrom* at para. 26.
32. I am satisfied that the Applicants here are insolvent in that they are unable to meet their obligations as they generally become due. As of January 1, 2025, the Applicants had approximately \$3 million in cash on hand. They owed approximately \$315 million in trade

payables and \$422 million in pre-filing secured debt in addition to \$724.4 million in mortgage obligations, for approximate total Secured Debt Obligations of \$1.1294 billion.

33. Hudson's Bay today is facing an imminent liquidity crisis. It has not paid rent at several of its leased stores and a number of its trade creditors have not been paid. The failure to pay rent will imminently trigger an escalating chain of events leading to defaults under other leases, where Hudson's Bay has failed to pay rent and cross defaults on its secured obligations. As reflected in the Cash Flow Forecast prepared by Hudson's Bay and reviewed by the Proposed Monitor, the Companies have a critical need for immediate financing to continue operating in the ordinary course.
34. Accordingly, I am satisfied that the Applicants are corporations that collectively owe over \$5 million in outstanding liabilities. They have delivered the documents and financial statements required under s. 10(2) of the *CCAA*.

Stay of Proceedings

35. Section 11.02(1) of the *CCAA* provides that the Court may order a stay of proceedings on an initial *CCAA* application for a period of not more than 10 days. Section 11.001 of the *CCAA* provides that relief granted on an initial *CCAA* application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that initial 10-day period.
36. In *Lydian*, the Chief Justice observed that the Initial Stay Period preserves the status quo and allows for operations to be stabilized and negotiations to occur, followed by requests for expanded relief on proper notice to affected parties at the full comeback hearing.
37. The relief requested in this first-day Application meets these criteria. Each aspect of the relief sought by the Applicants in the Initial Stay Period is interdependent, and collectively the relief is critical to allow the Applicants to properly respond to their current circumstances.
38. A stay of proceedings is clearly necessary here if any form of restructuring process is to be successful. The Applicants are in a liquidity crisis and absent a stay of proceedings, there is a significant risk that individual creditors will seek to enforce their rights on a haphazard basis without regard for the survival of the Companies or maximization of their value. Indeed, landlords and creditors in Ontario and Nova Scotia are already seeking to do just that.
39. A stay of proceedings is necessary to provide the Applicants with the breathing space necessary to develop an orderly restructuring process while maintaining business operations in the ordinary course.

The Stay should be Extended to Non-Applicant Stay Parties

40. I am also satisfied that the stay and the protections and authorizations proposed in the draft Initial Order should be extended to the defined Non-Applicant Stay Parties, including the RioCan-Hudson's Bay JV.
41. The authority of the Court to extend a stay to non-filing affiliates is derived from the broad jurisdiction given to the Court under ss. 11 and 11.01(2) of the *CCAA*. The Supreme Court of Canada has described this judicial discretion - which plays a prominent role in *CCAA* restructurings - as the "true 'engine'" driving the statutory scheme of the *CCAA*: *Montreal (City) v. Deloitte Restructuring Inc.*, ("Montreal v. Deloitte"), 2021 SCC 53 at para. 48.
42. In *JTI-Macdonald Corp.*, this Court outlined the factors determining when it is appropriate to extend a *CCAA* stay over non-filing affiliates, including where the business of the non-filing affiliate is significantly intertwined with that of the debtors and extending the stay would help maintain stability during the *CCAA* process: *JTI-Macdonald Corp. (Re)*, 2019 ONSC 1625 at para. 15 ("*JTI-Macdonald*").
43. In considering whether to extend a stay of proceedings to non-applicant parties, this Court has previously considered factors including: whether (a) the non-applicant parties had guaranteed the debtor's secured loans; (b) the non-applicant parties were deeply integrated into the business operations of the debtor; and (c) the claims against the non-applicant parties were derivative of the primary liability of the debtor: *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 ("*BZAM*") at para 42.
44. Certain of the Non-Applicant Stay Parties here are partnerships. Where the operations of partnerships are integral and closely related to the operations of the applicants, it is well-established that the *CCAA* court has the jurisdiction to extend the protection of the stay of proceedings to those partnerships to ensure that the purposes of the *CCAA* can be achieved. To decide otherwise would "defeat the entire purpose" of a *CCAA* restructuring: *Just Energy* at para 117.
45. One of the Non-Applicant Stay Parties, RioCan-Hudson's Bay JV, is a joint venture between Hudson's Bay and a third-party non-applicant, RioCan Real Estate Investment Trust. Hudson's Bay, through its wholly owned subsidiary Hudson's Bay Holdings LP, holds a 78.0136% interest as a limited partner in RioCan-Hudson's Bay JV. The general partner of RioCan-Hudson's Bay JV is RioCan-Hudson's Bay GP. Hudson's Bay Holdings GP, a wholly owned subsidiary of Hudson's Bay, has a 50% share ownership interest in RioCan-Hudson's Bay GP and RioCan Financial Services Limited has the remaining 50% share ownership interest in RioCan-Hudson's Bay GP. Certain of RioCan-Hudson's Bay JV's subsidiaries are proposed Non-Applicant Stay Parties.

46. This Court has previously granted stays of proceedings over entities in which the applicants lacked majority control. In *Re Imperial Tobacco Canada Limited*, 2019 ONSC 1684 at para. 11 – 12, the Court granted a stay over an entity in which the debtors held a 50% voting interest and 70% equity interest, noting that the non-applicant stay entity was “highly integrated with the [a]pplicants and indispensable to the [a]pplicants’ business and restructuring.” The Court concluded by noting that extending the stay to the non-applicant entity would not prejudice any claimants.
47. In the present case, the Non-Applicant Stay Parties are highly integrated with and indispensable to the business of the Applicants. RioCan-Hudson’s Bay JV and the other Non-Applicant Stay Parties are the Applicants’ real estate subsidiaries (whether wholly or partially owned by Hudson’s Bay) and represent all of Hudson’s Bay Canada’s owned real property interests and certain head leasehold interests.
48. The business and operations of the Non-Applicant Stay Parties is fully intertwined with those of the Applicants. Any proceedings commenced against the Non-Applicant Stay Parties would necessarily involve the Applicants’ key personnel and consume the Applicants’ limited resources. Extending the stay to the Non-Applicant Stay Parties prevents uncoordinated realization and enforcement attempts in different jurisdictions, all of which would be counterproductive to the maximization and protection of value for Applicants’ stakeholders. Accordingly, the Applicants submit that it is appropriate to extend the stay of proceedings to the Non-Applicant Stay Parties. I agree with that submission.

The Stay Should Prohibit Pre/Post Set-Off

49. The proposed stay of proceedings would prohibit any person from setting off pre-filing obligations against post-filing obligations.
50. While section 21 of the *CCAA* contemplates set-off within a *CCAA* proceeding, it does not specifically address the issue of pre-/post set-off. However, the Supreme Court of Canada has confirmed that this Court can stay pre-/post set-off pursuant to its broad jurisdiction that flows from ss. 11 and 11.02 of the *CCAA*: *Montreal v. Deloitte* at para 62. This Court has in fact done so in other cases. See, for example, *Re Tacora Resources Inc.* (October 2023), Toronto CV-23-00707394-00CL (Initial Order) at para. 13.
51. I am satisfied that such an element of the proposed stay is appropriate here.

The Stay Should Suspend Certain Rent Payments

52. In addition, I am satisfied that, pursuant to section 11 of the *CCAA*, the stay should, as proposed, suspend the payment of rent by Hudson’s Bay to Rio-Can-Hudson’s Bay JV, YSS1 or YSS 2 (the “JV Sublandlords”) pending further order of the Court, other than with respect to that amount of rent payable by the JV Sublandlords, as applicable, to third party Landlords under the JV Head Lease until such JV Head Lease is disclaimed or terminated.

53. The circumstances here are somewhat unique and, in my view, warrant the exercise of discretion to stay the payment of post-filing rent in this curated fashion, since the JV Sublandlords are Non-Applicant Stay Parties in which Hudson's Bay indirectly owns a 78.0136% equity interest and which form an integrated and integral part of the business of the Applicants.
54. Five of the leases between the Applicants and the JV Sublandlords are subleases. Those JV Sublandlords in turn have head leases with third-party Landlords. The majority of the sublease structures are subject to third party property-specific mortgages. The rent payable to the Landlords is lower than current market rents. The rent payable to the JV Sublandlords by Hudson's Bay reflects market rents as they existed in 2015 when the structure was put in place.
55. In the normal course, the rent paid by Hudson's Bay to the JV Sublandlords would be used to pay the rent payable to the Landlords under the head lease, administrative costs, and the servicing of mortgage debt, with the remainder being distributed to Hudson's Bay and RioCan by way of equity distribution.
56. The extension of the stay to the Non-Applicant Stay Parties will stay pre-filing debt obligations of the JV Sublandlords owed to the third party mortgage lenders. While RioCan and Hudson's Bay would normally receive equity distributions from RioCan-Hudson's Bay JV, such distributions will be stayed by the *CCAA* proceedings.
57. The proposed stay of the payment of rent by Hudson's Bay to the JV Sublandlords (other than any amount necessary to satisfy the amount of rent payable under any head leases), will mitigate any prejudice to the Landlords, and is consistent with s. 11.01 of the *CCAA*.
58. The Applicants are facing a severe liquidity crisis and require immediate access to DIP financing to continue operating, all as is discussed further below. The Applicants' ability to avoid a complete liquidation and restructure around a lower number of locations – thereby preserving the jobs of thousands of employees – is dependant upon preserving as much liquidity as possible. If Hudson's Bay is required to pay rent in full to the JV Sublandlords, that cash (net of payments to Landlords and for other expenses) would pool in the JV Sublandlord entities resulting in a potential windfall recovery for the JV Sublandlords' secured creditors, to the detriment of Hudson's Bay and its stakeholders generally.
59. The terms of the proposed DIP Facility do not permit Hudson's Bay to make post-filing payments to RioCan Hudson's Bay JV. A similar approach was endorsed by this Court in *Nordstrom*, where this Court stayed and suspended the payment of certain post-filing amounts arising from subleases between the debtor (as sublessee) and a non-applicant stay party (as sublessor). Basic rent was not stayed, but amounts incurred in constructing, fixturing, and furnishing the premises that would otherwise be due under the subleases were stayed: *Nordstrom* at paras. 9 and 44.

60. I recognize that other courts have taken different approaches, but in my view, each case reflects the fact that, as contemplated by the *CCAA*, the exercise of discretion should be considered on a case-by-case basis according to the specific facts in each. The British Columbia and Québec courts have, on occasion, declined to relieve debtors of paying post-filing rent. See, for example: *Re Quest University Canada*, 2020 BCSC 921; and *Groupe Dynamite inc. C. Deloitte Restructuring Inc.*, 2021 QCCS 3. Both of these cases, however, are in my view distinguishable from the present situation as they did not involve a related-party landlord, and the debtors in those cases proposed deferring or not paying all of the rent owing under their leases.
61. In the particular and unique circumstances of this case, I am satisfied that the stay of proceedings should suspend post-filing rent payments to the JV Sublandlords, other than with respect to any amounts necessary to pay the rent due on the head lease.

Co-Tenancy Stay

62. The proposed stay would also apply to co-tenants. Many retail leases provide that tenants have certain rights against their landlords which rights are triggered upon the insolvency of an anchor tenant or an anchor tenant ceasing operations at the location of the co-tenancy.
63. The Applicants are requesting that the stay here apply to any rights that tenants or occupants may have against the owners, operators, managers and landlords of the commercial properties where Hudson's Bay stores are located that arise as a result of the insolvency by Hudson's Bay Canada, the granting of the proposed Initial Order, or any actions taken by the Applicants pursuant thereto. This is supported by the Proposed Monitor.
64. I recognize that such relief has been granted by other Courts in retail insolvencies pursuant to the broad discretion given to the court under sections 11 and 11.02(1) of the *CCAA* to make an initial order on "any terms that it may impose". See, for example, *Re T. Eaton Co.*, 1997 CarswellOnt 1914 (Gen. Div.), *Target* at paras. 44 - 48, and *Nordstrom* at paras 33 - 35.
65. The rationale is that extending the stay of proceedings in such a manner prevents a so-called "run on the bank" in the sense that many other co-tenants might seek, as a result of this proceeding, to terminate their own leases with landlord locations where Hudson's Bay currently operates. As observed by the Court in *Target* at para. 44, if tenants were permitted to exercise these co-tenancy rights during the stay, the claims of the landlord against the debtor company could greatly increase, with the potentially detrimental impact on the restructuring efforts of the debtor company.
66. In the particular and unique circumstances of this case, and given the prominent nature of the business of Hudson's Bay, both generally in the retail landscape across Canada and specifically at various shopping mall locations, I am prepared to grant that relief today for the initial stay period to ensure stability of operations.

67. However, and consistent with the approach adopted by the Court in *Target*, to the extent that the affected parties wish to challenge the broad nature of this stay, such can be addressed at the comeback hearing: *Target*, at para. 48.
68. I would add that, in my view, such co-tenancy stays are representative of relief that lies towards the limit of the judicial discretion permitted by ss. 11 and 11.02 of the *CCAA* and should generally be granted only in relatively unique circumstances and where justified on the evidence before the Court.
69. Such stays suspend the enforcement of contractual rights of parties that are quite remote to the present proceeding and the insolvency of the debtor on which it is based. Such co-tenancy stays operate, in practical terms, to protect and stabilize the operations not of the debtor, but of landlords who are contractual counterparties to the debtor (i.e., through retail leases). Those landlords are not insolvent. While I appreciate that the object of such stays is to minimize the risk of that very event occurring, such stays represent a significant compromise of rights of third parties.
70. There are many examples of stays that compromise or suspend the rights of third parties. Usually, however, those third parties are counterparties in contracts or have some other relationship with the debtor. Here, such co-tenancy stays suspend the rights of parties one step even further removed from the insolvency of the debtor - other retail tenants who have their own leases with the landlords. The only factor joining those parties to the debtor is that they have a common landlord at a common retail location.
71. The exercise of termination rights by those other retail tenants sought to be suspended must depend on those termination rights existing in the first place according to the terms of the leases in place between those other tenants and the landlord. If a co-tenant bargained for the right to terminate its own lease in the event that an anchor tenant at the same location ceased operations or became insolvent, and its landlord agreed to give that co-tenant such a right (presumably for economic consideration), the landlord made the business decision to take risks in respect of other retail tenancies based on its own assessment of the risk of insolvency of the anchor tenant.
72. Finally in this regard, it does not automatically follow that even if a co-tenant terminated its lease, the landlord would have a valid claim against the debtor in the insolvency proceeding.
73. Accordingly, in my view, an analysis of whether the rights of co-tenants should be suspended pursuant to a stay of proceedings will be fact-specific in each case, and if granted at the initial order hearing of an application, will be subject to review at the comeback hearing as noted by the Chief Justice in *Target*.
74. I would add that it will also be subject to review at any time throughout the proceeding by a co-tenant pursuant to the seven day comeback clause in the Commercial List Model Order

pursuant to which any affected party may request that the Court review, amend or vacate an initial order at any time.

Cash Management System Should be Maintained

75. Finally, I am satisfied that the terms of the stay should be such that the existing Cash Management System is preserved for the time being, and that Hudson's Bay and The Bay LP should have continued and uninterrupted access to the Bank accounts, with the associated banks not having the ability to restrict the rights of those parties in any way associated with the Cash Management System.
76. The Cash Management System centralizes the payment of funds and expenses associated with the operations of Hudson Bay through 46 bank accounts with 28 accounts at RBC, 16 accounts at TD, and two at Bank of America. Store receipts are deposited into depository accounts at RBC, and debit and credit card receipts (excluding American Express) are deposited daily into the TD depository accounts.
77. The Company maintains 22 bank accounts that process outgoing wires, Automatic Clearing House and cheque payments for disbursements to landlords, vendors, tax authorities, and employees. Those accounts are funded by the main cash accounts in each respective entity. In addition, Hudson's Bay Canada holds nominal cash to ensure sufficient cash flow to the stores. Excess cash is deposited into the main cash account of Hudson's Bay as needed, typically twice per week.
78. I am satisfied that the existing Cash Management System should be maintained in order that the Company can continue to efficiently collect, manage and disperse cash. The Proposed Monitor has familiarized itself with the Cash Management System, is supportive of its maintenance, and opines that the appropriate processes, controls, and reporting are in place to enable the Applicants, with the oversight of the Proposed Monitor, to continue to use the Cash Management System during this CCAA Proceeding.

Appointment of Alvarez & Marsal Canada Inc. as Monitor

79. Pursuant to section 11.7 of the *CCAA*, the Court shall appoint a person to monitor the business and financial affairs of the company when an order is made on the initial application. The person appointed must be a trustee within the meaning of subsection 2 (1) of the *BIA*.
80. The Applicants propose to have Alvarez & Marsal Canada Inc. ("A&M") appointed as the Monitor.
81. A&M is a "trustee" within the meaning of subsection 2(1) of the *BIA*, is established and qualified, and has consented to act as Monitor. The involvement of A&M as the court-appointed Monitor will lend stability and assurance to the Applicants' stakeholders. A&M is not subject to any of the restrictions set out in s. 11.7(2) of the *CCAA*.

82. I am satisfied that A&M should be appointed as Monitor in these *CCAA* Proceedings.

The DIP and DIP Facility

83. The Applicants seek approval of the DIP Facility and approval of an interim financing charge (the DIP Charge) to secure the proposed DIP Facility pursuant to section 11.2 of the *CCAA*.

84. Section 11.2(4) of the *CCAA* sets out a non-exhaustive list of criteria that the Court must consider in deciding whether to grant a DIP lender's charge. Those criteria apply to the period during which the Applicants are expected to be subject to *CCAA* proceedings, how the Applicants' business and financial affairs are to be managed during the proceedings, whether the Applicants' management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the Applicants' property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the monitor supports the charge.

85. When an application for interim financing is made at the same time as an initial application, the applicant must additionally satisfy the Court that the terms of the loan are "limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period: s. 11.2(5).

86. It is important that an applicant meet the criteria in section 11.2(1) as well as those in section 11.2(4). See *CanWest Publishing Inc., Re*, 2010 ONSC 222 ("*CanWest II*") at paras. 42-44.

87. When considering the s. 11.2(4) factors, the Court "must determine which proposal is most appropriate and most importantly, which will best serve the interests of the stakeholders of the [Applicants] as a whole by enhancing the prospects of a successful restructuring." The Court is to make an "independent determination" when selecting a DIP proposal, having regard to the factors in subsection 11.2(4): *Crystallex (Re)*, 2012 ONCA 404 at para 85.

88. The terms of the DIP Facility, in the principal amount of \$16 million, are reflected in the Junior DIP Term Sheet dated as of March 7, 2025. The Company is the Borrower, and various affiliates are Guarantors. The Agent is Restore Capital, LLC on behalf of a syndicate of lenders as set out in the materials. The Applicants are seeking on this initial Application a corresponding DIP Charge, which would rank according to the waterfall priority set out in the proposed Initial Order.

89. I am satisfied that the DIP Facility and DIP Charge are appropriate here. The Applicants are facing an urgent and immediate liquidity crisis. They are unable to pay rent, current

commitments to suppliers, and they will be unable to fund payroll within a matter of days. A loss of employees or material contracts could have significant negative impacts on the business of the Applicants.

90. The proposed DIP facility does not contain any commitment fee, and the proposed exit fee is comparable to DIP Facilities of a similar size. In the view of the Proposed Monitor, while the proposed interest rate is on the higher end of the range for comparable DIP facilities of similar size (CORRA+11.5%, or approximately 14.5%), it is reasonable relative to the existing FILO Credit Facility rate (CORRA+9.75%, or approximately 12.75%), and in my view is reflective of both the challenges and risks associated with a bricks and mortar retail operation in Canada today and the challenges facing these Applicants in particular.
91. The cash flow projections demonstrate that debtor-in-possession financing is urgently required to fund the needed liquidity to preserve the value in going-concern operations of the business. The DIP Lenders require the DIP Charge as a condition of the DIP Facility.
92. The Applicants believe, and the Proposed Monitor supports the view, that the DIP Facility represents the best interim financing that is available in the circumstances, and further that the economic terms of the DIP Facility are reasonable in the circumstances. It was selected following discussions with multiple potential lenders.
93. I accept the submission. The DIP Lender is an existing pre-filing secured creditor. Notice has been given to secured creditors that are proposed to be primed by the DIP Charge as required by subsection 11.2(1) of the *CCAA*. The terms of the proposed Initial Order are clear that the proposed DIP Charge does not secure any pre-filing obligations of the Applicants.
94. As required by section 11.2(5), the proposed DIP Facility is limited on this initial application to what is “reasonably necessary” to meet the needs of the debtor during the initial interim period.
95. The Cash Flow Forecast provided by the Proposed Monitor shows that the funds to be made available by the DIP Facility of \$16 million are required to stabilize and maintain operations and fund these proceedings through the initial stay period. Without that, the total projected disbursements for this period of approximately \$30.7 million would be unfunded.
96. I observe that the Cash Flow Forecast reflects receipts forecasted from sales of retail stores and e-commerce channels consistent with recent sales trends for the Company, inventory purchases represent estimated disbursements to purchase inventory for continuing stores, and occupancy costs include post-filing rent for the period March 7-17, 2025 for all store, corporate and distribution centre locations.

97. For all of these reasons, the DIP Facility and the DIP Charge are approved.

Administration Charge

98. The Applicants are seeking an Administration Charge to secure the professional fees and disbursements of the Proposed Monitor, its counsel, and counsel to the Applicants up to a maximum of \$2.8 million for the duration of the Initial Stay Period.

99. The Administration Charge was developed in consultation with the Proposed Monitor and is proposed to be secured by the Property with first priority over all other charges and security interests.

100. The Court has jurisdiction to grant an administration charge under s. 11.52 of the *CCAA*. It is to consider: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor. See *CanWest Publishing Inc.*, 2010 ONSC 222 at para. 54.

101. The proposed Administration Charge sought for the initial 10-day period meets this test and is appropriate. It is supported by the Proposed Monitor.

The Directors' Charge

102. The Court has jurisdiction to grant a directors' charge under section 11.51 of the *CCAA*, provided notice is given to the secured creditors who are likely to be affected by it.

103. The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protections against liabilities that could be incurred.

104. Such a charge may not be made if "the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost" and the court shall declare that the charge does not apply in respect of a specific obligation or liability incurred by a director or officer "if, in its opinion, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct": *CCAA*, s 11.51; see also *Laurentian University of Sudbury*, 2021 ONSC 1098, *supra* at para 81; and *Jaguar Mining Inc, Re*, 2014 ONSC 494 at para 45.

105. The Applicants here seek a Directors' Charge in the amount of \$26,300,000 to secure the indemnity of their directors and officers for liabilities they may incur during the *CCAA* proceedings.

106. I am satisfied that the proposed Directors' Charge is appropriate here. The directors and officers have advised that they are prepared to continue to serve, conditional upon the granting of the Directors' Charge. It will apply only to the extent that the directors' and officers' respective insurance is insufficient or ineffective, and only in respect of obligations and liabilities incurred after the commencement of the *CCAA* Proceedings excluding wilful misconduct or gross negligence.
107. The Proposed Monitor supports the Applicants' request for the Directors' Charge. I am satisfied it is appropriate here.
108. I recognize that the quantum of the proposed charge is significant. I am satisfied, however, that it is appropriate here, due in large part to the fact that the business of the Applicants is largely retail consumer sales. The payroll of the Applicants (which will cycle during the initial stay period) is very significant given the large number of employees (approximately 9,364 as of February 28, 2025), and that triggers regular remittance obligations. So too do all retail sales in respect of HST remittance obligations.
109. I am satisfied that the proposed amount is reasonable in the circumstances, and limited to the potential exposure during the initial 10 day period. For all of these reasons, the Directors' Charge is approved.

Pre-Filing Payments to Critical Third Parties

110. The Applicants seek the authorization but not the requirement to make payments with the consent of the Monitor, of pre-filing amounts to certain critical third parties.
111. Authority to grant an order for the payment of critical suppliers flows from section 11.4 of the *CCAA* which gives the Court specific authority to declare a person to be a critical supplier and to grant a corresponding charge on the property of the debtor to secure amounts owing for services provided after the filing.
112. The proposed order here would grant authority to the Applicants to pay pre-filing critical suppliers. I accept the submission that section 11.4 does not oust the inherent jurisdiction of the Court to authorize the payment of pre-filing amounts to suppliers who services are viewed as critical to the post-filing operations of the debtor. See, for example: *BZAM* at para. 73; and *Cline Mining Corporation (Re)*, 2014 ONSC 6998 at paras 39-40.
113. The Court has exercised its jurisdiction on multiple occasions to grant similar relief in other cases: See, for example, *Target*, at para. 62 to 65; *Nordstrom*, at paras. 50-53; *Just Energy*, at para. 99; *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753 at paras. 72-74; and *Boreal Capital* at paras. 20-22.

114. The factors that courts have considered in determining whether to grant such authorization include: (a) whether the goods and services are integral to the business of the applicants; (b) the applicants' dependency on the uninterrupted supply of the goods or services; (c) the fact that no payments will be made without the consent of the Monitor (which is a requirement under the proposed Initial Order); and (d) the effect on the debtors' operations and ability to restructure if it could not make such payments: *Index Energy Mills Road Corporation (Re)*, 2017 ONSC 4944 at para. 31; *Clover Leaf Holdings Company, Re.*, 2019 ONSC 6966 at para 25; *Re Just Energy* at para 99; and *BZAM* at paras 73-74.

115. These factors are fulfilled in this case, as these categories of suppliers are fundamental to the continuing operations of the Applicant.

Initial Order and Comeback Hearing

116. For all of these reasons, the Initial Order was granted with immediate effect according to its terms and without the necessity of issuing and entering.

117. The comeback hearing shall take place on Monday, March 17, 2025 commencing at 9:00am ET at the Courthouse.

A handwritten signature in green ink, appearing to read "Osborne J.", is positioned above a horizontal line.

Osborne J.

