

**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 August 22, 2024)**

August 19, 2024

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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 “**Termination and Distribution Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), to effect an orderly and efficient distribution to the Debtor Companies’ creditors and termination of these CCAA proceedings.

2. Pursuant to prior orders of this Court, the Debtor Companies successfully liquidated a subset of their retail stores and closed a going-concern sale transaction for the remainder of their business. With a view to distributing the proceeds of their liquidation and going-concern sales, the Debtor Companies, under the Monitor’s direction, subsequently implemented a Claims Procedure (as defined below) to determine the universe of claims against the Debtor Companies and their directors and officers.

3. Having completed the liquidation and going-concern sales, and Claims Procedure, distributions may now be made to the Debtor Companies’ creditors and thereafter, these CCAA proceedings may be terminated. To that end, the proposed Termination and Distribution Order, among other things:

- (a) approves the distribution methodology (the “**Distribution Methodology**”) described in the Fifth Report of the Monitor dated August 13, 2024 (the “**Fifth Report**”), and authorizes and directs the Monitor, for and on behalf of the Debtor Companies, to make the distributions contemplated by the Distribution Methodology (collectively, the “**Distributions**”);

- (b) authorizes the Debtor Companies to make assignments in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) prior to the CCAA Termination Time (as defined below), naming A&M as the licensed insolvency trustee (in such capacity, the “**Trustee**”);
- (c) terminates these CCAA proceedings upon the Monitor’s service on the service list of a certificate (the “**Termination Certificate**”) in the form attached as Schedule “A” to the proposed Termination and Distribution Order (the “**CCAA Termination Time**”);
- (d) discharges and releases the Charges (as defined below) and A&M as Monitor as of the CCAA Termination Time;
- (e) grants certain releases (the “**Releases**”) in favour of the Released Parties (as defined below);
- (f) approves the Reports (as defined below), and the activities of the Monitor described therein; and
- (g) approves the fees and disbursements of the Monitor and the Monitor’s counsel referred to in the Fifth Report and the fee affidavits sworn in support thereof (together, the “**Fee Affidavits**”), including the Fee Estimate.

4. The relief sought under the proposed Termination and Distribution Order will facilitate the Distributions to the Debtor Companies’ creditors and the termination of these CCAA proceedings. Such relief represents the logical conclusion to these CCAA proceedings, is in the best interests of the Debtor Companies’ and their creditors and is appropriate in the circumstances.

PART II - FACTS

5. The facts with respect to this motion are more fully set out in the Fifth Report. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Fifth Report or the proposed Termination and Distribution Order, as applicable.¹

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

6. Together, the Debtor Companies formerly constituted Canada's largest privately held retailer of specialty toys and children's books. Facing several 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 (the "**Liquidation Sale**"). Accordingly, Old MM GP Inc. sought and, on November 23, 2023, obtained an initial order (the "**Initial Order**") under the CCAA.²

7. Among other things, the Initial Order:

- (a) appointed A&M as the Monitor;
- (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 Debtor Companies' directors and officers, or affecting the Business or the Property (each as defined in

¹ Fifth Report of the Monitor dated August 13, 2024 [Fifth Report], Motion Record of the Court Appointed Monitor dated August 13, 2024 at Tab 2 [Motion Record].

² *Ibid* at paras 1.1-1.3, Motion Record at Tab 2; Third Report of the Monitor dated January 8, 2024 at paras 1.1, 1.3 [Third Report], Motion Record at Tab 2D.

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.³

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

- (a) an amended and restated Initial Order (the “**ARIO**”), which, among other things:
 - (i) approved 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;
 - (iii) approved the KERP and granted the KERP Charge (as defined in the ARIO); and
 - (iv) increased the amounts of the Administration Charge and the Director’s Charge; and

³ Fifth 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.

(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 conduct the Liquidation Sale at 18 store locations.⁴

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

9. 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

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

(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) 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

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

⁵ Fifth Report, *supra* note 1 at paras 1.3-1.4, Motion Record at Tab 2.

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

11. 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).⁷ 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**”);
- (c) extending the Stay of Proceedings to and including April 30, 2024;
- (d) authorizing and directing Old MM LP to make certain distributions to CIBC, including to satisfy all obligations under the Forbearance Agreement (collectively, the “**CIBC Distribution**”); and
- (e) terminating and releasing the DIP Charge and the KERP Charge upon Old MM LP making the CIBC Distribution.⁸

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

⁸ *Ibid*, Motion Record at Tab 2.

12. The Liquidation Sale was completed on January 14, 2024, and the Transaction closed on January 15, 2024. The Transaction resulted in excess proceeds available after the CIBC Distribution (the “**Excess Proceeds**”).⁹

C. The Claims Procedure

13. To facilitate the distribution of the Excess Proceeds and the termination of these CCAA proceedings, the Monitor sought and, on March 8, 2024, obtained an order (the “**Claims Procedure Order**”), among other things, establishing a procedure for the identification, quantification and resolution of claims against the Debtor Companies and their present and former directors and officers (the “**Claims Procedure**”). The Claims Procedure was intended to provide a fair, comprehensive and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and their present and former directors and officers.¹⁰

14. Pursuant to the Claims Procedure Order, every Claimant asserting any Claim against the Debtor Companies (or either of them) and/or the Debtor Companies’ present and former directors and officers (or any of them), other than a Listed Claimant in respect of a Listed Claim, was required to deliver a Proof of Claim to the Monitor by no later than:

- (a) in the case of a Prefiling Claim or Director/Officer Claim, 5:00 p.m. (Eastern Prevailing Time) on April 19, 2024 (the “**Claims Bar Date**”); or
- (b) in the case of a Restructuring Period Claim, the later of: (i) the Claims Bar Date; and (ii) 5:00 p.m. (Eastern Prevailing Time) on the date that is ten (10) Business

⁹ *Ibid* at para 4.1, Motion Record at Tab 2; Fourth Report of the Monitor dated February 28, 2024 at paras 4.1-4.2, Motion Record at Tab 2E.

¹⁰ Fifth Report, *ibid* at paras 1.6, 5.1-5.2, Motion Record at Tab 2.

Days after the Monitor sends a Claims Package with respect to a Restructuring Period Claim (the “**Restructuring Period Claims Bar Date**”).¹¹

15. Any Listed Claimant who wished to dispute its Listed Claim was similarly required to deliver a Notice of Dispute of Claim Statement to the Monitor no later than the Claims Bar Date or the Restructuring Period Claims Bar Date, as applicable. Both the Claims Bar Date and the Restructuring Period Claims Bar Date have long since elapsed.¹²

16. The Monitor reviewed all Proofs of Claim received on or before the Claims Bar Date and the Restructuring Period Claims Bar Date, and as applicable, either accepted, revised or disallowed the classification, nature, and/or amount of each Claim. Ultimately, 300 Claims, totalling approximately \$32.2 million, were finally determined and accepted by the Monitor in accordance with the Claims Procedure Order (each, a “**Proven Claim**”).¹³

D. The Distribution Methodology and the Distributions

17. Having completed the Liquidation Sale, closed the Transaction, satisfied all obligations to CIBC and under the KERP, and implemented the Claims Procedure, all of the Debtor Companies’ assets have been monetized and all of the Claims against the Debtor Companies and their present and former directors and officers have been quantified, resolved or barred. Accordingly, the Monitor now seeks approval of the Distribution Methodology and the Distributions contemplated thereby.¹⁴

¹¹ *Ibid* at para 5.4, Motion Record at Tab 2.

¹² *Ibid* at paras 5.5-5.6, Motion Record at Tab 2.

¹³ *Ibid* at paras 5.6, 5.10, Motion Record at Tab 2.

¹⁴ *Ibid* at para 6.5, Motion Record at Tab 2.

18. Pursuant to the proposed Termination and Distribution Order, the Monitor, for and on behalf of the Debtor Companies, will be authorized, directed and empowered to make one or more Distributions to each Claimant holding a Proven Claim for such Claimant's *pro rata* amount of the Cash Pool. The Cash Pool is currently expected to be approximately \$1.88 million.¹⁵

19. Each of the Distributions will be made free and clear of any encumbrances and in Canadian dollars.¹⁶

E. The Debtor Companies' Assignments in Bankruptcy

20. To facilitate the orderly and efficient wind-up of their estates, the proposed Termination and Distribution Order authorizes each of the Debtor Companies to make an assignment in bankruptcy pursuant to the BIA prior to the CCAA Termination Time, naming A&M as the Trustee.¹⁷

21. The proposed Termination and Distribution Order authorizes the Trustee to administer the bankruptcy estates as if such estates were in respect of a single bankrupt for the purposes of carrying out its duties and responsibilities as trustee under the BIA (the "**Bankruptcy Proceedings**"). The procedural consolidation of the Debtor Companies' bankruptcy estates contemplated under the proposed Termination and Distribution Order will reduce the costs of administering the Bankruptcy Proceedings to be funded from the Administrative Reserve.¹⁸

¹⁵ *Ibid* at para 6.6, Motion Record at Tab 2.

¹⁶ *Ibid* at para 6.7, Motion Record at Tab 2.

¹⁷ *Ibid* at para 6.9, Motion Record at Tab 2.

¹⁸ *Ibid* at paras 6.9-6.10, Motion Record at Tab 2.

F. The Termination of These CCAA Proceedings

22. In accordance with the proposed Termination and Distribution Order, these CCAA proceedings will be terminated upon service of the Termination Certificate certifying that the Distributions have been made and all matters to be attended to in connection with these CCAA proceedings have been completed to the satisfaction of the Monitor. At such time, A&M will be released and discharged as Monitor and the Administration Charge and Directors' Charge (together, the "**Charges**") will be terminated, released and discharged.¹⁹

G. The Releases

23. The proposed Termination and Distribution Order releases (i) the current and former directors, officers, employees, partners, managers, agents and advisors of the Debtor Companies and (ii) the Monitor, the Monitor's counsel, the Debtor Companies' counsel and each of their respective present and former affiliates, officers, directors, partners, employees, legal counsel, agents and advisors (collectively, the "**Released Parties**", and each a "**Released Party**") from the Released Claims (as defined in the CCAA Termination Order).²⁰

24. The Releases do not waive, discharge, release, cancel or bar any claim that is not permitted to be released pursuant to subsection 5.1(2) of the CCAA or with respect to any act or omission determined by a court of competent jurisdiction to have constituted actual fraud, wilful misconduct or gross negligence.²¹

25. The proposed Releases are intended to limit any indemnification claims the Released Parties may have against the Debtor Companies, allow for the release of the Charges, and

¹⁹ *Ibid* at para 6.2, Motion Record at Tab 2.

²⁰ *Ibid* at para 6.11, Motion Record at Tab 2.

²¹ *Ibid* at para 6.12, Motion Record at Tab 2.

recognize the significant time and effort expended by the Released Parties in, and their substantial contributions to the success of, these CCAA proceedings.²²

H. The Monitor's Reports, Activities and Fees

26. The proposed Termination and Distribution Order approves the Pre-Filing Report of the Monitor dated November 22, 2023, the First Report of the Monitor dated November 29, 2023, the Second Report of the Monitor dated December 10, 2023, the Third Report of the Monitor dated January 8, 2024, the Fourth Report of the Monitor dated February 28, 2024, and the Fifth Report (collectively, the “**Reports**”), as well as the activities of the Monitor described therein.²³

27. The proposed Termination and Distribution Order also approves the fees and disbursements of the Monitor and its counsel referred to in the Fifth Report and the Fee Affidavits, including the Fee Estimate. The Fee Estimate reflects the fees and disbursements of the Monitor and its counsel that have been and are anticipated to be incurred in connection with the completion of the Monitor's remaining duties in these CCAA proceedings.²⁴

PART III - ISSUES

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

- (a) authorize the Distributions contemplated by the Distribution Methodology;
- (b) authorize the termination of these CCAA proceedings and the discharge of the Monitor and the Charges at the CCAA Termination Time;

²² *Ibid* at para 6.13, Motion Record at Tab 2.

²³ *Ibid* at para 7.1, Motion Record at Tab 2.

²⁴ *Ibid* at paras 7.3-7.7, Motion Record at Tab 2.

- (c) authorize the Debtor Companies to make assignments in bankruptcy on a procedurally consolidated basis;
- (d) approve the Releases in favour of the Released Parties;
- (e) approve the Reports and the activities of the Monitor described therein; and
- (f) approve the fees and disbursements of the Monitor and its counsel.

PART IV - LAW AND ARGUMENT

A. These CCAA Proceedings Should be Terminated and the Monitor and the Charges Should be Discharged

29. Section 11 of the CCAA vests this Court with broad discretion to make “any order that it considers appropriate in the circumstances.”²⁵ This discretion has been characterized as the “engine that drives” the CCAA’s flexible statutory scheme, allowing Courts to make orders responsive to the circumstances of each case.²⁶

30. The exercise of this Court’s discretion under section 11 of the CCAA must “further the remedial objectives of the CCAA and be guided by the baseline considerations of appropriateness, good faith, and due diligence.”²⁷ An order under section 11 of the CCAA will be appropriate where it “advances the policy objectives underlying the CCAA.”²⁸ These objectives include, among others, providing for the timely, efficient and impartial resolution of an insolvency, ensuring the

²⁵ *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36 s 11 [CCAA].

²⁶ *9354-9186 Québec inc v Callidus Capital Corp*, 2020 SCC 10 at para 48 [Callidus].

²⁷ *Ibid* at paras 49, 67, 70; *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at paras 59, 70 [Century Services]; *Re ENTREC Corporation*, 2020 ABQB 751 at para 3 [ENTREC].

²⁸ *Callidus*, *ibid* at para 50; *Century Services*, *ibid* at 70; *ENTREC*, *ibid* at para 4.

fair and equitable treatment of claims against debtor companies and maximizing creditor recovery.²⁹

31. In furtherance of the CCAA's remedial objectives, Courts have routinely granted orders, similar to the proposed Termination and Distribution Order, terminating debtor companies' CCAA proceedings, discharging the Court-appointed monitor and Court-ordered charges, authorizing distributions to debtor companies' creditors and facilitating debtor companies' assignments in bankruptcy under the BIA.³⁰

32. Having regard to the foregoing considerations and the powers conferred upon the Monitor under the Ancillary Order,³¹ the Monitor submits that it is appropriate for this Court to exercise its jurisdiction to authorize the termination of these CCAA proceedings and the discharge of the Monitor and the Charges given that, among other things:

²⁹ *Callidus*, *ibid* at paras 40, 42; *Century Services*, *ibid* at paras 15, 59, 70.

³⁰ *Re JTI-Macdonald Corp.*, 2010 ONSC 4212 at para 19; *In the Matter of a Plan of Compromise or Arrangement of Old API Wind-down Ltd.* (May 17, 2019), Toronto, CV-18-603054-00CL (CCAA Termination Order) (ONSC) [*Old API Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of Del Equipment Inc.* (October 29, 2020), Toronto, CV-19-629552-00CL (CCAA Termination Order) (ONSC) [*Del Equipment Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc. et al.* (March 29, 2018), Toronto, CV-16-11527-00CL (CCAA Termination Order) (ONSC) [*Golf Town Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp. et al.* (February 15, 2022), Toronto, CV-21-00673304-00CL (CCAA Distribution and Termination Order) (ONSC) [*Harte Gold Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of Forme Development Group Inc. et al.* (June 23, 2022), Toronto, CV-18-608313-00CL (CCAA Termination and Distribution Order) (ONSC) [*Forme Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.* (March 1, 2024), Toronto, CV-23-00703350-00CL (Order CCAA Termination) (ONSC) [*Aleafia Termination Order*]; *In the Matter of a Plan of Compromise or Arrangement of 9366016 Canada Inc.* (October 28, 2016), Toronto, CV-15-10869-00CL (Distribution and CCAA Termination Order) (ONSC) [*9366016 Termination and Distribution Order*]; *In the Matter of a Plan of Compromise or Arrangement of Trichome Financial Corp. et al.* (September 14, 2023), Toronto, CV-22-00689857-00CL (CCAA Termination Order) (ONSC) [*Trichome Termination and Distribution Order*]; *In the Matter of a Plan of Compromise or Arrangement of 1000704712 Ontario Inc. et al.* (January 30, 2024), Toronto, CV-23-00708635-00CL (CCAA Termination and Distribution Order) (ONSC) [*Ignite Termination and Distribution Order*]; *In the Matter of a Plan of Compromise or Arrangement of King Street Company Inc. et al.* (March 29, 2021), Toronto, CV-20-00650945-00CL (Termination Order) (ONSC) [*King Street Termination Order*].

³¹ *In the Matter of a Plan of Compromise or Arrangement of Mastermind GP Inc.* (January 12, 2024), Toronto, CV-23-00710258-00CL (Ancillary Order) (ONSC) at para 3.

- (a) the Debtor Companies and the Monitor have acted in good faith and with due diligence to preserve and maximize the value of the Business, prepare and implement the Liquidation Sale and consummate the Transaction;
- (b) the principal purposes of these CCAA proceedings, including the consummation of the Transaction and the completion of the Liquidation Sale for the benefit of the Debtor Companies and their creditors, have been realized;
- (c) with the completion of the Liquidation Sale, the closing of the Transaction, the satisfaction of all obligations to CIBC and under the KERP, and the implementation of the Claims Procedure, all of the Debtor Companies' assets have been monetized and all of the Claims against the Debtor Companies and their present and former directors and officers have been quantified, resolved or barred; and
- (d) as at the CCAA Termination Time and subject to the granting of the proposed Termination and Distribution Order:
 - (i) all remaining matters to be attended to in connection with these CCAA proceedings, including the establishment of the Administrative Reserve, and the making of the Distributions to those creditors with an economic interest in these CCAA proceedings, will have been completed;
 - (ii) all of the amounts secured by the Administration Charge and necessary to complete the wind-down of these CCAA proceedings and administer the Bankruptcy Proceedings will have been funded;
 - (iii) all of the Monitor's obligations under the WEPP Act will have been complied with; and

- (iv) any claims secured by the Directors' Charge will have been satisfied, barred and/or released.³²

B. This Could Should Authorize the Monitor to Make the Distributions

33. Nothing in the CCAA precludes the distribution of the net proceeds remaining after a Court-approved sale transaction or liquidation to debtor companies' creditors.³³ Rather, it is well established that the broad discretion conferred under section 11 of the CCAA permits Courts to approve interim or final distributions to secured or unsecured creditors absent a plan of compromise or arrangement.³⁴

34. To ensure the equitable treatment of claims and maximize creditor recovery, this Court has previously exercised its discretion under section 11 of the CCAA to authorize distributions to the creditors of debtor companies absent a plan of compromise or arrangement, including in accordance with a distribution methodology.³⁵ The Monitor submits that it is similarly appropriate, and consistent with the CCAA's remedial objectives, for this Court to authorize the proposed Distributions in this case given that:

- (a) the Claims Procedure provided a fair, comprehensive and expeditious means of identifying, quantifying and resolving Claims against the Debtor Companies and

³² Fifth Report, *supra* note 1 at paras 1.3, 6.1-6.3, 6.5, Motion Record at Tab 2.

³³ [*Re AbitibiBowater Inc.*, 2009 QCCS 6461](#) at para 71 [*Abitibi*]. See also, [*Re Nortel Networks Corp.*, 2014 ONSC 4777](#) at para 53 [*Nortel*].

³⁴ [*CCAA*](#), *supra* note 25 s 11; [*Nortel*](#), *ibid* at paras 54-58; [*Abitibi*](#), *ibid*. See also, [*Re Timminco Ltd.*, 2014 ONSC 3393](#) at para 38.

³⁵ [*In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc. et al.* \(February 2, 2022\)](#), Toronto, CV-21-00655373-00CL (Order) (ONSC) at paras 5-6; [*In the Matter of a Plan of Compromise or Arrangement of Carillion Canada Holdings Inc. et al.* \(August 4, 2021\)](#), Toronto, CV-18-590812-00CL (Interim Distribution Order) (ONSC) at paras 3, 6; [*9366016 Termination and Distribution Order*](#), *supra* note 30 at paras 5-6; [*Golf Town Termination Order*](#), *supra* note 30 at paras 2-3; [*Harte Gold Termination Order*](#), *supra* note 30 at paras 3-4; [*Forme Termination Order*](#), *supra* note 30 at paras 5-7; [*Trichome Termination and Distribution Order*](#), *supra* note 30 at para 7; [*Ignite Termination and Distribution Order*](#), *supra* note 30 at para 7. See also, [*Nortel*](#), *ibid*.

their present and former directors and officers, and was implemented in accordance with the terms of the Claims Procedure Order;

- (b) having completed the Liquidation Sale, closed the Transaction, satisfied all obligations to CIBC and under the KERP, and implemented the Claims Procedure, all of the Debtor Companies' assets have been monetized and all of the Claims against the Debtor Companies and their present and former directors and officers have been quantified, resolved or barred;
- (c) the Cash Pool will comprise all of the Debtor Companies' available cash, save for the Priority Payables holdback and those funds required to establish the Administrative Reserve;
- (d) the proposed Distributions and Distribution Methodology reflect the entitlement of Old MM LP's unsecured creditors to the Cash Pool, as determined in accordance with the Claims Procedure Order; and
- (e) the proposed Distributions, Distribution Methodology and ancillary relief related thereto, will enable the efficient distribution of the Cash Pool free and clear of any encumbrances and prevent the incurrence of additional time and expense that will only erode recoveries.³⁶

C. The Debtor Companies Should be Authorized to Make Assignments in Bankruptcy on a Procedurally Consolidated Basis

35. As noted above, the legislative purposes of the CCAA include the efficient resolution of an insolvency. In furtherance of this purpose, this Court has previously exercised its discretion

³⁶ Fifth Report, *supra* note 1 at paras 5.2, 5.10-5.13, 6.5-6.8, Motion Record at Tab 2.

under section 11 of the CCAA to make any order considered “appropriate in the circumstances” to authorize the assignment of debtor companies into bankruptcy pursuant to the BIA, including on a procedurally consolidated basis.³⁷

36. This Court is empowered to authorize the Trustee to administer the Bankruptcy Proceedings on a procedurally consolidated basis pursuant to section 11 of the CCAA and, as Morawetz J. (as he then was) held in *Re Ornge Global GP Inc.*, this Court’s inherent jurisdiction.³⁸ The procedural consolidation of bankruptcy estates is appropriate, where as in this case, it will avoid unnecessary duplication in their administration and such estates arise “out of the same transactions and occurrences”.³⁹

37. The Monitor submits that the Debtor Companies’ assignments in bankruptcy and the procedural consolidation of their bankruptcy estates is appropriate in the circumstances given that:

- (a) the Debtor Companies’ assignments in bankruptcy will facilitate the orderly and efficient wind-up of their estates;
- (b) Old MM GP did not, and continues not to, have any operations and exists solely for the purpose of serving as Old MM LP’s general partner;
- (c) all of the Proven Claims in the Claims Procedure were accepted as against Old MM LP;

³⁷ [CCAA](#), *supra* note 25 [s 11](#); [Aleafia Termination Order](#), *supra* note 30 at paras 12-15; [Ignite Termination and Distribution Order](#), *supra* note 30 at paras 17-23; [King Street Termination Order](#), *supra* note 30 at paras 16-18; [Old API Termination Order](#), *supra* note 30 at paras 22-24; [Del Equipment Termination Order](#), *supra* note 30 at para 16; [Trichome Termination and Distribution Order](#), *supra* note 30 at para 15.

³⁸ [CCAA](#), *ibid* [s 11](#); [Re Ornge Global GP Inc.](#), 2013 ONSC 4518 at para [15](#) [*Ornge*].

³⁹ [Ornge](#), *ibid* at para [14](#).

- (d) the procedural consolidation of the Debtor Companies' estates is not expected to prejudice the Debtor Companies' creditors; and
- (e) the procedural consolidation of the Debtor Companies' estates will secure the just, most expeditious and least expensive determination of the Bankruptcy Proceedings, consistent with the principles embodied in the *Bankruptcy and Insolvency General Rules*, C.R.C., c. 368 and *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.⁴⁰

D. The Releases in Favour of the Released Parties Should be Granted

38. The broad discretion inherent in section 11 of the CCAA to make any order considered “appropriate in the circumstances” vests this Court with jurisdiction to approve releases in favour of the directors and officers of debtor companies and third parties – in each case, absent a plan of compromise or arrangement.⁴¹ Such discretion has previously been exercised by Courts both when granting approval and vesting orders and terminating debtor companies' CCAA proceedings.⁴²

⁴⁰ Fifth Report, *supra* note 1 at paras 6.9-6.10, Motion Record at Tab 2; Pre-Filing Report of the Monitor dated November 22, 2023, at para 1.3, Motion Record at Tab 2A. See also, [Re Electro Sonic Inc.](#), 2014 ONSC 942 at para 4; *Bankruptcy and Insolvency General Rules*, C.R.C., c 368 s 3; *Rules of Civil Procedure*, RRO 1990, Reg 194 Rule 1.04(1).

⁴¹ [CCAA](#), *supra* note 25 s 11; [Re Green Relief Inc.](#), 2020 ONSC 6837 at paras 16-17, 23-26 [Green Relief]; [CannaPiece Group Inc v Marzilli](#), 2023 ONSC 3291 at para 22 [CannaPiece]; [Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al](#), 2022 ONSC 6354 at para 67 [Just Energy]; [Re Harte Gold Corp.](#), 2022 ONSC 653 at paras 78-79 [Harte Gold Corp]; [ENTREC](#), *supra* note 27 at paras 3, 5-7, 9. As this Court and the Alberta Court of King's Bench recognized in [Green Relief](#) at paras 17, 25 and [ENTREC](#) at para 5, respectively, subsection 5.1(1) of the [CCAA](#) contemplates the release of debtor companies' directors and officers in the context of a plan of compromise or arrangement without limiting the jurisdiction of Courts to make any order considered appropriate in the circumstances pursuant to section 11 of the [CCAA](#).

⁴² [Del Equipment Termination Order](#), *supra* note 30 at para 17; [Golf Town Termination Order](#), *supra* note 30 at para 14; [9366016 Termination Order](#), *supra* note 30 at para 12; [Trichome Termination and Distribution Order](#), *supra* note 30 at para 16; [In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp.](#) (January 28, 2022), Toronto, CV-21-00673304-00CL (Approval and Reverse Vesting Order) (ONSC) at para 21(A); [In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.](#) (November 3, 2022), Toronto, CV-21-00658423-00CL (Approval and Vesting Order) (ONSC) at paras 21-24; [In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.](#) (May 12, 2023), Toronto, CV-23-00696017-00CL (Approval and Vesting Order) (ONSC) at paras 21-22.

39. When determining whether it is appropriate to grant such releases pursuant to section 11 of the CCAA, Courts have drawn on the well-established factors for approving third party releases in the context of a plan of compromise or arrangement.⁴³ When modified to accommodate cases in which no plan of compromise or arrangement is proposed, these factors include whether:

- (a) the claims to be released are rationally connected to the restructuring;
- (b) the restructuring can succeed without the proposed releases;
- (c) the parties to be released contributed to the restructuring;
- (d) the proposed releases benefit the debtor companies as well as their creditors generally;
- (e) the debtor companies' creditors have knowledge of the nature and effect of the proposed releases; and
- (f) the proposed releases are fair, reasonable and not overly-broad.⁴⁴

40. No single factor is determinative and not all factors need apply.⁴⁵

41. Here, the factors considered by Courts in granting releases in favour of the directors and officers of debtor companies and third parties support approval of the proposed Releases given, among other things, that:

- (a) the proposed Releases are rationally connected to the Debtor Companies' restructuring insofar as they will eliminate claims for indemnification or

⁴³ *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 at paras 43, 70-71 [Metcalfe]; *Harte Gold Corp.*, *supra* note 41 at para 80 citing *Re Lydian International Limited*, 2020 ONSC 4006 at para 54 [Lydian]; *Green Relief*, *supra* note 41 at para 27 citing *Lydian* at para 54; *CannaPiece*, *supra* note 41 at para 22 citing, among other things, *Just Energy* at para 67 and *Green Relief* at paras 23-29.

⁴⁴ *Metcalfe*, *ibid* at paras 43, 70-71; *Harte Gold Corp.*, *ibid* at paras 81-86; *Green Relief*, *ibid*; *Lydian*, *ibid*; *CannaPiece*, *ibid*; *Just Energy*, *ibid*.

⁴⁵ *Harte Gold Corp.*, *ibid* at para 80; *Lydian*, *ibid*; *Green Relief*, *ibid* at para 28.

contribution that the Released Parties may be entitled to assert against the Debtor Companies, including those secured by the Charges (which are excluded claims under the Claims Procedure Order). The Cash Pool available to the Debtor Companies' creditors will thereby be maximized rather than eroded. The elimination of potential indemnification or contribution claims and the maximization of the Cash Pool resulting from the granting of the proposed Releases are in the best interests of the Debtor Companies and their creditors;

- (b) the Released Parties have made, and where applicable, continue to make, significant contributions to these CCAA proceedings and the Debtor Companies' restructuring efforts. Indeed, the Released Parties have been integral to the: (i) Debtor Companies' efforts to realize their restructuring objectives and liaise with their stakeholders during these CCAA proceedings; (ii) implementation of the Liquidation Sale; (iii) negotiation of the APA and consummation of the value-maximizing, going-concern Transaction, which assured the continuation of the "Mastermind Toys" business through the Purchaser and operation of 48 retail stores, preserved approximately 590 jobs, and resulted in the Excess Proceeds and the repayment in full of all obligations that were owing by the Debtor Companies to CIBC; and (iv) development and implementation of the Claims Procedure. The results realized in these CCAA proceedings could not have been achieved without the significant time and effort expended by the Released Parties;
- (c) having been served with the within motion, the Debtor Companies' creditors that have elected to participate in these CCAA proceedings have knowledge of the nature and effect of the proposed Releases. With respect to the Releases in favour

of the Debtor Companies' directors and officers, such notice is in addition to the notice provided within the Claims Procedure approved by this Court pursuant to the Claims Procedure Order, which made clear the consequences of failing to submit a Director/Officer Claim. No Director/Officer Claims were submitted. The Monitor is not aware of any creditor that opposes the granting of the proposed Releases;

- (d) the proposed Releases are fair, reasonable and not overly-broad. The proposed Releases do not release any claims arising out of the fraud, gross negligence or wilful misconduct on the part of the applicable Released Party or that are not permitted to be released pursuant to subsection 5.1(2) of the CCAA. Moreover, pursuant to the Claims Procedure Order, all claims not filed in the Claims Procedure, including any Director/Officer Claims, have already been barred and extinguished; and
- (e) the Monitor is not aware of any creditor that will be materially prejudiced by the proposed Releases.⁴⁶

E. The Monitor's Reports and Activities Should be Approved

42. This Court routinely approves the reports and activities of Court-appointed monitors in CCAA proceedings pursuant to its jurisdiction under section 11 of the CCAA to make any order considered "appropriate in the circumstances".⁴⁷ As this Court has previously recognized, "there are good policy and practical reasons" for doing so, including that such approval:

⁴⁶ Fifth Report, *supra* note 1 at paras 4.1-4.2, 5.1-5.2, 5.4-5.6, 5.8, 5.10, 6.11-6.13, Motion Record at Tab 2.

⁴⁷ [CCAA](#), *supra* note 25 [s 11](#); [Re Target Canada Co, 2015 ONSC 7574](#) at paras [1-2](#) [*Target*]; [Laurentian University of Sudbury, 2022 ONSC 5850](#) at para [17](#) [*Laurentian*]; [Laurentian University of Sudbury, 2022 ONSC 2927](#) at para 13 [*Laurentian University*].

- (a) allows the monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and disruption that would be caused by (i) the re-litigation of steps taken to date, and (ii) potential indemnity claims by the monitor.⁴⁸

43. Given the aforementioned benefits, the customary limitations imposed upon reliance on such approval under the proposed Termination and Distribution Order and the Monitor's diligent and good faith performance of its activities in compliance with the CCAA and the orders of this Court, the Monitor submits that it is appropriate for this Court to approve the Reports and the activities described therein.⁴⁹

F. The Fees and Disbursements of the Monitor and its Counsel Should be Approved

44. Pursuant to the Initial Order and the ARIO, this Court directed that the Monitor and its counsel shall be paid their reasonable fees and disbursements and pass their accounts from time to

⁴⁸ *Target*, *ibid* at paras 22-23; *Laurentian*, *ibid*; *Laurentian University*, *ibid* at paras 13-14.

⁴⁹ Fifth Report, *supra* note 1 at paras 7.1-7.2, Motion Record at Tab 2.

time. In accordance with the Initial Order and the ARIO, the Monitor now seeks to pass its accounts and those of its counsel pursuant to the proposed Termination and Distribution Order.

45. The principles governing the approval of the fees and disbursements of a Court-appointed monitor and its counsel are well established. A Court-appointed officer bears the onus of establishing that the fees and disbursements for which approval is sought are fair and reasonable having regard to the following non-exhaustive factors:

- (a) the nature, extent and value of the case;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the debtors;
- (d) the time spent;
- (e) the monitor's knowledge, skill and experience;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services.⁵⁰

46. In determining whether the fees and disbursements of a Court-appointed monitor and its counsel are fair and reasonable in the circumstance, this Court is not required to undertake a

⁵⁰ [Re Nortel Networks Corp, 2017 ONSC 673](#) at paras 13-14 [*Nortel Networks*]; [Nortel Networks Inc, 2022 ONSC 6680](#) at paras 10-11 [*Nortel Networks Corp*]; [Laurentian University](#), *ibid* at para 10.

“docket-by-docket or line-by-line assessment of the accounts”.⁵¹ Rather, this Court is to evaluate such fees and disbursements based on the overriding principle of reasonableness, having regard to what was accomplished.⁵²

47. Applied here, the aforementioned considerations support the approval of the fees and disbursements of the Monitor and its counsel, including the Fee Estimate. Namely:

- (a) since the granting of the Initial Order, the Monitor, with the assistance of its counsel, has acted in good faith and with due diligence in the performance of its duties under the CCAA and the orders of this Court;
- (b) the Monitor and its counsel have significantly contributed to the success of these CCAA proceedings, including the completion of the Liquidation Sale, the negotiation of the APA and consummation of the value-maximizing, going-concern Transaction, which resulted in the Cash Pool being available for distribution to the Debtor Companies’ creditors – a result that was uncertain at the commencement of these CCAA proceedings;
- (c) pursuant to the Ancillary Order, the Monitor has had an enhanced role in these CCAA proceedings, including in developing and implementing the Claims Procedure and Distribution Methodology; and
- (d) the fees and disbursements of the Monitor and its counsel, including the Fee Estimate, are commensurate with the complexity of these proceedings, the cost of

⁵¹ [Nortel Networks Corp.](#), *ibid* at para 10; [Nortel Networks](#), *ibid* at para 21; [Laurentian University](#), *ibid* at para 9.

⁵² [Nortel Networks](#), *ibid* at para 15; [Laurentian University](#), *ibid*.

comparable services, and the activities undertaken and to be undertaken by the Monitor and its counsel.⁵³

PART V - ORDER REQUESTED

48. The Monitor submits that the relief sought on the within motion is appropriate in the circumstances and consistent with prior orders of this Court,⁵⁴ and respectfully requests that the proposed Termination and Distribution Order be granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19TH DAY OF AUGUST 2024

Bennett Jones LLP

BENNETT JONES LLP

⁵³ Fifth Report, *supra* note 1 at paras 1.5-1.6, 4.1-4.2, 5.1-5.2, 5.6, 5.9-5.10, 6.1, 7.3-7.7, Motion Record at Tab 2.

⁵⁴ See generally, [*9366016 Termination and Distribution Order*](#), *supra* note 30; [*Golf Town Termination Order*](#), *supra* note 30; [*Harte Gold Termination Order*](#), *supra* note 30; [*Trichome Termination and Distribution Order*](#), *supra* note 30; [*Ignite Termination and Distribution Order*](#), *supra* note 30; [*Forme Termination Order*](#), *supra* note 30; [*Aleafia Termination Order*](#), *supra* note 30; [*Old API Termination Order*](#), *supra* note 30.

SCHEDULE “A” – LIST OF AUTHORITIES

Cases Cited

1. [*ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 ONCA 587](#)
2. [*CannaPiece Group Inc v Marzilli*, 2023 ONSC 3291](#)
3. [*Century Services Inc v Canada \(Attorney General\)*, 2010 SCC 60](#)
4. [*In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc. et al.* \(March 1, 2024\), Toronto, CV-23-00703350-00CL \(Order CCAA Termination\) \(ONSC\)](#)
5. [*In the Matter of a Plan of Compromise or Arrangement of Carillion Canada Holdings Inc. et al.* \(August 4, 2021\), Toronto, CV-18-590812-00CL \(Interim Distribution Order\) \(ONSC\)](#)
6. [*In the Matter of a Plan of Compromise or Arrangement of Del Equipment Inc.* \(October 29, 2020\), Toronto, CV-19-629552-00CL \(CCAA Termination Order\) \(ONSC\)](#)
7. [*In the Matter of a Plan of Compromise or Arrangement of FIGR Brands, Inc. et al.* \(February 2, 2022\), Toronto, CV-21-00655373-00CL \(Order\) \(ONSC\)](#)
8. [*In the Matter of a Plan of Compromise or Arrangement of Forme Development Group Inc. et al.* \(June 23, 2022\), Toronto, CV-18-608313-00CL \(CCAA Termination and Distribution Order\) \(ONSC\)](#)
9. [*In the Matter of a Plan of Compromise or Arrangement of Golf Town Canada Holdings Inc. et al.* \(March 29, 2018\), Toronto, CV-16-11527-00CL \(CCAA Termination Order\) \(ONSC\)](#)
10. [*In the Matter of a Plan of Compromise or Arrangement of Harte Gold Corp. et al.* \(February 15, 2022\), Toronto, CV-21-00673304-00CL \(CCAA Distribution and Termination Order\) \(ONSC\)](#)
11. [*In the Matter of a Plan of Compromise or Arrangement of Just Energy Group Inc. et al.* \(November 3, 2022\), Toronto, CV-21-00658423-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
12. [*In the Matter of a Plan of Compromise or Arrangement of King Street Company Inc. et al.* \(March 29, 2021\), Toronto, CV-20-00650945-00CL \(Termination Order\) \(ONSC\)](#)
13. [*In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.* \(May 12, 2023\), Toronto, CV-23-00696017-00CL \(Approval and Vesting Order\) \(ONSC\)](#)
14. [*In the Matter of a Plan of Compromise or Arrangement of Mastermind GP Inc.* \(January 12, 2024\), Toronto, CV-23-00710258-00CL \(Ancillary Order\) \(ONSC\)](#)
15. [*In the Matter of a Plan of Compromise or Arrangement of Old API Wind-down Ltd.* \(May](#)

- [17, 2019\), Toronto, CV-18-603054-00CL \(CCAA Termination Order\) \(ONSC\)](#)
16. [*In the Matter of a Plan of Compromise or Arrangement of Trichome Financial Corp. et al.* \(September 14, 2023\), Toronto, CV-22-00689857-00CL \(CCAA Termination Order\) \(ONSC\)](#)
 17. [*In the Matter of a Plan of Compromise or Arrangement of 1000704712 Ontario Inc. et al.* \(January 30, 2024\), Toronto, CV-23-00708635-00CL \(CCAA Termination and Distribution Order\) \(ONSC\)](#)
 18. [*In the Matter of a Plan of Compromise or Arrangement of 9366016 Canada Inc.* \(October 28, 2016\), Toronto, CV-15-10869-00CL \(Distribution and CCAA Termination Order\) \(ONSC\)](#)
 19. [*Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354](#)
 20. [*Laurentian University of Sudbury*, 2022 ONSC 2927](#)
 21. [*Laurentian University of Sudbury*, 2022 ONSC 5850](#)
 22. [*Nortel Networks Inc*, 2022 ONSC 6680](#)
 23. [*Re AbitibiBowater Inc*, 2009 QCCS 6461](#)
 24. [*Re Electro Sonic Inc*, 2014 ONSC 942](#)
 25. [*Re ENTREC Corporation*, 2020 ABQB 751](#)
 26. [*Re Green Relief Inc*, 2020 ONSC 6837](#)
 27. [*Re Harte Gold Corp*, 2022 ONSC 653](#)
 28. [*Re JTI-Macdonald Corp*, 2010 ONSC 4212](#)
 29. [*Re Lydian International Limited*, 2020 ONSC 4006](#)
 30. [*Re Nortel Networks Corp*, 2014 ONSC 4777](#)
 31. [*Re Nortel Networks Corp*, 2017 ONSC 673](#)
 32. [*Re Ornge Global GP Inc*, 2013 ONSC 4518](#)
 33. [*Re Target Canada Co*, 2015 ONSC 7574](#)
 34. [*Re Timminco Ltd.*, 2014 ONSC 3393](#)
 35. [*9354-9186 Québec inc. v Callidus Capital Corp.*, 2020 SCC 10](#)

SCHEDULE “B” – STATUTES AND REGULATIONS RELIED ON

Bankruptcy and Insolvency General Rules, C.R.C., c. 68

Rule 3

In cases not provided for in the Act or these Rules, the courts shall apply, within their respective jurisdictions, their ordinary procedure to the extent that that procedure is not inconsistent with the Act or these Rules.

SOR/98-240, s. 1

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.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 1.04

Interpretation

General Principle

(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

Proportionality

(1.1) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding. O. Reg. 438/08, s. 2.

Matters Not Provided For

(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them. R.R.O. 1990, Reg. 194, r. 1.04 (2).

(3) Revoked: O. Reg. 231/13, s. 2.

“Party and Party” Costs

(4) If a statute, regulation or other document refers to party and party costs, these rules apply as if the reference were to partial indemnity costs. O. Reg. 284/01, s. 3.

“Solicitor and Client” Costs

(5) If a statute, regulation or other document refers to solicitor and client costs, these rules apply as if the reference were to substantial indemnity costs. O. Reg. 284/01, s. 3.

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 August 22, 2024)**

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