

**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)

**FACTUM OF THE APPLICANTS
(Re: Sale of Intellectual Property and WEPPA Declaration)
(Returnable June 3, 2025)**

May 30, 2025

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TO: THE SERVICE LIST

PART I – OVERVIEW¹

1. The Applicants sought and obtained protection under the CCAA on March 7, 2025.²

2. At the Comeback Motion on March 21, 2025, the Applicants sought and obtained the SISP Order approving the SISP, which was intended to identify a potential going-concern or other transaction for all or a portion of the Company's Business.³

3. Following a review of the bids received (in consultation with the Monitor, Reflect and certain secured lenders), the Applicants declared Canadian Tire's bid for the Company's intellectual property portfolio to be the Successful Bid.⁴

4. Execution of the APA represents the culmination of extensive solicitation efforts undertaken pursuant to the SISP, which included a broad canvassing of the market of parties potentially interested in the Applicants' business and assets.⁵ The APA and the Transactions contemplated thereunder represents the highest and best offer for the Applicants' intellectual property portfolio and other brand assets documented in the APA. In addition, the Transactions (if approved), will allow for the Company's iconic marks and intellectual property to be utilized by another of Canada's iconic retailers, ensuring that an important part of the Company's legacy will continue into the future.⁶

5. Despite best efforts to solicit a bid for a going concern transaction through the SISP, no going concern bid was identified. As no going concern sale opportunity was available, the Company had to make the necessary but difficult decision to significantly reduce employee headcounts to align with the wind down of the Liquidation Sale and rolling closure of store

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms in the Affidavit of Michael Culhane sworn May 26, 2025 (the "**First Culhane Affidavit**").

² First Culhane Affidavit at para 7, Motion Record of the Applicants dated May 26, 2025 ("**Motion Record**") at Tab 2.

³ *Ibid* at para 8.

⁴ *Ibid* at para 10.

⁵ *Ibid* at para 62.

⁶ *Ibid* at para 59.

locations.⁷

6. Accordingly, this factum is filed in support of the Applicants' motion for approval of: (a) the Approval and Vesting Order which, among other things, approves the APA and the Transactions contemplated therein; (b) if necessary, the Assignment Order assigning, conveying, and transferring to Canadian Tire, the rights, title and interest of the Company under the Pendleton Agreements; and (c) the WEPPA Declaration that, pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, effective June 21, 2025, the Applicants meet the criteria prescribed by section 3.2 of the WEPP Regulation.

PART II – THE FACTS

7. The facts with respect to this motion are more fully set out in the First Culhane Affidavit.

A. Conduct of the SISP

8. Following the commencement of the CCAA Proceedings the Applicants, with the assistance of Reflect and the Monitor, made significant efforts to identify a potential going-concern transaction for all or a portion of the Business.⁸

9. In accordance with the SISP, Reflect sent a Teaser Letter, together with the SISP Approval Order and a draft form of NDA, to approximately 407 potentially interested parties, 54 of which executed an NDA and were provided with the Confidential Information Memorandum and access to an electronic data room to conduct due diligence. In addition, five parties participated in meetings with certain of Hudson's Bay's senior management, the Financial Advisor and the Monitor.⁹

10. By the Bidding Phase Bid Deadline (April 30, 2025), Reflect and the Monitor had received 17 bids, 13 of which were bids for all or a portion of the Company's intellectual property.¹⁰

⁷ *Ibid* at para 31.

⁸ *Ibid* at para 45.

⁹ *Ibid* at paras 48-49.

¹⁰ *Ibid* at para 51.

11. Following the Bidding Phase Bid Deadline, the Applicants, in consultation with their counsel, Reflect and the Monitor, reviewed and discussed each bid received, and where appropriate, requested certain amendments to bids. Reflect engaged in numerous discussions with bidders to seek and obtain clarification in respect of their bids. In many instances, both the quantitative and qualitative attributes of certain bids were indistinguishable. In such instances, Reflect sought and obtained modifications to such bids to improve them where possible. Reflect also discussed the non-conforming aspects with parties who submitted bids that did not conform with the requirements set out in the SISP. To the extent parties re-submitted their bid in a conforming manner, those bids were considered. To the extent parties declined to do so, their bid was deemed non-compliant.¹¹

12. After careful consideration, the Company's board of directors, in consultation with its legal counsel, Reflect and the Monitor, exercised its reasonable business judgement and determined that the bid submitted by Canadian Tire was the most favourable bid for the Company's intellectual property portfolio, including the HBC Stripes and other brand assets, and declared the Canadian Tire bid the Successful Bid.¹²

13. On May 15, 2025, the APA was executed by The Bay LP, through its general partner, The Bay Holdings, as vendor, and Canadian Tire, as purchaser, subject to Court approval.

B. The APA and the Transactions

14. The key terms of the APA are summarized below¹³ (capitalized terms not defined herein have the meaning ascribed to them in the APA):

Key Terms	Asset Purchase Agreement
Purchased Assets	<p>The Purchased IP includes the following:</p> <p>(a) the Stripes and Hudson Bay trademarks, service marks, trade dress, logos, trade names, and corporate names,</p>

¹¹ *Ibid* at paras 54-56.

¹² *Ibid* at para 58.

¹³ *Ibid* at para 61.

	<p>and design patents together with all goodwill associated therewith owned by the Vendor;</p> <p>(b) select trademarks, service marks, trade dress, logos, trade names, and corporate names;</p> <p>(c) all works of authorship (whether copyrightable or not) and all copyrights (whether registered or unregistered) relating to the Trademarks and owned by the Vendor;</p> <p>(d) all domain names, uniform resource locators, social media user account names related to the Trademarks, and other names and locators associated with the Internet, in each case, that are owned by the Vendor; and</p> <p>(e) any and all other rights owned or held by or otherwise bestowed upon the Vendor anywhere in the world relating to the “heraldry” and the exclusive use thereof;</p> <p>all of the foregoing set forth in (a) – (e) inclusive of all registrations, applications, or reservations in or related to such Purchased IP.</p> <p>Notwithstanding the foregoing and anything to the contrary in the APA, the Purchased IP shall not include any (x) Art, Artifacts and Archives, (y) Art, Artifacts and Archives that contain, incorporate, replicate, represent or embody, in tangible or intangible form, the Purchased IP or (z) intellectual property that constitutes Art, Artifacts and Archives.</p>
Purchase Price	\$30,001,670.00
Deposit	\$3,000,167.00
Transaction Structure	Approval and Vesting Order
Outside Date for Closing	July 15, 2025, or such later date as the parties may mutually agree
Key Covenants of Vendor	<p>During the Interim Period, the Vendor shall continue to do the following:</p> <p>(a) Maintain the Purchased Assets (other than Expiring Trademarks);</p> <p>(b) Undertake timely renewals of the Vendor’s registered Purchased IP including the Trademarks and Domain names;</p>

	<p>(c) Manage and Protect the Purchased IP including any ongoing prosecution of any pending trademark applications; and</p> <p>(d) Maintain existing insurance policies.</p>
Assignment	<p>Prior to the Closing, the Purchaser may assign, upon written notice to the Vendor and the Monitor, all or any portion of its rights and obligations under this Agreement to an Affiliate, provided that the Vendor and the Monitor are satisfied that such Affiliate is capable of making the same representations and warranties herein and completing the Transactions by the Outside Date.</p>
Key Conditions to Closing	<p>The respective obligations of the Purchaser and the Vendor to consummate the Transactions are subject to the satisfaction of, or compliance with, at or prior to the Closing Time, each of the conditions listed below, among other customary closing conditions for transactions of this nature:</p> <p>(a) The Approval and Vesting Order and the Assignment Order, if required, shall have been issued by the Court; and</p> <p>(b) The ARIO and SISP Order shall not have been vacated, set aside or stayed.</p>
Post-Closing Limited Licenses	<p>Following the Closing Time:</p> <p>(a) to the extent that any Trademarks remain present as signage at any of the Applicant's store locations or is otherwise used by an Applicant in connection with the winding down of the operations thereof, the Purchaser has agreed 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.</p> <p>The Purchaser has agreed to grant to Saks Global Enterprises LLC and its Affiliates (collectively, "Saks") a limited, personal,</p>

	nonexclusive, non-transferable, non-sublicensable license to access and use the hbc.com and hbc.io domain names solely for the purpose of, and to the extent reasonably necessary to facilitate, the migration of email, application connectivity, data transfer, and integration services by Saks from such domains to its internal platforms, until the earlier of (i) the date that the Vendor informs the Purchaser in writing that such migration has been completed and (ii) August 1, 2025.
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15. The Monitor has prepared a summary of the highest-value bids received under the SISF with respect to the intellectual property (the “**Confidential Bid Summary**”), which the Applicants are seeking to seal pending closing of the Transactions. The Confidential Bid Summary, among other things, shows the purchase prices offered by the four next highest bidders. If the Transactions fail to close and those purchase prices were publicly disclosed, it would prejudice the Applicants’ ability to maximize value for the benefit of their stakeholders.¹⁴

C. Assignment Order

16. The APA identifies three sets of contracts which the Purchaser will assume in connection with the Transactions, being the Assigned Contracts. It is a condition of closing that all Assigned Contracts be assigned to the Purchaser by consent or by Court order.¹⁵

17. Of the three sets of contracts, only one set of agreements, namely the Pendleton Agreements, is with a counterparty who is unrelated to the Applicants. The Pendleton Agreements consist of a settlement agreement and trademark license agreement between Hudson’s Bay and Pendleton Woolen Mills, Inc. Pursuant to the Pendleton Agreements, Hudson’s Bay granted Pendleton a perpetual, royalty-free, worldwide non-exclusive trademark license for the Multistripe Design Mark and the Bar and Point Design Mark (as defined in the Pendleton Agreements).¹⁶

¹⁴ Fourth Report of the Monitor Alvarez & Marsal Canada Inc. dated May 29, 2025 (“**Fourth Monitor Report**”) at paras 6.4-6.5.

¹⁵ *Ibid* at para 63.

¹⁶ *Ibid*.

18. The license does not grant Pendleton any rights to use in any manner the names and marks Hudson's Bay, Hudson's Bay Company, and HBC, without the Company's prior written approval.¹⁷ Further, Pendleton acknowledges that (a) HBC is the exclusive owner of all rights, title and interest in, and goodwill associated with the Multistripe Design Mark and the Bar and Point Design Mark; (b) nothing in the license grants Pendleton any ownership interest in the Multistripe Design Mark and the Bar and Point Design Mark; and (c) all goodwill arising from Pendleton's use of the Multistripe Design Mark and the Bar and Point Design Mark on or in connection with any goods inures and continues to inure to the benefit of HBC.¹⁸ Pendleton also agreed not to challenge or contest the distinctiveness, validity and ownership of HBC's Multistripe Design Mark and the Bar and Point Design Mark, nor assist any third party directly or indirectly in challenging or contesting the distinctiveness, validity and ownership of the Multistripe Design Mark and the Bar and Point Design Mark.¹⁹

19. Although the consent of Pendleton to an assignment of the Pendleton Agreements is not expressly required by the terms of the Pendleton Agreements, as a courtesy and for certainty, the Vendor and its advisors are in the process of seeking the consent of Pendleton to the assignment of those agreements on similar terms as those provided for in the Assignment Order.²⁰

20. In the event the Vendor or its advisors do not receive a response by the date of this motion, the Applicants are seeking approval of the Assignment Order to, among other things, vest in the Purchaser or its assignee all right, title and interest of the relevant Vendor in the Pendleton Agreements, free and clear from any Claims and Encumbrances (as such terms are defined in the Approval and Vesting Order).²¹

¹⁷ Trademark License Agreement at para 1, attached to the First Culhane Affidavit, Motion Record Tab 2(F).

¹⁸ *Ibid* at para 4(a).

¹⁹ *Ibid* at para 4(b).

²⁰ First Culhane Affidavit at para 64, Motion Record at Tab 2.

²¹ *Ibid* at para 65.

D. WEPPA Declaration

21. Immediately prior to the commencement of the CCAA Proceedings, the Applicants employed approximately 9,364 people across its 96 stores, four Distribution Centres and head office. The Applicants' employees generally fall into three categories: (a) corporate employees; (b) employees at Hudson's Bay's retail stores; and (c) employees at the four Distribution Centres.²²

22. The employer of record for the Applicants' employees was Hudson's Bay or The Bay Holdings (other than with respect to seven employees that reside in the United States).²³

23. With the conclusion of the Lease Monetization Process and the SISP providing no going concern sale opportunity despite the Applicants' best efforts, the Company had to make the difficult decision to significantly reduce employee headcounts to align with the winddown of the Liquidation Sale and rolling closure of store locations.²⁴

24. The Applicants anticipate that by June 1, 2025, all stores will have closed pursuant to the Liquidation Sale and the majority of retail employees employed at those locations will have been terminated, with the exception of a few remaining at each location to assist with the final sale of FF&E and store closure.²⁵

25. Specifically, by June 1, 2025, the Company will have terminated approximately 8347 employees or approximately 89% total of its employees. The remaining 1017 employees include Distribution Centre employees (which Distribution Centres are expected to close on or around June 15, 2025), store employees remaining onsite to assist with finalizing the sale of FF&E and closing up the stores and corporate associates who will continue to assist with the closing of any transactions resulting from the Lease Monetization Process and the SISP and the wind-up of the

²² *Ibid* at para 29.

²³ *Ibid* at para 30.

²⁴ *Ibid* at para 31.

²⁵ *Ibid* at para 33.

Applicants' business.²⁶

26. Following June 15, 2025, the Company expects that the number of employees will decrease, with the remaining employee headcount being as follows:

- (a) approximately 50 retail employees;
- (b) approximately 58 corporate employees; and
- (c) approximately 10 Distribution Centre employees,

to assist with the final wind-up of the Applicants' business.²⁷

27. The Applicants' employees will be paid their accrued vacation pay as at their date of termination, however, the Company does not expect any other termination or severance payments to be paid by the Company upon termination.²⁸

28. As such, to assist eligible terminated employees of the Applicants in accessing payments in respect of eligible wages under WEPPA in a timely manner following the termination of their employment with the Applicants, the Applicants are seeking the WEPPA Declaration effective June 21, 2025, in respect of employees terminated during these CCAA Proceedings.

PART III – ISSUES

29. The issues to be determined on this motion are whether this Court should:

- (a) grant the Approval and Vesting Order: (i) approving the APA and the Transactions contemplated therein and vesting all of the Purchased Assets in the Purchaser free and clear of any Claims and Encumbrances; and (ii) sealing the Confidential Appendix;
- (b) if necessary, grant the Assignment Order assigning the Pendleton Agreements to the Purchaser pursuant to section 11.3 of the CCAA; and

²⁶ *Ibid.*

²⁷ *Ibid* at para 34.

²⁸ *Ibid* at para 35.

- (c) make the WEPPA Declaration to allow the Applicants' former employees to access WEPPA.

PART IV – LAW & ARGUMENT

A. The Approval and Vesting Order Should Be Granted

This Court Has Jurisdiction to Approve the Transactions and Vest the Purchased Assets in the Purchaser

30. Section 36 of the CCAA provides that a debtor company may sell assets outside of the ordinary course of business if authorized to do so by the Court. Section 36(3) sets out the following factors for the Court to consider when determining whether to authorize a sale of assets by a debtor company in a CCAA proceeding. The criteria are non-exhaustive and the Court must look at the proposed Transactions as a whole and decide whether it is appropriate, fair and reasonable:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²⁹

31. The factors listed are not exhaustive or a mandatory checklist for every CCAA sale.³⁰

32. In *Canwest*, Justice Pepall held that the criteria enumerated in section 36(3) of the CCAA largely overlapped with the traditional common law criteria established in *Royal Bank v Soundair Corp.* ("**Soundair**") for approval of a sale of assets in an insolvency scenario and remain relevant when considering the statutory test:

- (a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.³¹

33. A court should also give effect to the business judgement rule, which affords deference to the exercise of the commercial and business judgement of the debtor company in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.³²

The APA and the Transactions Satisfy the Requirements of Section 36(3) of the CCAA

34. The process undertaken by the Applicants to identify a refinancing, restructuring, sale and other transaction in respect of the Companies' business satisfies the requirements of section 36(3) of the CCAA and the *Soundair* principles. The APA and the Transactions contemplated

²⁹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") at s. 36(3); *Nelson Education Limited (Re)*, 2015 ONSC 5557 at para 38 ("**Nelson**"); *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920 at paras. 25-26. ("**Bloom Lake**").

³⁰ *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] at para 15 (**Endorsement**).

³¹ CCAA, s. 36(3); *Canwest Global Communications Corp.*, 2010 ONSC 2870 at para 13; *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.) at para 16; *Nelson* at paras 37-38.

³² *Bloom Lake*, at para 28.

therein represents the highest and best available outcome for the sale of the Company's intellectual property and the Applicants' stakeholders in the circumstances. Each of the criteria enumerated in section 36(3) of the CCAA and the *Soundair* principles are reviewed in turn.

(a) The process leading up to the execution of the APA was reasonable in the circumstances and there is no concern as to its efficacy and integrity. The Applicants and Reflect undertook significant efforts to obtain the best price and have not acted improvidently.

35. The APA is the result of extensive solicitation efforts undertaken pursuant to the SISP carried out by the Company with the assistance of Reflect and in consultation with the Monitor. The SISP broadly canvassed the market of parties potentially interested in the Applicants' business and assets pursuant to reasonable timelines.³³

36. The SISP was conducted in a fair and transparent manner, in consultation with the Monitor and certain secured lenders at relevant times. The range of transactions permitted under the SISP was sufficiently broad and provided the Applicants with the latitude to pursue both acquisition and investment transactions.³⁴

37. The SISP process was extensive, canvassing approximately 407 potentially interested parties and providing significant information and time for potential bidders to perform due diligence. By the Bidding Phase Bid Deadline, Reflect and the Monitor had received a total of 17 bids, 13 of which were for all or a portion of the intellectual property of the Company. As set out above, Reflect also engaged in numerous discussions after the Bidding Phase Bid Deadline to request amendments and improvements to bids.³⁵

(b) The Monitor supports the conduct of the SISP

38. In *Nelson*, the Court indicated that the monitor's "blessing" of a sale process undertaken

³³ First Culhane Affidavit at paras 48-50, Motion Record at Tab 2; Fourth Monitor Report at paras 6.1 and 6.11.

³⁴ First Culhane Affidavit at para 46.

³⁵ *Ibid* at paras 48-50 and 54-56.

prior to a CCAA filing is an important factor to consider.³⁶

39. The Monitor is of the view that the market for assets available in the SISP was thoroughly canvassed.³⁷ The proposed APA is the result of: (a) the Court approved SISP that was conducted by the Company and Reflect, which canvassed a broad group of potential strategic and financial purchasers; and (b) significant negotiations among Hudson's Bay Canada, Canadian Tire, Reflect, the Monitor and their respective counsel. Moreover, the Monitor believes that the Transactions, the timelines, and terms of the SISP were reasonable.³⁸

(c) The Monitor Believes that the Transactions are more beneficial to creditors than a sale or disposition under bankruptcy

40. The Monitor is of the view that the proposed Transactions are superior to a bankruptcy. The proposed Transactions maximize value for the benefit of the Applicants' stakeholders, as they provide greater value compared to any other bid identified in the SISP for Hudson's Bay Canada's intellectual property portfolio following a thorough canvassing of the market and provide for the continuation of the Company's iconic marks and intellectual property by another of Canada's iconic retailers ensuring that an important part of the Company's legacy will continue in Canada.³⁹

(d) Creditors were adequately consulted, the interests of all parties have been considered, and there has been no unfairness in the conduct of the SISP.

41. Throughout the SISP, the Applicants have engaged with certain of their Secured Lenders in accordance with the terms of the SISP, as appropriate, and kept them informed on the progress of the SISP.

³⁶ *Nelson* at [para 38](#).

³⁷ Fourth Monitor Report at para 6.1.

³⁸ *Ibid* at para 6.11.

³⁹ *Ibid*.

42. The Company carefully considered all alternatives available to the Company and having given due consideration to the interests of all stakeholders, the Company's Board of Directors, in consultation with its legal counsel, Reflect and the Monitor, exercised its reasonable business judgement and determined that the Canadian Tire Bid was the most favourable bid for the Company's intellectual property portfolio and represented the best option available to the Applicants.⁴⁰

(e) The Transactions are a positive development for the Applicants' stakeholders

43. As set out above, the Transactions represents the highest and best offer in a competitive and robust SISF for the Applicants' intellectual property portfolio and other brand assets. If the APA is approved, the Applicants' creditors will receive the benefit of the value-maximizing Transactions.⁴¹

44. Moreover, the Transactions position the "Hudson's Bay" brand to continue to thrive in Canada by allowing for the Company's iconic marks and intellectual property to be utilized by another of Canada's iconic retailers with a proven track record of success.⁴²

(f) The Consideration to be received is fair and reasonable

45. As stated above, the Boards of Directors of the Companies, with the benefit of advice from its legal counsel, and consultation with the Monitor and Reflect, carefully considered all alternatives available to the Companies and gave due consideration to the interests of all the Companies' stakeholders, in determining that the Transactions contemplated under the APA are in the best interests of the Companies.⁴³ Moreover, the Monitor is of the view that the market for

⁴⁰ First Culhane Affidavit at para 58, Motion Record at Tab 2.

⁴¹ Fourth Monitor Report at para 6.11.

⁴² Fourth Monitor Report at para 6.11; First Culhane Affidavit at para 59, Motion Record at Tab 2.

⁴³ First Culhane Affidavit at para 58, Motion Record at Tab 2.

assets available under the SISP was thoroughly canvassed and that the Transactions, including the consideration being provided by Canadian Tire, are fair and reasonable in the circumstances.⁴⁴

E. This Court should Seal the Confidential Appendix

46. As mentioned above, as part of the Approval and Vesting Order, the Applicants are seeking to seal the Confidential Bid Summary to the Fourth Report which contains a summary of the bids received during the SISP.

47. Section 137(2) of the Courts of Justice Act provides this Court with the discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed, and not part of the public record.⁴⁵

48. The test to determine if a sealing order should be granted is set out in *Sierra Club*, as re-framed by the Supreme Court of Canada in *Sherman Estate v. Donovan*: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁴⁶

49. Although the SCC was considering issues of personal privacy in *Sherman Estate*, it noted in citing *Sierra Club* that the term “important interest” can capture a broad array of public objectives including commercial interests.⁴⁷

50. Courts have applied the *Sierra Club* and *Sherman Estate* tests in the insolvency context and authorized sealing orders over confidential or commercially sensitive documents to protect

⁴⁴ Fourth Monitor Report at para 6.11.

⁴⁵ *Courts of Justice Act*, R.S.O. 1990, c. C. 43 at s 137(2).

⁴⁶ *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at para 53; *Sherman Estate v. Donovan*, 2021 SCC 25 at paras 38 and 43 (“**Sherman Estate**”).

⁴⁷ *Sherman Estate*, 2021 SCC 25 at para 41.

the interests of debtors.⁴⁸ Courts have also recently granted sealing orders in respect of a confidential summary of bids received, which is substantially the same in all material respects to the confidential summary of bids in the Confidential Appendix that the Applicants are seeking a sealing order in respect of.⁴⁹

51. The proposed sealing order is supported by considerations of: (a) the public interest, being serious risk that public disclosure of the confidential summary of offers could impair any efforts to remarket the purchased assets if the Transactions do not close;⁵⁰ and (b) lack of a reasonable alternative to a sealing order to mitigate the aforementioned risks⁵¹.

52. The Monitor of the view that the limited sealing request is not prejudicial to stakeholders and is appropriate in the circumstances.⁵²

F. This Court should Assign the Pendleton Agreements to the Purchaser

53. The APA contemplates that, subject to its terms, the Purchaser is to assume the Assigned Contracts upon the closing of the Transactions. As set out and described above, of the three sets of Assigned Contracts, only one set of contracts, namely the Pendleton Agreements, is with a counterparty who is unrelated to the Applicants.⁵³

54. Notwithstanding the Company's best efforts, the consent of Pendleton remains outstanding at this time.

55. As such, the Applicants are seeking the Assignment Order solely with respect to the

⁴⁸ *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para 82; *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347 at paras 23-28.

⁴⁹ See: *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314, at para 39; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at paras 35-36; *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at paras 50-54; *Attorney General of Canada v. Silicon Valley Bank*, 2023 ONSC 4703 at para 28-33.

⁵⁰ See for example, *Springer Aerospace Holdings Ltd.*, 2022 ONSC 6581 at paras 29-30; *Just Energy Group Inc. et al. v. Morgan Stanley Capital Group Inc. et al.*, 2022 ONSC 6354, at para 72.

⁵¹ *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] at para 62 (*Endorsement*).

⁵² Fourth Monitor Report at para 6.5.

⁵³ First Culhane Affidavit at para 63, Motion Record at Tab 2.

Pendleton Agreements identified on Schedule “A” to the proposed Assignment Order.

56. Section 11.3 of the CCAA provides this Court with the authority to make an order assigning a debtor company’s rights and obligations under an agreement.⁵⁴ Section 11.3(3) sets out a non-exhaustive list of factors for this Court to consider when determining whether it is appropriate to grant such an order:

- (a) whether the Monitor approved the proposed assignment;
- (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
- (c) whether it would be appropriate to assign the rights and obligations to that person.⁵⁵

57. Having regard to the factors set out in section 11.3(3) of the CCAA, this Court should grant the Assignment Order.

- (a) Section 11.3(3)(a): the Monitor is supportive of the relief sought in the Assignment Order.⁵⁶
- (b) Section 11.3(3)(b): The Purchaser has agreed to assume all liabilities under the Pendleton Agreements from and after the Closing Date⁵⁷ and the Purchaser is fully capable of performing the Applicants’ obligations under the Pendleton Agreements. Courts have found comfort in the ability of an assignee to perform the contract where that assignee is a sophisticated entity⁵⁸ like the Purchaser who is a well known, reputable corporate citizen. The Applicants and the Monitor are also not aware of any cure costs owing or monetary defaults with respect to any of the

⁵⁴ CCAA at s. 11.3.

⁵⁵ CCAA at s. 11.3(3).

⁵⁶ Fourth Monitor Report at para 6.13.

⁵⁷ Asset Purchase Agreement between The Bay LP, through its general partner, The Bay Holdings, as vendor, and Canadian Tire, as purchaser, dated May 15, 2025, attached to the Affidavit of Brittney Ketwaroo sworn May 29, 2025, at Exhibit A.

⁵⁸ In the Matter of a Plan of Arrangement of UrtheCast Corp., 2021 BCSC 1819 at para 50.

Pendleton Agreements.⁵⁹ To the extent that any cure costs are payable, the APA contemplates the payment of cure costs in relation to the Pendleton Agreements.

- (c) Section 11.3(3)(c): Appropriateness under the CCAA is assessed by inquiring whether the order sought advances the policy objectives underlying the CCAA, which are "avoiding the social and economic losses resulting from liquidation of an insolvent company".⁶⁰ It is a condition of closing that all Assigned Contracts be assigned to the Purchaser by consent or through the Assignment Order.⁶¹ The Applicants' have sought Pendleton's consent to the assignment, and will only seek approval of the Assignment Order if they are unable to obtain their consent.

58. The Pendleton Agreements are not agreements to which the exception in subsection 11.3(2) apply.

59. All of the counterparties to the Pendleton Agreements have been served with notice of this Motion.

G. The Court Should Approve the WEPPA Declaration

60. Section 5(1) of the WEPPA permits eligible former employees of a company subject to the CCAA to collect certain benefits, including termination and severance pay, if certain criteria are met, namely: (i) the individual's employment is ended for a reason prescribed by regulation; (ii) the individual is owed eligible wages by a former employer; (iii) the former employer is subject to proceedings under the CCAA; and (iv) a court determines under s. 5(5) of the WEPPA that the criteria prescribed by regulation are met.⁶²

61. Section 3.2 of the WEPP Regulations establishes the criteria which the court must consider under s. 5(5) of the WEPPA.⁶³ Pursuant to s. 3.2, the court "may determine whether the

⁵⁹ Fourth Monitor's Report at para 6.11.

⁶⁰ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para 70.

⁶¹ First Culhane Affidavit at para 63, Motion Record at Tab 2.

⁶² *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("WEPPA") at ss. 5(1) and 5(5).

⁶³ *Wage Earner Protection Program Regulations*, SOR/2008-222 at s. 3.2.

former employer is the former employer all of whose employees in Canada have been terminated other than any retained to winddown its business operations.”⁶⁴

62. In order to assist eligible terminated employees, the Applicants seek a declaration, effective as of June 21, 2025 (the “**WEPP Effective Date**”), that they meet the criteria by prescribed by s. 3.2 of the WEPP Regulations such that eligible employees may submit claims and seek to receive payments under the WEPPA following the WEPP Effective Date.

63. The Applicants are subject to CCAA proceedings.

64. As a result, the only determination this Court must make is whether the Applicants are a “former employer, all of whose employees in Canada have been terminated other than any retained to wind-down their business operations”.⁶⁵

65. As mentioned above, the employer of record for the Applicants’ employees was Hudson’s Bay or The Bay Holdings (other than with respect to seven employees that reside in the United States).⁶⁶

66. The Applicants anticipate that by June 1, 2025, all stores will have closed pursuant to the Liquidation Sale and the majority of retail employees employed at those locations will have been terminated, with the exception of a few remaining at each location to assist with the final sale of FF&E and store closure.⁶⁷

67. Moreover, all Distribution Centres are anticipated to close on or around June 15, 2025. All Distribution Centre employees are expected to be terminated at that time, with the exception of approximately 10 employees to assist with the final Distribution Centre closures.⁶⁸

68. In addition, with the exception of a small number of corporate employees whose services

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ First Culhane Affidavit at para 30, Motion Record at Tab 2.

⁶⁷ Ibid at para 70.

⁶⁸ Ibid.

are required to complete any transactions arising from the Lease Monetization Process and the SISP and wind-down the Applicants' business, all corporate employees have been provided with their respective dates of termination.⁶⁹

69. As such, by June 1, 2025, the Company will have terminated approximately 8347 or 89% of the employees who were employed at the commencement of the CCAA Proceedings, with approximately 899 further employees expected to be terminated on or around June 15, 2025. The balance of the retained employees after June 15, 2025 (being approximately 1.2 % of the employees employed at the commencement of the CCAA Proceedings) will assist with wind up functions for the Company through the CCAA Proceedings.⁷⁰

70. Courts have previously granted similar orders in other retail insolvencies, to assist in facilitating the claims into WEPPA. Specifically, Courts have found debtor companies to be compliant with section 3.2 of the WEPP Regulations in analogous circumstances, including in *The Body Shop* where the court issued a WEPPA declaration while a subset of the employees were retained by TBS Canada for the purpose of liquidating excluded certain locations.⁷¹

71. The requested declaration is thus necessary in order to assist eligible terminated employees of the Applicants in accessing payments in respect of eligible wages under WEPPA as soon as possible to minimize the deleterious effects of having their employment terminated and the Applicants being unable to pay them any termination and severance pay. By seeking the WEPPA Declaration at this time, the Applicants' former employees, with the Monitor's, ERC's, and their Union's assistance, will be in a position to seek to finalize their applications with minimum

⁶⁹ *Ibid* at para 71.

⁷⁰ *Ibid* at para 72.

⁷¹ *The Body Shop Canada Limited*, (December 13, 2024) Court File No. CV-24-00723586-00CL, Ont. S.C.J. [Commercial List] at para 14 ([Ancillary Order](#)). See also: *Comark Holdings Inc. (Re)*, (April 17, 2025) Court File No. CV-25-00734339-00CL, Ont. S.C.J. [Commercial List] at para 1 ([WEPPA Declaration Order](#)); *BBB Canada Ltd. (Re)*, (February 21, 2023) Court File No CV-23-00694493-00CL, Ont. S.C.J. [Commercial List] at para 23 ([Amended and Restated Initial Order](#)).

delay or lapse from their last payroll.

72. If the WEPPA Declaration is made, Employee Representative Counsel and the Monitor will work to identify all employees that may be eligible for payments under the WEPPA and assist eligible employees in making submissions to Service Canada at the appropriate time. As well, the Monitor has reached out to Service Canada to commence discussions in respect of an orderly process to work together to expedite the processing of WEPPA claims for former employees. Service Canada has advised that they are not opposing the WEPPA Declaration order.

PART V – ORDER SOUGHT

73. The Applicants therefore request that the Court grant the Approval and Vesting Order, the Assignment Order and the WEPPA Declaration in the forms requested.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of May 2025.

Stikeman Elliott LLP

Stikeman Elliott LLP
Lawyers for the Applicants

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
2. *Attorney General of Canada v Silicon Valley Bank*, 2023 ONSC 4703
3. *BBB Canada Ltd. (Re)*, (February 21, 2023) Court File No CV-23-00694493-00CL, Ont. S.C.J. [Commercial List] at para 23 (*Amended and Restated Initial Order*)
4. *Bloom Lake, g.p.l. (Arrangement relatif à)*, 2015 QCCS 1920
5. *Canwest Global Communications Corp.*, 2010 ONSC 2870
6. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
7. *Comark Holdings Inc. (Re)*, (April 17, 2025) Court File No. CV-25-00734339-00CL, Ont. S.C.J. [Commercial List] at para 1 (*WEPPA Declaration Order*)
8. *Danier Leather Inc. (Re)*, 2016 ONSC 1044
9. *In the Matter of a Plan of Arrangement of UrtheCast Corp.*, 2021 BCSC 1819
10. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
11. *Nelson Education Limited (Re)*, 2015 ONSC 5557
12. *Ontario Securities Commission v Bridging Finance Inc.*, 2022 ONSC 1857
13. *Ontario Securities Commission v. Bridging Finance Inc.*, 2021 ONSC 4347
14. *Original Traders Energy Ltd. (Re)*, (January 30, 2023), Court File No. CV-23-00693758-00CL Ont. S.C.J. [Commercial List] (*Endorsement*)
15. *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934
16. *Royal Bank v Soundair Corp.* (1991), 83 D.L.R. (4th) 76 (Ont. C.A.)
17. *Sherman Estate v. Donovan*, 2021 SCC 25
18. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
19. *Springer Aerospace Holdings Ltd.*, 2022 ONSC 6581
20. *Target Canada Co. (Re)*, (April 2, 2015), Court File No. CV-15-10832-00CL, Ont. S.C.J. [Commercial List] (*Endorsement*)
21. *The Body Shop Canada Limited*, (December 13, 2024) Court File No. CV-24-00723586-00CL, Ont. S.C.J. [Commercial List] at para 14 (*Ancillary Order*)

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

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

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Factors to be considered

- (3)** In deciding whether to make the order, the court is to consider, among other things,
- (a) whether the monitor approved the proposed assignment;
 - (b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (c) whether it would be appropriate to assign the rights and obligations to that person.

[...]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Wage Earner Protection Program Act, SC 2005, c 47, s 1

Eligibility for Payments

Conditions of eligibility

5 (1) An individual is eligible to receive a payment if

- (a) the individual's employment ended for a reason prescribed by regulation;
- (b) one of the following applies:
 - i. the former employer is bankrupt,
 - ii. the former employer is subject to a receivership,
 - iii. the former employer is the subject of a foreign proceeding that is recognized by a court under subsection 270(1) of the Bankruptcy and Insolvency Act and
 - A. the court determines under subsection (2) that the foreign proceeding meets the criteria prescribed by regulation, and
 - B. a trustee is appointed, or
 - iv. the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and
- (c) the individual is owed eligible wages by the former employer.
- (d) [Repealed, 2009, c. 2, s. 343]

Prescribed criteria — other proceedings

(5) On application by any person, a court may, in proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act, determine that the former employer meets the criteria prescribed by regulation.

Wage Earner Protection Program Regulations, SOR/2008-222**Proceedings Under BIA or CCAA**

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

[...]

Courts of Justice Act, R.S.O. 1990, c. C. 43**Sealing Documents**

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

[...]

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.
1985, c. C-36, AS AMENDED, AND IN THE MATTER OF HUDSON'S BAY COMPANY
ULC et al.

Court File No: Court File No. CV-25-738613-00CL

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

Proceeding commenced at Toronto

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