

**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
OLD MM GP INC.**

Applicant

**FACTUM OF THE COURT-APPOINTED MONITOR
(Returnable March 8, 2024)**

March 4, 2024

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)

Tel: (416) 777-7906

Email: fosterj@bennettjones.com

Milan Singh-Cheema (LSO# 88258Q)

Tel: (416) 777-5527

Email: singhcheemam@bennettjones.com

Lawyers for Alvarez & Marsal Canada Inc.,
solely in its capacity as the Court-appointed
Monitor and not in its personal or corporate
capacity

TO: THE SERVICE LIST

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PART I - OVERVIEW

1. Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the Court-appointed monitor (in such capacity, the “**Monitor**”) of Old MM GP Inc. (f/k/a Mastermind GP Inc.) and Old MM LP (f/k/a Mastermind LP) (together, the “**Debtor Companies**”), seeks an order (the “**Claims Procedure Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), to implement a comprehensive, fair and expeditious claims procedure.

2. Pursuant to an approval and vesting order (the “**Approval and Vesting Order**”) previously granted by this Court, the Debtor Companies have implemented a going-concern sale of their business and no longer have any active operations. Having closed the sale transaction and with a view to informing a distribution of the proceeds thereof, the Debtor Companies, under the Monitor’s direction, wish to determine the universe of claims that exist against the Debtor Companies and their directors and officers (collectively, the “**Directors and Officers**”). To that end, the proposed Claims Procedure Order, among other things:

- (a) establishes a procedure for the identification, quantification and resolution of claims against the Debtor Companies and the Directors and Officers (the “**Claims Procedure**”); and
- (b) extends the Stay of Proceedings (as defined below) to and including October 31, 2024 (the “**Stay Period**”).

3. The relief sought under the proposed Claims Procedure Order will facilitate the orderly and efficient completion of these CCAA proceedings and, subject to this Court’s prior approval, a distribution to the Debtor Companies’ creditors. Such relief is the logical next step in these CCAA

proceedings, is appropriate in the circumstances and is consistent with the scope and purpose of the Monitor's expanded powers.

PART II - FACTS

4. The facts with respect to this motion are more fully set out in the Fourth Report of the Monitor dated February 28, 2024 (the "**Fourth Report**"). Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Claims Procedure Order or the Fourth Report, as applicable.¹

A. Background to, and Initial Stages in, these CCAA Proceedings

5. Together, the Debtor Companies formerly constituted Canada's largest privately held retailer of specialty toys and children's books. Facing several unique challenges and a liquidity crisis, the Debtor Companies resolved to commence these CCAA proceedings to provide the stability and flexibility necessary to allow them to pursue a value maximizing going concern sale transaction, while also implementing a liquidation and closure of a sub-set of their retail stores. Accordingly, Old MM GP Inc. sought and, on November 23, 2023, obtained an initial order (the "**Initial Order**") under the CCAA.²

6. Among other things, the Initial Order:

(a) appointed A&M as the Monitor;

¹ Fourth Report of Alvarez & Marsal Canada Inc. dated February 28, 2024 [Fourth Report], Motion Record of the Court Appointed Monitor dated February 28, 2024 at Tab 2 [Motion Record].

² *Ibid* at paras 1.1, 1.3, Motion Record at Tab 2; Third Report of Alvarez & Marsal Canada Inc. dated January 8, 2024 at paras 1.1, 1.3 [Third Report], Motion Record at Tab 2D.

- (b) stayed, until November 30, 2023, all proceedings and remedies taken or that might be taken in respect of the Debtor Companies, the Monitor or the Directors and Officers, or affecting the Business or the Property (each as defined in the Initial Order), except with the written consent of the Debtor Companies and the Monitor, or with leave of the Court (the “**Stay of Proceedings**”);
- (c) extended the Stay of Proceedings and other protections and authorizations to Old MM LP; and
- (d) granted an Administration Charge and Directors’ Charge (each as defined in the Initial Order) over the Property in the amounts of \$750,000 and \$4,000,000, respectively.³

7. On November 30, 2023, Old MM GP Inc. sought and obtained the following additional orders:

- (c) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
 - (i) approved the Forbearance Agreement dated December 1, 2023 (the “**Forbearance Agreement**”), among, *inter alios*, Old MM GP Inc. and Old MM LP, as credit parties, and Canadian Imperial Bank of Commerce (“**CIBC**”), as agent for certain lenders, and granted a corresponding DIP Charge (as defined in the ARIO) over the Property;
 - (ii) extended the Stay of Proceedings to and including January 26, 2024;

³ Fourth Report, *ibid* at paras 1.1-1.2, Motion Record at Tab 2; Third Report, *ibid* at paras 1.1-1.2, Motion Record at Tab 2D.

- (iii) approved a key employee retention plan (the “**KERP**”) and granted a KERP Charge (as defined in the ARIO) to secure amounts payable under the KERP; and
- (iv) increased the amounts of the Administration Charge and the Director’s Charge to \$1,000,000 and \$5,000,000, respectively; and
- (b) an order (the “**Liquidation Sale Approval Order**”), which, among other things:
 - (i) approved the Consulting Agreement and Sale Guidelines (each as defined in the Liquidation Sale Approval Order); and
 - (ii) authorized Old MM LP, with the assistance of Gordon Brothers Canada ULC, to commence a liquidation sale at 18 store locations (the “**Liquidation Sale**”).⁴

B. The Sale of Old MM LP’s Assets and Business

8. With a view to consummating a value maximizing going concern sale transaction, Old MM LP negotiated and entered into an asset purchase agreement dated December 1, 2023 (the “**APA**”) with Unity Acquisitions Inc. (“**Unity**”).⁵

9. To effectuate the transactions contemplated under the APA (collectively, the “**Transaction**”), Old MM GP Inc. sought and, on December 13, 2023, obtained the Approval and Vesting Order, among other things:

⁴ Third Report, *ibid* at para 1.4, Motion Record at Tab 2D.

⁵ Fourth Report, *supra* note 1 at para 1.3, Motion Record at Tab 2.

- (a) approving the APA between Old MM LP, as vendor, and Unity or its permitted assignee, Mastermind Toys Inc., as purchaser (the “**Purchaser**”); and
- (b) upon the delivery of a certificate to Old MM LP and the Purchaser (the “**Monitor’s Certificate**”), vesting all of Old MM LP’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser free and clear of all claims and encumbrances other than the Permitted Encumbrances (as defined in the APA).⁶

10. In accordance with the APA, Old MM GP Inc. sought and, on January 12, 2024, obtained an order (the “**Assignment Order**”) assigning, conveying and transferring to the Purchaser the rights and obligations of the Debtor Companies under the Assigned Contracts (as defined in the Assignment Order). On that same date and in anticipation of the closing of the Transaction and the completion of the Liquidation Sale, Old MM GP Inc. also sought and obtained an order (the “**Ancillary Order**”), among other things:

- (a) expanding the Monitor’s powers effective upon the delivery of the Monitor’s Certificate and granting certain additional protections in favour of the Monitor;
- (b) declaring that Old MM LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and that Old MM LP’s former employees are eligible to receive payments under and in accordance with the *Wage Earner Protection Program Act*, S.C. 2006, c. 47 s. 1, as amended (the “**WEPP Act**”);

⁶ *Ibid* at para 1.4, Motion Record at Tab 2.

- (c) extending the Stay of Proceedings to and including April 30, 2024;
- (d) amending the style of cause in these CCAA proceedings;
- (e) authorizing and directing Old MM LP to make certain distributions to CIBC following the delivery of the Monitor's Certificate, including to satisfy all obligations under the Forbearance Agreement (collectively, the "**Distribution**"); and
- (f) terminating and releasing the DIP Charge and the KERP Charge upon Old MM LP making the Distribution.⁷

11. As expected, the Liquidation Sale was completed on January 14, 2024, and the Transaction closed on January 15, 2024.⁸

C. The Proposed Claims Procedure

12. Pursuant to its enhanced powers granted under the Ancillary Order, the Monitor now seeks the proposed Claims Procedure Order and authorization to undertake the Claims Procedure set out therein. The Claims Procedure was developed by the Monitor and is intended to provide a comprehensive, fair and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and the Directors and Officers.⁹

⁷ *Ibid* at para 1.5, Motion Record at Tab 2.

⁸ *Ibid* at para 4.1-4.2, Motion Record at Tab 2.

⁹ *Ibid* at para 5.1, Motion Record at Tab 2.

13. A detailed description of the Claims Procedure is provided in the Fourth Report.¹⁰ Its key features are described below.

Notice

14. Pursuant to the proposed Claims Procedure Order, notice of the Claims Procedure will be provided in the following ways, among others:

- (a) delivery of the Claims Package by the Monitor, on behalf of the Debtor Companies, to each of the Known Claimants by no later than five (5) Business Days following the granting of the Claims Procedure Order;
- (b) publication of the Notice Letter in *The Globe and Mail* (National Edition) as soon as practicable after the date of the Claims Procedure Order;
- (c) publication of the Claims Procedure Order, the Monitor's Motion Record in respect of the Claims Procedure Order, and the Claims Package on the Monitor's Website as soon as practicable after the date of the Claims Procedure Order; and
- (d) delivery by the Monitor of a copy of the Claims Package to any Person claiming to be a Claimant and requesting such material in writing.¹¹

15. The proposed Claims Procedure also includes a "negative claims process" for certain Known Claimants. Specifically, the proposed Claims Procedure permits the Monitor to elect to deliver a General Claim Statement, Employee Claim Statement or Landlord Claim Statement to Known Claimants setting out the classification, nature and amount of each such Known Claimant's

¹⁰ *Ibid* at paras 5.2-5.15, Motion Record at Tab 2.

¹¹ *Ibid* at para 5.9, Motion Record at Tab 2.

Claim (each, a “**Listed Claim**”) by including a Claim Statement in the Claims Package delivered to such Known Claimants (each, a “**Listed Claimant**”).¹²

16. Any Listed Claimant who does not dispute the classification, nature or amount of the Listed Claim set forth in the Claim Statement delivered to such Listed Claimant is not required to take any further action. The Claim of such Listed Claimant will be deemed to be of such classification, nature and amount as set forth in the Claim Statement for voting and/or distribution purposes. Any Listed Claimant who wishes to dispute the classification, nature and/or amount of the Listed Claim set forth in the Claim Statement delivered to such Listed Claimant must deliver a Notice of Dispute of Claim Statement to the Monitor so that it is actually received by the Monitor by no later than the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable.¹³

Claims

17. In addition to Listed Claims, the Monitor, on behalf of the Debtor Companies, will solicit Prefiling Claims, Restructuring Period Claims and Director/Officer Claims from all other potential Claimants.¹⁴

18. Any Claimant, including a Listed Claimant, that wishes to assert a Pre-Filing Claim, Restructuring Period Claim or Director/Officer Claim other than a Listed Claim must do so by the Claims Bar Date or the Restructuring Period Claims Bar Date, respectively. The Claims Bar Date is 5:00 p.m. (Eastern Prevailing Time) on April 19, 2024, or such later date as may be ordered by the Court. The Restructuring Period Claims Bar Date is the later of (i) the Claims Bar Date and

¹² *Ibid* at para 5.2, Motion Record at Tab 2.

¹³ *Ibid*, Motion Record at Tab 2.

¹⁴ *Ibid* at para 5.4, Motion Record at Tab 2.

(ii) 5:00 p.m. (Eastern Prevailing Time) on the date that is ten (10) Business Days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim to a Claimant.¹⁵

19. Pursuant to the proposed Claims Procedure Order, any Person that does not deliver a Proof of Claim to the Monitor on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable:

- (a) shall not be entitled to attend or vote at a Meeting in respect of such Claim;
- (b) shall not be entitled to receive any distribution in respect of such Claim pursuant to a Plan or otherwise;
- (c) shall not be entitled to any further notice in these CCAA proceedings (unless it has otherwise sought to be included on the Service List); and
- (d) shall be forever barred from making or enforcing such Claim, and such Claim shall be extinguished without any further act or notification.¹⁶

Assessment and Determination of Claims

20. The proposed Claims Procedure prescribes the processes for reviewing all Proofs of Claim filed and resolving any Disputed Claims.

21. Pursuant to the proposed Claims Procedure Order, the Monitor will review all Proofs of Claim received on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, as

¹⁵ *Ibid* at paras 5.7-5.8, Motion Record at Tab 2.

¹⁶ *Ibid* at para 5.15, Motion Record at Tab 2.

applicable. Following such review, the Monitor will accept, revise or disallow the classification, nature, and/or amount of each Claim. If the Monitor intends to revise or disallow a Claim, in whole or in part, the Monitor will notify the applicable Claimant by sending a Notice of Revision or Disallowance, together with the reasons for such revision or disallowance.¹⁷

22. Any Claimant who intends to dispute a Notice of Revision or Disallowance must send written notice to the Monitor by completing a Notice of Dispute of Revision or Disallowance by no later than 5:00 p.m. (Eastern Prevailing Time) on the date that is fourteen (14) Calendar Days after the date the Monitor sends the Notice of Revision or Disallowance to the applicable Claimant. Any Claimant that receives a Notice of Revision or Disallowance that does not file a Notice of Dispute of Revision or Disallowance with the Monitor within such period shall be deemed to have accepted the classification, amount and nature of the Claim as set out in the Notice of Revision or Disallowance for voting and distribution purposes, as applicable.¹⁸

23. In the event that a dispute raised in a Notice of Dispute of Revision or Disallowance or Notice of Dispute of Claim Statement is not settled within a time period or in a manner satisfactory to the Monitor, the Monitor shall so notify the Claimant or Listed Claimant, as applicable. Thereafter, the Monitor shall refer the Disputed Claim to the Court or to such alternative dispute resolution proceeding as may be ordered by the Court or agreed to by the Monitor and the applicable Claimant or Listed Claimant, as the case may be. The Court or the Person or Persons conducting the alternative dispute resolution proceeding, as the case may be, shall resolve the dispute.¹⁹

¹⁷ *Ibid* at para 5.10, Motion Record at Tab 2.

¹⁸ *Ibid* at paras 5.11-5.12, Motion Record at Tab 2.

¹⁹ *Ibid* at para 5.13, Motion Record at Tab 2.

D. The Stay of Proceedings

24. The Stay of Proceedings granted under the Ancillary Order will expire on April 30, 2024. Pursuant to the proposed Claims Procedure Order, the Monitor is seeking to extend the Stay of Proceedings to and including October 31, 2024.²⁰

25. The Debtor Companies are forecast to have sufficient liquidity throughout the Stay Period.²¹

PART III - ISSUES

26. The issues to be considered on this motion are whether this Court should:

- (a) approve the proposed Claims Procedure; and
- (b) extend the Stay of Proceedings through the Stay Period.

PART IV - LAW AND ARGUMENT

A. This Court Should Approve the Proposed Claims Procedure

27. Sections 11 and 12 of the CCAA, which respectively authorize this Court to make “any order it considers appropriate in the circumstances”, and “fix deadlines for the purposes of voting and for the purposes of distributions”, vest this Court with jurisdiction to make an order approving a process for the solicitation and determination of claims against a debtor company and its directors

²⁰ *Ibid* at para 6.1, Motion Record at Tab 2.

²¹ *Ibid* at para 6.4, Motion Record at Tab 2.

and officers.²² As this Court recognized in *Re Toys “R” Us (Canada) Ltd.*, such orders – including those providing for a “negative claims process” – are routinely granted.²³

28. Claims procedure orders permit insolvent debtors to establish processes “under which all of the creditors of an applicant and its directors and officers can submit their claims for recognition and valuation”.²⁴ Such orders must “be carefully drafted so as to ensure that the process by which claims are determined is both fair and reasonable to all stakeholders” and further the CCAA’s remedial objectives.²⁵

29. Generally, claims procedure orders provide the following:

- (a) a method to communicate to potential creditors that there is a process by which they must prove their claims and the date by which they must do so;
- (b) an opportunity for the debtor company or its representative to review and, if appropriate, contest claims made by creditors;

²² *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 s 11, s 12 [CCAA]; *Re Toys “R” Us (Canada) Ltd.*, 2018 ONSC 60 at para 8 [Toys]; *Rambler Metals and Mining Limited, Re CCAA*, 2023 NLSC 134 at para 111 [Rambler]. See also, *Re Timminco Ltd.*, 2014 ONSC 3393 at para 40 [Timminco]; *Plan of Arrangement of Fire & Flower Holdings Corp. et al.*, 2023 ONSC 4934 at para 30 [Fire & Flower]; *Re U.S. Steel Canada Inc.*, 2017 ONSC 1967 at para 5 [U.S. Steel]; *ScoZinc Ltd, Re*, 2009 NSSC 136 at para 26 [ScoZinc].

²³ *Toys*, *ibid* at paras 8, 11-14; *Rambler*, *ibid*; *ScoZinc*, *ibid* at para 25. See also, *In the Matter of a Plan of Compromise or Arrangement of Roberts Company Canada Limited* (July 28, 2020), Toronto, CV-20-00643158-00CL (Claims Procedure Order) (ONSC) [Roberts Claims Procedure Order]; *In the Matter of a Plan of Compromise or Arrangement of 1000156489 Ontario Inc.* (June 20, 2023), Toronto, CV-22-00691990-00CL (Claims Procedure Order) (ONSC) [DCL Claims Procedure Order]; *In the Matter of a Plan of Compromise or Arrangement of Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc.* (April 24, 2019), Toronto, CV-19-00614629-00CL (Order (Claims Procedure Order)) (ONSC) [Payless Claims Procedure Order]; *In the Matter of a Plan of Compromise or Arrangement of Forever XXI ULC* (May 28, 2020), Toronto, CV-19-00628233-00CL (Claims Procedure Order) (ONSC) [Forever 21 Claims Procedure Order]; *In the Matter of a Plan of Compromise or Arrangement of Toys “R” Us (Canada) Ltd. Toys “R” Us Canada Ltee* (January 25, 2018), Toronto, CV-17-00582960-00CL (Claims Procedure Order) (ONSC) [Toys “R” Us Claims Procedure Order].

²⁴ *Toys*, *ibid* at para 8.

²⁵ *Laurentian University of Sudbury*, 2021 ONSC 3885 at paras 31-32.

- (c) an adjudication mechanism for claims that cannot be agreed upon or settled through negotiation;
- (d) a “claims bar date” by which claims must be submitted; and
- (e) the barring of late claims to ensure that the Court-appointed monitor and the debtor company can make accurate and informed determinations for voting and distribution purposes.²⁶

30. The processes provided by claims procedure orders have been regarded by Courts as eminently practical means of streamlining and resolving the “multitude of claims against an insolvent debtor” in a timely and cost-effective manner.²⁷ Such processes are “of fundamental importance” where, as in this case, there is a sale or liquidation of a debtor company’s assets and anticipated distribution.²⁸

31. In this case, it is appropriate for this Court to exercise its discretion to approve the Claims Procedure and grant the proposed Claims Procedure Order given that, among other things:

- (a) the determination and resolution of the universe of Claims against the Debtor Companies and the Directors and Officers is a fundamental prerequisite to any future distribution of the proceeds realized from the Liquidation Sale and the Transaction to the Debtor Companies’ creditors;

²⁶ *Toys*, *supra* note 22 at para 8; *Timminco*, *supra* note 22 at para 43; *ScoZinc*, *supra* note 22 at para 23.

²⁷ *ScoZinc*, *ibid* at para 31; *Canwest Global Communications Corp. Re*, 2011 ONSC 2215 at para 40 [Canwest]. See also, *Fire & Flower*, *supra* note 22 at para 30.

²⁸ *Timminco*, *supra* note 22 at para 41; *Re Walter Energy Canada Holdings Inc*, 2016 BCSC 1746 at para 81.

- (b) it is necessary to understand the scope and nature of any potential Claims against the Directors and Officers to address those that may be secured by the Directors' Charge and to release such charge in connection with the termination of these CCAA proceedings;
- (c) pursuant to the Ancillary Order, the Monitor was authorized and empowered to, *inter alia*, develop and conduct a process for the solicitation, determination and resolution of Claims against the Debtor Companies and the Directors and Officers;
- (d) the Claims Procedure was developed, and will be fairly, transparently and efficiently implemented and administered, by the Monitor;
- (e) the Claims Procedure is intended to provide a comprehensive, fair and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and the Directors and Officers;
- (f) the use of a "negative claims process" for Listed Claims will improve the efficiency of the Claims Procedure, reduce the time and expense required for certain Known Claimants to prove their Listed Claims and minimize the time and fees expended by the professionals retained in these CCAA proceedings in reviewing and addressing Proofs of Claim;
- (g) in the Monitor's view, the Claims Procedure Order provides Claimants with sufficient opportunity to evaluate the Claims Packages, Claim Statements and Amended Claim Statements, as the case may be, and submit Proofs of Claim,

Notices of Dispute of Claim Statement and Notices of Dispute of Revision or Disallowance, as applicable; and

- (h) the Claims Procedure includes a fair and streamlined process for resolving all Disputed Claims in a time-sensitive and cost-efficient manner, and in the event that the Monitor is unable to resolve any Disputed Claim, the Disputed Claim shall be referred to this Court for resolution or to such alternative dispute resolution as may be ordered by this Court.²⁹

32. For these reasons, the Monitor submits that the proposed Claims Procedure is fair, reasonable and appropriate in the circumstances. What's more, it provides the best and most efficient means of identifying, quantifying and resolving Claims against the Debtors Companies and the Directors and Officers.

B. This Court Should Extend the Stay of Proceedings

33. The Stay of Proceedings is currently set to expire on April 30, 2024.³⁰ Subsection 11.02(2) of the CCAA authorizes this Court to grant an extension of the Stay of Proceedings for “any period that the court considers necessary”.³¹ To grant such an extension, this Court must be satisfied that circumstances exist that make the order appropriate and that the Debtor Companies have acted, and are acting, in good faith and with due diligence.³²

²⁹ Fourth Report, *supra* note 1 at paras 4.7, 5.1-5.15, 8.1, Motion Record at Tab 2.

³⁰ *Ibid* at para 6.1, Motion Record at Tab 2.

³¹ [CCAA](#), *supra* note 22 s 11.02(2); [U.S. Steel](#), *supra* note 22 at para [23](#).

³² [CCAA](#), *ibid* s 11.02(2).

34. The jurisdiction conferred under section 11.02 “should be construed broadly to accomplish the legislative purposes of the *CCAA*”.³³ These purposes include, among others, providing for an efficient resolution of a debtor company’s insolvency, ensuring the fair and equitable treatment of claims against such debtor company and maximizing creditor recovery.³⁴ Accordingly, a stay of proceedings will be appropriate where it maintains the *status quo* and provides a debtor company with the breathing room necessary to achieve these objectives.³⁵

35. In this case, the proposed extension of the Stay of Proceedings is appropriate given that:

- (a) since the granting of the Initial Order, the Debtor Companies have acted in good faith and with due diligence to, among other things, implement and complete the Liquidation Sale and the Transaction;
- (b) under the Monitor’s direction, the Debtor Companies have continued to act in good faith and with due diligence since the closing of the Transaction to address post-closing matters and facilitate the Monitor’s development of the proposed Claims Procedure and identification of all of Old MM LP’s former employees that may be eligible for payments under the WEPP Act;
- (a) the proposed extension of the Stay of Proceedings will maintain the *status quo* and provide the breathing room and stability necessary to, among other things, (i) complete the proposed Claims Procedure and resolve any Disputed Claims therein in accordance with the Claims Procedure Order, and (ii) allow the Monitor, exercising its powers under the Ancillary Order, to seek approval of one or more

³³ [Canwest](#), *supra* note 27 at para 24.

³⁴ [Ibid](#); [9354-9186 Québec inc. v Callidus Capital Corp.](#), 2020 SCC 10 at paras 40, 42; [Re Timminco Limited](#), 2012 ONSC 2515 at para 15 [*Timminco Limited*].

³⁵ [Timminco Limited](#), *ibid* at para 15; [Canwest](#), *ibid*.

distributions to the Debtor Companies' creditors and otherwise administer the Debtor Companies' estates and wind-down;

- (c) the Debtor Companies are forecast to have sufficient liquidity throughout the Stay Period; and
- (d) the Monitor is not aware of any creditor that would be materially prejudiced by the proposed extension of the Stay of Proceedings.³⁶

36. Taken together, the Monitor submits that the proposed extension of the Stay of Proceedings is in the best interests of the Debtor Companies and their stakeholders, is consistent with the purposes of the CCAA, and is appropriate in the circumstances.

PART V - ORDER REQUESTED

37. The Monitor submits that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,³⁷ and respectfully requests that the proposed Claims Procedure Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4TH DAY OF MARCH 2024

Bennett Jones LLP

BENNETT JONES LLP

³⁶ Fourth Report, *supra* note 1 at paras 6.1-6.5, Motion Record at Tab 2.

³⁷ [Roberts Claims Procedure Order](#), *supra* note 23; [DCL Claims Procedure Order](#), *supra* note 23; [Payless Claims Procedure Order](#), *supra* note 23; [Forever 21 Claims Procedure Order](#), *supra* note 23; [Toys "R" Us Claims Procedure Order](#), *supra* note 23; [In the Matter of a Plan of Compromise or Arrangement of Yatsen Group of Companies et al.](#) (August 4, 2021), Toronto, CV-21-00655505-00CL (Claims Procedure Order) (ONSC); [In the Matter of a Plan of Compromise or Arrangement of Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest \(Canada\) Inc.](#) (April 12, 2010), Toronto, CV-10-8533-00CL (Claims Procedure Order) (ONSC); [In the Matter of a Plan of Compromise or Arrangement of Cline Mining Corporation, New Elk Coal Company LLC and North Central Energy Company](#) (December 3, 2014), Toronto, CV-14-10781-00CL (Claims Procedure Order) (ONSC).

SCHEDULE “A” – LIST OF AUTHORITIES

Cases Cited

1. [Canwest Global Communications Corp, Re, 2011 ONSC 2215](#)
2. [In the Matter of a Plan of Compromise or Arrangement of Canwest Publishing Inc./Publications Canwest Inc., Canwest Books Inc. and Canwest \(Canada\) Inc. \(April 12, 2010\), Toronto, CV-10-8533-00CL \(Claims Procedure Order\) \(ONSC\)](#)
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4. [In the Matter of a Plan of Compromise or Arrangement of Forever XXI ULC \(May 28, 2020\), Toronto, CV-19-00628233-00CL \(Claims Procedure Order\) \(ONSC\)](#)
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12. [Rambler Metals and Mining Limited, Re CCAA, 2023 NLSC 134](#)
13. [Re Timminco Limited, 2012 ONSC 2515](#)
14. [Re Timminco Ltd., 2014 ONSC 3393](#)
15. [Re Toys “R” Us \(Canada\) Ltd., 2018 ONSC 609](#)
16. [Re U.S. Steel Canada Inc., 2017 ONSC 1967](#)

17. [*Re Walter Energy Canada Holdings Inc*, 2016 BCSC 1746](#)
18. [*ScoZinc Ltd, Re*, 2009 NSSC 136](#)
19. [*9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10](#)

SCHEDULE “B” – STATUTES AND REGULATIONS RELIED ON

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

Section 11

General Power of Court

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.

R.S., 1985, c. C-36, s. 111992, c. 27, s. 901996, c. 6, s. 1671997, c. 12, s. 1242005, c. 47, s. 128.

Section 11.02

Stays, etc. – initial application

(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*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(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);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F)2019, c. 29, s. 137.

Section 12**Fixing Deadlines**

The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

R.S., 1985, c. C-36, s. 121992, c. 27, s. 901996, c. 6, s. 1672004, c. 25, s. 1952005, c. 47, s. 1302007, c. 36, s. 68

Court File No.: CV-23-00710259-00CL

**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 OLD MM GP INC.**

Applicant

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

Proceeding commenced at Toronto

**FACTUM OF THE COURT-APPOINTED MONITOR
(Returnable March 8, 2024)**

BENNETT JONES LLP

3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4

Sean Zweig (LSO# 57307I)
Tel: (416) 777-6254
Email: zweigs@bennettjones.com

Joshua Foster (LSO# 79447K)
Tel: (416) 777-7906
Email: fosterj@bennettjones.com

Milan Singh-Cheema (LSO# 88258Q)
Tel: (416) 777-5527
Email: singhcheemam@bennettjones.com

Lawyers for Alvarez & Marsal Canada Inc., solely in its
capacity as the Court-appointed Monitor and not in its
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