

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**

B E T W E E N:

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 1 INC., HBC
BAY HOLDINGS II ULC, THE BAY HOLDINGS ULC, HBC CENTREPOINT
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 FILO AGENT
(JULY 31, 2025 MOTION RE: STAY EXTENSION)

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TO: **SERVICE LIST**

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SUPERIOR COURT OF JUSTICE
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PART I - INTRODUCTION

1. The FILO Agent takes no position on the approval of the YM Lease Assignment Agreement, the YM Transactions, the IC Lease Assignment Agreement nor the IC Transaction.¹

2. Instead, the FILO Agent's primary position on this motion is that if the Court is satisfied that the test for extending the stay of proceedings is met, such extension should be accompanied by an Order:

- (a) requiring that the Monitor and Applicants to immediately distribute to the FILO Agent the amounts the Monitor has recommended, namely:
 - (i) approximately \$2 million from the proceeds of the sale of the Affiliate Lease Assignment currently held in trust by the Monitor; and
 - (ii) approximately \$5 million from the proceeds of the YM Lease Assignment Agreement, once the YM Transactions are approved by the Court and closed (together, the "**Interim Distributions**"); and
- (b) declaring that these Interim Distributions are without prejudice to the FILO Agent's pending and future requests for further distributions.

3. The above \$2 million figure is a portion of the \$6 million that is the subject of the FILO Agent's pending motion (now to be heard on August 28 and 29) for distributions and other relief. The Monitor's Seventh Report does not expressly reflect what it has already said to the FILO

¹ All capitalized terms not defined herein, have the same meaning as in the Applicants' Motion Record dated July 25, 2025.

Agent clearly: that it supports the Interim Distributions described above.² The Applicants are described by the Monitor as having the *intention* to make these distributions,³ but the Applicants have failed to confirm this to the FILO Agent directly. No justification is offered as to why a minimum of \$2 million in proceeds has not been distributed already, given the powers granted to the Monitor and the Applicants by the Court's May 14, 2025 Stay Extension and Distribution Order.⁴

4. The failure of the Monitor and HBC's management and directors to accelerate these distributions is remarkable, given that they have failed to take the simple steps available to them in paragraph 12 of the ARIO to shift the costs of the Central Walk Transaction to the Pathlight Lenders or Ruby Liu, who stand to benefit from it:

- (a) as Ms. Liu's now-disclosed communications to the Court⁵ reveal, the Applicants and Monitor themselves know (and had failed to advise the Court to date) that the Purchaser under the Central Walk APA has failed to diligently pursue it and has been in breach of that agreement;⁶
- (b) instead of demanding more consideration, for instance, to cover costs during the period of delay, the Applicants inexplicably offered to pay funds back to the Purchaser;⁷ and

² Letter from Bennett Jones to Lenczner Slaght dated July 28, 2025, Compendium of the FILO Agent, ("COM"), Tab 11.

³ Seventh Report of the Monitor dated July 29, 2025 at para 10.3(f), COM Tab 12.

⁴ Stay Extension and Distribution Order, dated May 13, 2025, COM Tab 3.

⁵ Correspondence from Ruby Liu to Justice Osborne, dated July 9, 2025, COM Tab 6; Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, COM Tab 7.

⁶ Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, Attachment 2, COM Tab 7.

⁷ Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, Attachment 2, COM Tab 7.

- (c) the Applicants have now granted Ruby Liu an extension of the Outside Date of the Central Walk Transaction without any economic *quid pro quo* from her or the Pathlight Lenders, even as the delay and costs have grown.⁸

5. In these circumstances, the FILO Agent also seeks the Court's clear direction that any relief granted by the Court now, including as to the approval of the activities of the Monitor, does not prejudice the FILO Agent's ability to challenge any claim to approval, payment or allocation of any fees, costs and expenses, already accrued or going forward. This order is necessary to allow all stakeholders to hold the Applicants and the Monitor accountable for their management of the Central Walk transaction and the FILO Agent's collateral, as well as for their management of any other matters relating to this proceeding, especially in light of their failure to communicate material information relating to the Central Walk APA to the Court.

PART II - SUMMARY OF FACTS

The Stay

6. On March 7, 2025, a stay of proceedings was granted as against the Applicants until and including March 17, 2025 pursuant to section 11.02(1) of the *CCAA*. This stay period was extended twice – first until and including May 15, 2025 by order dated March 18, 2025,⁹ and then again until and including July 31, 2025 by order dated May 14, 2025.¹⁰ The Applicants now seek an extension of this stay to October 31, 2025.

⁸ Letter from Stikeman Elliott to Lenczner Slaght, dated July 29, 2025, COM Tab 13.

⁹ Endorsement of Osborne J., dated March 18, 2025, COM Tab 1.

¹⁰ Stay Extension and Distribution Order, dated May 13, 2025, COM Tab 3.

The FILO Agent seeks to protect its collateral

7. Pursuant to paragraph 12 of the ARIO, the Applicants can shift the ongoing costs of maintaining the Leases which are Pathlight Priority Collateral to Pathlight, during the stay period.¹¹ They have failed to do so.

8. On June 22, 2025, counsel to the FILO Agent wrote to counsel to the Applicants and requested, pursuant to paragraph 12 of the ARIO¹²:

- (a) that the Applicants disclaim the leases subject to the Central Walk APA for which a transaction has not closed and that are not subject to any other potential transaction, absent funding by either Pathlight or the Central Walk parties; and
- (b) that irrespective of whether the these were disclaimed, that all costs incurred in relation to the Central Walk transaction after June 15, 2025 be reimbursed to the Applicants' estate. Notwithstanding this request, the Applicants did not disclaim the leases and did not require that the pursuit of the Central Walk transaction be funded by Pathlight or the Central Walk parties.

9. On July 8, 2025, the FILO Agent brought its now-pending motion seeking, among other things, an Order expanding the powers of the Monitor, authorizing the termination of the Central Walk APA and disclaimer of the remaining leases, and distribution of an additional \$6 million.¹³

10. Following the Court's adjournment of that motion to be heard with the Applicants' Central Walk APA approval motion, the FILO Agent delivered an Amended Notice of Motion. It seeks

¹¹ Amended and Restated Initial Order, dated March 21, 2025, COM Tab 2.

¹² Letter from Blake, Cassels & Graydon LLP to Stikeman Elliott LLP, dated June 22, 2025, COM Tab 4.

¹³ Notice of Motion of the FILO Agent, dated July 8, 2025, COM Tab 5.

additional and alternative relief to ensure that its motion is not rendered moot and that the costs of the Central Walk Transaction fall on the parties who stand to benefit from the transaction.¹⁴ The FILO Agent continues to seek an order directing that the Applicants distribute \$6 million.

The Applicants and the Monitor fail to disclose to the court that the Purchaser breached the Central Walk APA, and have now granted an extension of the Outside Date without any additional consideration

11. On July 29, 2025, the Monitor disclosed to the Service List for the first time certain emails from Ms. Liu to the Court. Those communications confirm for the first time that:

- (a) On June 28, 2025, the Applicants wrote to Ms. Liu to notify her that she was in breach of the Central Walk APA on the grounds that, among other things, Ms. Liu's delivery of a Cure Cost Chart on June 25, 2025 did not comply with Ms. Liu's obligations under the Central Walk APA;¹⁵
- (b) On July 5, 2025, the Applicants wrote to Ms. Liu again to allege a further breach of the Central Walk APA on the grounds that, among other things, Ms. Liu had failed to use commercially reasonable efforts to obtain a waiver from the various Landlords to the Remaining Leases, giving the Applicants a right to terminate the agreement;¹⁶ and

¹⁴ Amended Notice of Motion of the FILO Agent, dated July 25, 2025, COM Tab 9.

¹⁵ Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, Exhibit "E", COM Tab 7.

¹⁶ Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, Attachment 2, COM Tab 7.

- (c) Instead of demanding additional consideration or other economic terms that might have helped to defray the costs of delay, the Applicants actually offered to reduce the Purchaser's deposit.¹⁷

12. No explanation has been offered as to why the Applicants or the Monitor did not advise the Court of these developments – particularly in the face of the FILO Agent's repeatedly-expressed concerns regarding mounting costs from the delay which were eroding its collateral.

13. On July 23 and 27, 2025, the FILO Agent requested in writing that the Applicants insist, as an economic *quid pro quo* for extending the Outside Date in the Central Walk APA, that the purchaser under the Central Walk APA and/or the Pathlight Lenders pay rent on the properties subject to the Central Walk Transaction.¹⁸

14. However, as confirmed by correspondence of July 28, 2025, the parties to the Central Walk APA consented to an extension of the Outside Date without additional consideration of any kind, whether rent being paid by the Purchaser or the Pathlight Lenders, or otherwise.¹⁹

The Monitor supports the interim distributions, but the Applicants have failed to confirm that they will make them

15. On Sunday, July 27, 2025, counsel for the FILO Agent wrote to counsel for the Applicants and the Monitor concerning the Applicants' failure to make distributions pursuant to paragraph 5 of the Stay Extension and Distribution Order dated May 13, 2025.²⁰

¹⁷ Correspondence from Ruby Liu to Justice Osborne, dated July 10, 2025, Attachment 2, COM Tab 7.

¹⁸ Letter from Lenczner Slaght to Stikeman Elliott, dated July 23, 2025, COM Tab 8; Letter from Lenczner Slaght to Stikeman Elliott and Bennett Jones, dated July 27, 2025, COM Tab 10.

¹⁹ Letter from Stikeman Elliott to Lenczner Slaght, dated July 29, 2025, COM Tab 13.

²⁰ Letter from Lenczner Slaght to Stikeman Elliott and Bennett Jones, dated July 27, 2025, COM Tab 10.

16. In response to this letter, on Monday, July 28, 2025, the Monitor wrote to the FILO Agent and the Applicants and noted expressly that the Monitor “supports” the Interim Distributions described above.²¹

17. The Monitor’s Seventh Report, served the next day, Tuesday, July 29, 2025, indicated that the Applicants intend to make the Interim Distributions, but for an unknown reason omitted reference to the Monitor’s express support for them.

18. The Fifth Cash Flow at Appendix J to the Monitor’s Seventh Report estimates a \$10 million erosion to the FILO Lenders’ recovery (prior to lease proceeds) through the forecast period, compared to the Draft Fifth Cash Flow, driven by the Applicants’ occupancy costs, corporate overhead, and professional fees.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

19. There are only two issues for the Court to decide with respect to the relief sought by the FILO Agent:

- (a) First, if a stay extension is granted, should the Court make an order: (i) requiring the Interim Distributions; and (ii) providing that these Interim Distributions are without prejudice to the FILO Agent’s pending and future requests for interim and other distributions?
- (b) Second, should the Court order that that any approval of the Monitor’s activities is without prejudice to the ability of any party to this proceeding, including the FILO

²¹ Letter from Bennett Jones to Lenczner Slaght, dated July 28, 2025, COM Tab 11.

Agent, to challenge any claim to approval, payment or allocation of any fees, costs and expenses, already accrued or going forward.

20. The answer to both questions is yes.

The Court should order the relief sought by the FILO Agent

21. There is no question that the Interim Distributions are appropriate. The Monitor supports them, and the Applicants have not contradicted the statement in the Monitor's Seventh Report that the Applicants intend to make them. Given the silence of the Applicants and the lack of express commitment by them, the Court should now order that they be made, to ensure that they actually take place as a condition of any extension of the stay.

22. There is no doubt that Court has the jurisdiction to grant the relief sought by the FILO Agent pursuant to sections 11 and 11.02(2) of the *CCAA*, and require the distributions be made as a condition of the extension of the Stay. One aim of the *CCAA* is to maximize creditor recovery,²² and the weight to be given to this aim depends on the stage of the proceeding and the proposed solutions that are presented to the Court for approval, again among other things.²³

23. In this regard, the relief sought by the FILO Agent is in the interests of justice and is consistent with the aim of creditor recovery, including other creditors, given the reduction in the interest expense associated with the FILO loans.²⁴

24. The Court should also take account of the present stage of the proceedings and be mindful that the relief sought by the FILO Agent will only be a small step towards recovery for the FILO

²² 9354-9186 *Quebec Inc. v. Callidus Capital Corp.*, [2020 SCC 10](#), at [para 42](#).

²³ 9354-9186 *Quebec Inc. v. Callidus Capital Corp.*, [2020 SCC 10](#), at [para 46](#).

²⁴ *AbitibiBowater Inc. (Arrangement relatif à)*, [2009 QCCS 6461](#), at [paras 70-75](#).

Lenders in the face of otherwise continued erosion of its collateral for the sake of the pending Central Walk Transaction, from which they will not benefit. Accordingly, the FILO Agent's support for these Interim Distributions should not prejudice its pending or further requests for distributions.

25. An order directing the Interim Distributions will provide the FILO Lenders and all parties with certainty and stability. This certainty and stability is particularly important at the present stage of the *CCAA* proceedings, including the fact that the Purchaser is in breach of the Central Walk APA, a fact that, until yesterday, the Applicants and Monitor failed to disclose to the Court.

26. In these circumstances, the Court should ensure that any order made approving of the Monitor's activities not prejudice the pending relief sought by the FILO Agent as to allocation of costs, or as to any other position any party might take concerning the appropriateness of any fees, costs and expenses of the Monitor, the Applicants and any professional advisors, already accrued or going forward.

PART IV - ORDER REQUESTED

27. The FILO Agent seeks an Order that at any stay extension be accompanied by an Order:

- (a) requiring certain that the Applicant distribute to the Applicant approximately \$2 million to the FILO Agent from the proceeds of the sale of the Affiliate Lease Assignment and approximately \$5 million from the proceeds of the YM Lease Assignment Agreement once the YM Transactions are approved by the Court and closed (together, the "**Interim Distributions**"); and

- (b) providing that these Interim Distributions are without prejudice to the FILO Agent's pending and future requests for interim and other distributions.

28. The FILO Agent seeks an Order that any approval of the activities of the Monitor be without prejudice to the pending motion of the FILO Agent, and any other position any party may take in relation to any fees, costs and expenses of the Monitor or any other party, already accrued or going forward.

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



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SCHEDULE “A”
LIST OF AUTHORITIES

	Authority
1	9354-9186 Quebec Inc. v. Callidus Capital Corp., 2020 SCC 10
2	AbitibiBowater inc. (Arrangement relatif à), 2009 QCCS 6461 v

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date July 30, 2025



Signature

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

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

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.

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

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*...

11.02(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a)

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AND IN THE MATTER OF THE COMPROMISE OR ARRANGEMENT OF HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE
D'HUDSON SRI et al.

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

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FACTUM

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