

**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 JORIKI TOPCO INC. AND JORIKI INC.**

Applicants

FACTUM OF THE APPLICANTS
(Motion returnable June 27, 2025)

June 25, 2025

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I. OVERVIEW

1. On January 28, 2025, the Applicants commenced these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and obtained an Initial Order from the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). The Initial Order, among other things, appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor of the Applicants (in such capacity, the “**Monitor**”) and provided the Applicants with the necessary breathing space and forum to advance the negotiation, finalization and implementation of value maximizing turn-key transactions in respect of their Delta and Toronto facilities (the “**Transactions**”).¹

2. On February 26, 2025, the Court granted orders approving the Transactions, and they have now closed. With the closing of the Transactions, only certain limited remaining activities are left to complete the realization of value from the Applicants' assets and the orderly wind down of their affairs.

3. One of these remaining activities was pursuing a sale of numerous forklifts and related equipment located at the Pittston facility (the “**Forklifts**”). Joriki Inc. (“**Joriki Canada**”), with the assistance of the Monitor, canvassed potential purchasers (the “**Forklift Sale Process**”) for the Forklifts and recently entered into a definitive agreement with Long Way USA Corp. (“**Long Way**”) in respect of the Forklifts. The Applicants now seek approval of an order (the “**Forklift AVO**”), among other things:

¹ Capitalized terms used herein and not otherwise defined have the meanings given to them in Third Report of Alvarez & Marsal Canada Inc., in its capacity as the court-appointed monitor of the Applicants, dated June 23, 2025 (the “**Third Report**”).

- (a) approving the sale transaction (the “**Forklift Transaction**”) contemplated by the Bill of Sale dated as of May 14, 2025 (the “**Bill of Sale**”), between Long Way, as buyer, and Joriki Canada, as seller;
 - (b) upon completion of the Forklift Transaction, vesting all of Joriki Canada’s right, title and interest in and to the Purchased Assets (as defined in the Bill of Sale) in Long Way free and clear of all claims and encumbrances;
 - (c) authorizing the Applicants to make distributions from the net proceeds from the Forklift Transaction to the Secured Lender (as defined below) in respect of amounts outstanding under the Equipment Finance Contract (as defined below);
 - (d) approving the Third Report of the Monitor dated June 23, 2025 (the “**Third Report**”), and the actions, conduct and activities of the Monitor described in Third Report; and
 - (e) sealing the confidential appendix (which contains the unredacted Bill of Sale) to the Third Report pending closing of the Forklift Transaction.
4. The proposed Forklift Transaction, which is supported by both the Monitor and the Secured Lender, maximizes the value of the Forklifts and is in the best interests of the Applicants and their stakeholders.
5. The Applicants respectfully submit that the Court approve the Forklift Transaction, and grant the other requested relief to facilitate the Forklift Transaction and the distribution of the net proceeds thereof to the Secured Lender.

II. SUMMARY OF FACTS

A. Background

6. The Company was in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. Joriki operated its business from three production facilities in Canada (the Toronto and Pickering facilities in Ontario, and the Delta facility in B.C.), and one in the United States (the Pittston facility in Pennsylvania).

7. The Company experienced financial losses relating to a delay in the completion and commissioning of the Pittston facility and ongoing operational issues, as well as the Recall of certain products it produced for a customer in July 2024.

8. In August 2024, the Company engaged Goodmans LLP and Alvarez & Marsal Canada ULC to assist in reviewing and assessing its strategic options and alternatives as a result of its financial and operational challenges. Following this review, the Company, with the assistance of the Alvarez & Marsal Canada Securities ULC, undertook a sale process to explore the possibility of a sale of some or all of its business.

9. Following the loss of a key customer and certain potential purchasers advising they would not be pursuing transactions under the sale process, The Bank of Nova Scotia and The Toronto Dominion Bank, the Company's senior lenders, advised they were no longer prepared to fund the Company's business as a going concern.

10. Accordingly, the Company ceased active operations and, on December 31, 2024, terminated the employment of substantially all its employees save for a small group to assist in wind-down activities. Prior to this, Joriki Canada filed the NOI and A&M was appointed as Proposal Trustee. On

January 12, 2025, Joriki USA, the Company's U.S. operating subsidiary, filed a petition under Chapter 7 of the United States Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware (the "**Chapter 7 Case**") and Alfred T. Giuliano was appointed as Chapter 7 trustee of Joriki USA (the "**Chapter 7 Trustee**").²

11. Notwithstanding the foregoing, the Applicants were still of the view that value maximizing turn-key transactions could be completed in respect of the Toronto and Delta facilities. Shortly prior to obtaining the Initial Order, Joriki Canada entered into LOIs for its Delta and Toronto facility assets.

12. On January 28, 2025, in order to provide the necessary breathing space and forum to advance the negotiation, finalization and implementation of the Transactions, the Applicants sought and obtained the Initial Order providing relief under the CCAA.

13. On February 26, 2025, the Court granted two Approval and Vesting Orders, among other things, approving the Transactions, respectively, and an Ancillary Relief Order, among other things, extending the Stay Period to and including March 31, 2025.³

14. After the Transactions were approved by the Court, the Company and its advisors, with the assistance of the Monitor, worked expeditiously to close the Transactions, which occurred in February and March of 2025.

15. With the closing of the Transactions, the core objective of these CCAA proceedings was completed and only certain limited remaining activities were left to complete the realization of value from the Applicants' assets and the orderly wind down of their affairs. Given the foregoing, it was

² Third Report at para. 1.3 [E346; E3].

³ Third Report at para. 1.8 [E346; E5 – E349; E6].

anticipated that the Applicants remaining directors and officers would conclude their roles in the weeks that followed the closing of the Transactions.

16. Accordingly, the Applicants sought the Expansion of Monitor's Powers and CCAA Termination Order, which this Court granted on March 27, 2025. The Expansion of Monitor's Powers and CCAA Termination Order, among other things, provided that effective upon the service of a Monitor's certificate (the "**Monitor's Certificate**") with the prior written consent of the Applicants and following the termination of all remaining employees by the Applicants, the Monitor was authorized and empowered, but not required, to exercise any powers which may be properly exercised by the board of directors or any officer of each of the Applicants.⁴

17. The Monitor's Certificate was served on April 27, 2025, and pursuant to paragraph 3 of the Expansion of Monitor's Powers and CCAA Termination Order, the remaining directors and officers of the Applicants were deemed to have resigned concurrently.

18. Since the service of the Monitor's certificate, the Monitor has worked with the Applicants to advance the remaining activities that are left to complete the realization of value from the Applicants' assets and the orderly wind down of their affairs, which has included pursuing a sale process for the Forklifts.⁵

B. The Forklift Transaction

19. Following the commencement of the Chapter 7 Case, Joriki Canada and the Monitor reviewed the equipment and other assets located at the Pittston facility to ensure any assets of Joriki Canada were appropriately segregated from the Chapter 7 Case proceedings. During this review, it was

⁴ Third Report at para. 1.9 [E349; E6].

⁵ Third Report at para. 9.1 [E360; E17 – E361; E18] .

identified that the Forklifts currently being financed by Joriki Canada pursuant to an equipment finance contract dated February 14, 2023 and an addition agreement thereto dated June 23, 2023 (collectively, the “**Equipment Finance Contract**”) between Joriki Canada and The Bank of Nova Scotia (the “**Secured Lender**”), were all located at the Pittston facility.⁶ The Applicants and the Monitor engaged in discussions with the Chapter 7 Trustee regarding the Forklifts and it was initially anticipated that the Forklifts were to be included in the sale of Joriki USA’s assets at the Pittston facility by the Chapter 7 Trustee. However, the Chapter 7 Trustee ultimately advised the Applicants that Joriki Canada should instead liquidate the Forklifts.⁷

20. Accordingly, Joriki’s management team, with the Monitor’s assistance and in consultation with the Secured Lender, sought to obtain an estimated valuation of the Forklifts, and began considering potential realization alternatives for the Forklifts. Through discussions with various potential purchasers and machinery and equipment liquidators, it was determined that the highest possible realization for the Forklifts would be through a local sale in Pittston, given the significant cost of transporting the Forklifts relative to their estimated value.⁸

21. Management, with the assistance of the Monitor, then undertook the Forklift Sale Process which involved canvassing potential purchasers, including local and non-local liquidators, the original equipment manufacturer, other local manufacturers who use similar equipment in their operations, and the purchaser of the Pittston facility assets of Joriki USA in the Chapter 7 Case, Long Way.⁹

22. In March 2025, after discussions and negotiations with seven potential purchasers, three bids were obtained for the Forklifts. Ultimately, after reviewing the bids, and in consultation with the

⁶ Third Report at para. 4.1 [E352; E9].

⁷ Third Report at para. 4.2 [E352; E9].

⁸ Third Report at paras. 4.3 – 4.4 [E352; E9 – E353; E10].

⁹ Third Report at para. 4.5 [E353; E10].

Monitor and the Secured Lender, management and the Monitor determined that Long Way was the optimal bidder based on proposed value and certainty of execution, and Joriki Canada subsequently entered into the Bill of Sale with Long Way.¹⁰

23. The Bill of Sale provides for the sale by Joriki Canada to Long Way of the Forklifts on an “as is, where is” basis in exchange for cash consideration, which is currently held in trust by the Monitor, to be released upon closing of the Forklift Transaction.¹¹

24. The proposed Forklift Transaction maximizes the value of the Forklifts and is in the best interests of the Applicants and their stakeholders.¹² Neither the Applicants nor the Monitor believe that further marketing efforts for the Forklifts would yield better results and the proposed Forklift Transaction is also supported by the Secured Lender.¹³

C. Distributions

25. The Applicants are requesting authority from the Court for the Applicants and the Monitor to make distributions of the net proceeds resulting from the closing of the Forklift Transaction to the Secured Lender in respect of the obligations outstanding under the Equipment Finance Contract.¹⁴

D. Sealing

26. The Applicants are seeking an order sealing the confidential appendix to the Third Report, being an unredacted version of the Bill of Sale which includes the purchase price payable under the Forklift Transaction.¹⁵ Public disclosure of the purchase price prior to closing of the Forklift

¹⁰ Third Report at paras. 4.6 – 4.7 [[E353](#); [E10](#)].

¹¹ Third Report at para. 4.9 [[E354](#); [E11](#)].

¹² Third Report at para. 4.10(d) [[E355](#); [E12](#)].

¹³ Third Report at paras. 4.8 and 4.10(e) [[E354](#); [E11](#) - [E355](#); [E12](#)].

¹⁴ Draft Approval and Vesting Order (Forklift Transaction) at para. 10 [[A1207](#); [A16](#)].

¹⁵ Draft Approval and Vesting Order (Forklift Transaction) at para. 17 [[A1209](#); [A18](#)].

Transaction would be harmful to the integrity of the Forklift Sale Process as well as the Applicants efforts to maximize value for stakeholders should the Forklift Transaction fail to close and the Applicants be required to pursue an alternative transaction.¹⁶

III. ISSUES AND THE LAW

27. The issues to be considered on this motion are whether the Court should (i) approve the Forklift Transaction, (ii) authorize distributions of the net proceeds to the Secured Lender, and (iii) seal the confidential appendix.

28. The Applicants respectfully submit that the Court should approve the Forklift Transaction and grant the other requested relief for the reasons that follow.

A. The Forklift Transaction should be Approved

29. Pursuant to section 36 of the CCAA, this Court has jurisdiction to approve a sale outside of the ordinary course of business. Subsection 36(3) provides a non-exhaustive list of factors that the Court may consider when deciding whether to approve such a sale:

36(3) Factors to be considered – 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;

¹⁶ Third Report at para. 4.12 [[E355](#); [E12](#)].

- (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.¹⁷

30. These criteria have been held not to be cumulative or exhaustive. Rather, the Court must look at the proposed transaction as a whole and decide if it is appropriate, fair and reasonable.¹⁸

31. These criteria largely overlap with the factors enumerated in *Soundair*, which guided the Court prior to the enactment of section 36 of the CCAA and continue to be considered by the Court. The *Soundair* factors are as follows:

- (a) whether sufficient effort has been made to get the best price and the receiver or debtor (as applicable) has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (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.¹⁹

32. The Applicants submit that consideration of the criteria in section 36 of the CCAA, the *Soundair* principles, and other relevant case law support approval of the Transactions.

33. The Forklift Sale Process was conducted by Joriki Canada, with the assistance of the Monitor and in consultation with the Secured Lenders, and canvassed a broad group of potential purchasers

¹⁷ [Companies' Creditors Arrangement Act](#), RSC 1985, c C-36 [CCAA], Sections [36\(1\)](#) and [36\(3\)](#).

¹⁸ *Bloom Lake, gpl (Arrangement relative à)*, [2015 QCCS 1920](#) at para. [26](#).

¹⁹ *Royal Bank of Canada v Soundair Corp* (1991), [83 DLR \(4th\) 76 \(Ont CA\)](#) at para. [16](#); *Canwest Global Communications Corp*, [2010 ONSC 2870](#) at para. [13](#); *Target Canada Co (Re)*, [2015 ONSC 1487](#) at paras. [14–17](#).

for the Forklifts, having regard to the conclusion that the Forklifts would need to be sold locally to maximize net value.²⁰

34. After discussions and negotiations with seven potential purchasers, the Forklift Sale Process resulted in three bids being obtained for the Forklifts. In an effort to maximize value, management requested that the two lower bidders consider increasing their bids but neither were able to match the highest bid, which was from Long Way.²¹

35. The Applicants and the Monitor, in consultation with the Secured Lender, reviewed each bid based on, among other factors, economic value and execution certainty, including any conditions and closing timeline. It was determined that Long Way was the optimal bidder based on proposed value and certainty of execution. Accordingly, the Applicants and the Monitor worked diligently to finalize the Bill of Sale.²²

36. The Forklift Sale Process was a reasonable and fair process overseen by the Monitor that appropriately canvassed the market and has maximized value. The Forklift Transaction is supported by both the Monitor and the Secured Lender, who is the sole economic interest holder in the Forklifts. As such, the Applicants submit that Forklift Transaction should be approved.

(ii) Distribution of Net Proceeds to the Secured Lender is Appropriate

37. The proposed Forklift AVO authorizes the Applicants and the Monitor to make distributions of the net proceeds resulting from the closing of the Forklift Transaction to the Secured Lender in respect of the obligations outstanding under the Equipment Finance Contract.

²⁰ Third Report at paras. 4.4 and 4.10(a) [[E353; E10](#) – [E354; E11](#)].

²¹ Third Report at para. 4.6 [[E353; E10](#)].

²² Third Report at para. 4.7 [[E353; E10](#)].

38. Section 11 of the CCAA confers jurisdiction on this Court to make any order that it considers appropriate in the circumstances.²³ Accordingly, section 11 provides this Court with the jurisdiction and authority to approve distributions to creditors in the course of a CCAA process, even absent a plan of compromise or arrangement.²⁴ Courts have granted similar relief in many other CCAA proceedings, including this one.²⁵

39. The Applicants submit that it is reasonable and appropriate for the Court to exercise its discretion and approve the proposed distributions at this time. The Monitor's Canadian and U.S. counsel has reviewed the security granted by Joriki Canada in favour of the Secured Lender, and found the security to be valid and enforceable, subject to certain assumptions and qualifications outlined in the security opinion/memo.²⁶ Approval of distributions now will facilitate timely repayment of a portion of the secured debt obligations owing to the Secured Lender.

(iii) *Confidential Appendix Should be Sealed*

40. The Applicants request that this Court seal the confidential appendix to the Third Report pending closing of the Forklift Transaction. This Court has the discretion pursuant to section 137(2) of the *Courts of Justice Act*²⁷ and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

41. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (a)

²³ CCAA, Section [11](#).

²⁴ *Re Nortel Networks Corporation et al*, [2014 ONSC 4777](#) at paras. [53–55](#).

²⁵ *Joriki Inc. et al.*, [Ancillary Relief Order](#) dated February 26, 2025 (Court File No. CV-25-00735458-00CL); *Greenspace Brands Inc., Re*, [Ancillary Relief Order](#) dated June 15, 2023 (Court File No. CV-23-00697516-00CL); *LoyaltyOne, Co.*, [Stay Extension and Distribution Order](#) dated July 5, 2023 (Court File No. CV-23-00696017-00CL); *Harte Gold Corp. et al*, [CCAA Distribution and Termination Order](#) dated February 15, 2022 (Court File No. CV-21-00673304-00CL).

²⁶ Third Report at para. 5.1 [[E356](#); [E13](#)].

²⁷ [R.S.O. 1990, c. C.43](#).

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.²⁸

42. Courts have recognized that disclosure of commercially sensitive information, such as purchase prices, could undermine the integrity of the sale process and the important public interest in CCAA proceedings of maximizing value.²⁹

43. The Applicants respectfully submit that the *Sherman* test is satisfied. Public disclosure of the purchase price prior to closing of the Forklift Transaction would be harmful to the integrity of the Forklift Sale Process as well as the Applicants ability to maximize value for stakeholders should the Forklift Transaction fail to close and the Applicants be required to pursue an alternative transaction.³⁰ Accordingly, the requested sealing is necessary to prevent serious risk to the Applicants' ability to maximize value for stakeholders, reasonably alternative measures will not prevent the risk and, as a matter of proportionality, the benefits of sealing outweigh its negative effects.

(iv) *Approval of the Monitor's Third Report and Activities*

44. This Court has held that there are good policy and practical reasons for approving a court officer's report and activities, including that Court approval:

(a) allows the court officer to move forward with the next steps in the proceedings;

(b) brings the court officer's activities before the court;

²⁸ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at paras. [37](#) and [38](#).

²⁹ *Danier Leather Inc, Re*, [2016 ONSC 1044](#) at para. [84](#).

³⁰ Third Report at para. 4.12 [[E355](#); [E12](#)].

- (c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;
- (d) enables the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f) protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.³¹

45. The Applicants submit that it is appropriate to approve the Third Report and the activities and conduct of the Monitor described therein because:

- (a) the activities described in the Third Report were necessary and undertaken in good faith pursuant to the Monitor's duties and powers set out in the Orders of this Court granted in these CCAA proceedings, including the Initial Order, the Ancillary Relief Order and the Expansion of Monitor's Powers and CCAA Termination Order;
- (b) the Monitor's activities have been conducted in a prudent and diligent manner, and were undertaken in the best interests of the Applicants' stakeholders; and

³¹ *Target Canada Co, Re*, [2015 ONSC 7574](#) at para. 12; *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras. 13-14.

- (c) the Third Report was served on the service list in these CCAA proceedings and posted on the Monitor's website for review by the Applicants' creditors and other stakeholders, and there have been no adverse comments received in respect thereof.

IV. CONCLUSION

46. For the reasons set forth herein, the Applicants respectfully submit that the approval of the Forklift Transaction and the other relief sought is in the best interests of the Applicants and their stakeholders, and is appropriate in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 25, 2025

Goodmans LLP

Goodmans LLP

**SCHEDULE A
LIST OF AUTHORITIES**

1. [*Bloom Lake, gpl \(Arrangement relative à\), 2015 QCCS 1920*](#)
2. [*Royal Bank of Canada v Soundair Corp \(1991\), 83 DLR \(4th\) 76 \(Ont CA\)*](#)
3. [*Canwest Global Communications Corp, 2010 ONSC 2870*](#)
4. [*Target Canada Co \(Re\), 2015 ONSC 1487*](#)
5. [*Re Nortel Networks Corporation et al, 2014 ONSC 4777*](#)
6. [*Joriki Inc. et al., Ancillary Relief Order dated February 26, 2025 \(Court File No. CV-25-00735458-00CL\)*](#)
7. [*Greenspace Brands Inc., Re, Ancillary Relief Order dated June 15, 2023 \(Court File No. CV-23-00697516-00CL\)*](#)
8. [*LoyaltyOne, Co., Stay Extension and Distribution Order dated July 5, 2023 \(Court File No. CV-23-00696017-00CL\)*](#)
9. [*Harte Gold Corp. et al, CCAA Distribution and Termination Order dated February 15, 2022 \(Court File No. CV-21-00673304-00CL\)*](#)
10. [*Sherman Estate v. Donovan, 2021 SCC 25*](#)
11. [*Danier Leather Inc, Re, 2016 ONSC 1044*](#)
12. [*Target Canada Co, Re, 2015 ONSC 7574*](#)
13. [*Laurentian University of Sudbury, 2022 ONSC 2927*](#)

Lawyer's Statement (Rule 4.06.1(2.1)):

I certify that I am satisfied as to the authenticity of every authority cited in the factum:

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SCHEDULE B STATUTORY REFERENCES

[Companies' Creditors Arrangement Act, RSC 1985, c C-36](#)

General power of court

11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

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.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

[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

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