

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI, HBC
CANADA PARENT HOLDINGS INC., HBC CANADA PARENT HOLDINGS 2 INC.,
HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II ULC, THE BAY HOLDINGS
ULC, HBC CETERPOINT 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 RESTORE CAPITAL, LLC,
IN ITS CAPACITY AS FILO AGENT**

July 12, 2025

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PART I - OVERVIEW

1. This Factum is filed in support of a motion (the “**Motion**”) by ReStore Capital, LLC, in its capacity as agent (the “**FILO Agent**”) to the syndicate of lenders (the “**FILO Lenders**” and, together with the FILO Agent, the “**FILO Parties**”) that are the senior secured creditors of the Applicants (collectively, “**HBC**”), for an Order (the “**Expanded Powers Order**”) that, among other things:

- (a) abridges the time for service of the Notice of Motion and the Motion Record and dispenses with further service thereof, if necessary;
- (b) expands the powers of Alvarez & Marsal Canada Inc. in its role as monitor (in such capacity, the “**Monitor**”) of the Applicants so as to be able to direct the corporate functions of the Applicants;
- (c) authorizes and directs the Monitor to cause the Applicants (or in the alternative authorizes and directs the Applicants) to immediately terminate the Asset Purchase Agreement among Hudson’s Bay Company ULC (“**HBC ULC**”), as vendor, Ruby Liu Commercial Investment Corp. (“**Ruby Liu Corp.**”) as purchaser, and Weihong Liu as Guarantor dated May 23, 2025 (the “**Central Walk APA**” and the transaction subject thereto, the “**Central Walk Transaction**”);
- (d) authorizes and directs the Monitor to cause the Applicants (or in the alternative directs the Applicants) to disclaim each Lease subject to the Central Walk APA (the “**Central Walk Leases**”);
- (e) directs the Applicants to make a distribution to the FILO Agent in the amount of \$6 million; and

(f) seals the Confidential APA Exhibit (defined below).

2. Canadian courts have long recognized that the *Companies' Creditors Arrangement Act*¹ (“**CCAA**”) does not bestow on failed debtors an unfettered mandate to postpone an outcome that is ill-fated, but nonetheless, inevitable. When secured creditors have lost faith in management’s ability to steward the debtor and when any prospect of a going-concern outcome has faded into impossibility, the Court’s focus shifts from rescue to efficient resolution. Where confidence is lost and there is no hope of revival, the Court should step in and place control of the debtor in the competent grasp of a court officer that can bring clarity, credibility, efficiency and finality. This ensures that the liquidation unfolds in the steady hand of a neutral court officer, an expert in maximizing value, increasing transparency and safeguarding integrity. While rehabilitation is no longer attainable, order, fairness and accountability remain achievable.

3. HBC’s 300-year history as a functioning enterprise has come to an end. Since April 2025, these proceedings have been nothing more than a piecemeal liquidation with no prospect of a going-concern solution. The FILO Lenders, HBC’s senior secured lenders and fulcrum creditors, have lost all confidence, faith and trust in HBC’s board and management to oversee that liquidation. The FILO Agent’s cash collateral is being steadily, and in many respects irreversibly, depleted, not only by what management has done, but by what they have failed to do. In such a context, the expansion of the Monitor’s powers is not merely appropriate, it is imperative.

4. The most striking example of why the FILO Agent’s confidence in management has fully unraveled is HBC’s pursuit of the illusory Central Walk Transaction. This misadventure amounts

¹ R.S.C. 1985, c. C-36.

to little more than a confiscation of the FILO Lenders' cash collateral in order to grant a free opportunity to another creditor. Of the 25 leases at issue in the Central Walk Transaction, 19 are part of Pathlight's (as defined below) priority collateral, not the FILO Agent's. The Central Walk Transaction has not yet even been presented to the Court for scrutiny or approval. Should the deal somehow stagger across the finish line, a cost allocation between Pathlight and the FILO Lenders would be required, potentially offsetting the economic damage. But if the transaction fails, no proceeds will be realized and the astounding costs incurred, and to be incurred, in its pursuit, will never be recouped.

5. The FILO Lenders' pessimism is well founded. Management has offered no roadmap to closing; there is no timeline for Court approval of the Central Walk APA; no timeline to obtain landlord consents; no timeline for a motion to assign leases in the absence of landlord consents; and there has been no disclosure to the Court of any final, outside date for closing. HBC has not even sought to ensure that the parties that stand to gain the most from a successful transaction (i.e. Pathlight and the purchaser) shoulder a fair share of the cost required to achieve it. Instead, HBC is actively resisting the FILO Agent's effort to do so.

6. The fact that the FILO Lenders ask this Court to disclaim the FILO priority leases and dispense with any chance of monetizing them, speaks volumes: sophisticated economic actors have assessed that the risk in the Central Walk Transaction is so acute, the costs so high and the potential reward so remote, that they simply wish to stop the bleeding and immediately embrace an outcome that is ill fated, but nonetheless, inevitable.

PART II - FACTS

7. The facts with respect to this Motion are briefly summarized below and more fully set out in the affidavit of Ian Fredericks sworn July 8, 2025 (the “**Fredericks Affidavit**”).²

A. Commencement of CCAA Proceedings

8. At the commencement of these CCAA proceedings, the FILO Term Loan, which was advanced in late December 2024 to provide HBC with \$151.4 million of urgent financing, was anticipated to be repaid from HBC’s working capital assets, other than the “make-whole” portion of such FILO Term Loan.³

9. Working from this premise, the FILO Agent has cooperated with HBC for nearly four months while HBC pursued a “going-out-of-business” liquidation (the “**GOB Sale**”) of its inventory and certain FF&E through its stores, a sales process (“**SISP**”) to solicit a going-concern transaction for HBC’s business, and a process to monetize HBC’s leases (the “**Lease Monetization Process**”).⁴

10. At the commencement of these CCAA proceedings, HBC was unable to meet its employee payroll and lease obligations without the provision of urgent financing. The DIP Lenders (comprised of a subset of the FILO Lenders) supported HBC with a \$16 million DIP financing facility.⁵

² Capitalized terms not otherwise defined have the same meanings as in the Fredericks Affidavit. All references to monetary amounts in the Fredericks Affidavit and in this factum are in Canadian dollars unless otherwise noted.

³ Fredericks Affidavit at para 7.

⁴ Fredericks Affidavit at para 8.

⁵ Fredericks Affidavit at para 35.

11. The DIP Term Sheet served an additional important purpose by establishing acceptable guardrails under which HBC would operate during these CCAA proceedings. The principal guardrails included (i) the Applicants' obligation to comply with an approved budget, subject to a permitted variance, and (ii) the DIP Agent's right to approve any newly submitted budget. Absent these guardrails, the DIP Lenders would not have provided the funding required by HBC or supported HBC continuing to operate on a debtor-in-possession basis.⁶

12. On March 20, 2025 (one day before resumption of the comeback hearing), HBC approached the DIP Agent to inform it that HBC had earned significantly more revenue than expected and its cash on hand far exceeded forecasts, such that it no longer required the DIP Facility. Instead, HBC advised that it intended to finance these CCAA proceedings entirely through the liquidation of inventory (the FILO Lenders' collateral and primary source of recovery). Accordingly, every dollar spent by HBC from the proceeds of inventory is a dollar of recovery that is potentially lost by HBC's secured lenders, particularly the FILO Lenders.⁷

13. HBC recognized this risk to its pre-filing secured creditors, as did the Monitor. Accordingly, HBC, its pre-filing secured creditors, and the Monitor negotiated the RFA in order to provide the ABL Agent, FILO Agent and Pathlight Agent with certain of the protections and oversight that were built into the A&R DIP Agreement.⁸

⁶ Fredericks Affidavit at para 37,

⁷ Fredericks Affidavit at para 45-46.

⁸ Fredericks Affidavit at para 47

14. The RFA removed certain of the constraints on HBC relative to the A&R DIP Agreement, but still required HBC to develop and adhere to a budget that would not materially increase the risk of non-recovery for pre-filing secured lenders.⁹

15. Ultimately, the Court declined to approve the RFA, noting amongst other things that the Monitor's independent counsel had not yet confirmed the validity and enforceability of the security granted to the Agents and that, in the Court's view, certain of the relief requested was premature as HBC was still pursuing a going concern opportunity at the time. Given this, the FILO Lenders relied on the guardrails in respect of HBC's operations put in place by the Court as part of the Endorsement, which notably, did not include any consent right of the Agents with respect to updated or revised budgets.¹⁰

B. Failure of Going Concern Solution

16. By the end of April, it was clear that no going concern offers for HBC, or the subset of stores it had initially excluded from the liquidation, would materialize.¹¹ While the SISP did not result in a going-concern transaction, it did result in the CT APA with Canadian Tire for the acquisition by Canadian Tire of HBC's intellectual property, generating approximately \$30 million in additional revenue.¹²

17. At its conclusion, the results of the GOB Sale, as run by the Liquidator, were far better than anticipated, with approximately \$54 million more in net receipts generated than forecast.¹³

⁹ Fredericks Affidavit at para 48.

¹⁰ Fredericks Affidavit at para 50.

¹¹ Fredericks Affidavit at para 52.

¹² Fredericks Affidavit at para 8.

¹³ Fredericks Affidavit at para 8.

18. Notwithstanding this substantial increase in actual receipts relative to forecast, in the past few weeks, the projected collateral shortfall for the FILO Lenders has, between the Fourth Cash Flow dated May 9, 2025 (the “**Fourth Cash Flow**”) and the Fifth Cash Flow dated June 17, 2025 (the “**Fifth Cash Flow**”), *increased* from \$43 million to \$72 million, (in each case, before accounting for the “make-whole” portion of the FILO Term Loan that totals \$28 million and also excluding proceeds from the sale of CT APA).¹⁴

19. Unlike the SISP and the GOB Sale, the Lease Monetization Process has, to date, produced very little value for HBC’s stakeholders. Under the Lease Monetization Process, on May 23, 2025, HBC entered into the Central Walk APA with Ruby Liu Corp. which contemplates the assignment of 25 of HBC’s leases with either (i) consent of the applicable landlords, or (ii) approval of this Court.¹⁵

20. Ruby Liu Corp. and HBC ULC are also party to an “Affiliate Lease Assignment Agreement” which provided for the assignment of 3 leases (all in malls owned by an affiliate of Ruby Liu Corp.) on a consensual basis in exchange for \$6 million of consideration. The Affiliate Lease Agreement was approved by the Court on June 23, 2025.¹⁶ Of the \$6 million, \$4 million represents the priority collateral of Pathlight and \$2 million represents the priority collateral of the FILO Agent (subject to any appropriate allocation of costs already incurred in pursuing the monetization of the Pathlight Leases, which already exceed \$4 million).¹⁷

¹⁴ Fredericks Affidavit at para 9.

¹⁵ Fredericks Affidavit at para 11.

¹⁶ [Fifth Report of the Monitor dated June 19, 2025](#) at para 4.3; *In the matter of Hudon’s Bay Company ULC Compagnie De La Baie D’Huson SRI et al.*, (CV-25-00738613-00CL) [Affiliate Lease Assignment Order](#) dated June 23, 2025.

¹⁷ Fredericks Affidavit at para 58.

21. HBC has, to date, incurred exorbitant rent costs and professional fees in trying to obtain the necessary landlord consents with nothing to show for it, despite the landlords having indicated by at least June 9, 2025, that no consent will be provided:

- (a) approximately \$2.5 million in rent costs for vacant properties were incurred between June 15th and June 30th;
- (b) approximately \$7.5 million in rent costs is forecast between July 1, 2025 and August 15, 2025;
- (c) if the Central Walk Transaction does not close and assuming leases are finally disclaimed on August 15, 2025, another 30 days of rent would equal approximately \$5 million (there is currently no assurance that HBC would disclaim the leases by August 15, 2025); and
- (d) professional fees estimated for this non-operating entity for the 90-day period between June 14, 2025 and September 12, 2025 is forecast to be \$14.7 million and corporate payroll for that same period is approximately \$5 million.¹⁸

22. The sole source of funding for these extraordinary expenditures is the cash collateral that would otherwise form the basis of the FILO Lenders' recovery. The Fifth Cash Flow reflects that HBC intends to continue to incur significant costs in relation to the Central Walk Transaction through mid-August with no path to approval or closing the Central Walk Transaction.¹⁹ HBC is

¹⁸ Fredericks Affidavit at para 73.

¹⁹ Fredericks Affidavit at paras 10-12.

squandering the FILO Lenders' collateral without any clear path or plan towards realizing any benefit for HBC's stakeholders.

23. To make matters worse, 19 of the 25 Central Walk Leases (the "**Pathlight Leases**") are the priority collateral of Pathlight, not the FILO Lenders. Other than with respect to a Court-ordered cost allocation, the FILO Lenders will obtain no recovery from the assignment of the Pathlight Leases. However, as set out above, HBC has exclusively used the FILO Lenders' cash collateral to fund the significant costs of pursuing negotiations with a landlord group united in its opposition. If the Central Walk Transaction does not close, the funds expended will be completely lost. The FILO Lenders stand to derive very little benefit from the Central Walk Transaction, but currently bear all the risk of its potential failure.²⁰

24. The existing process is self-evidently and manifestly prejudicial to the FILO Lenders.²¹

25. HBC and its advisors could have prevented this obvious unfairness and required Pathlight to bear the cost of maintaining the Pathlight Leases. The GOB Sale was completed at all stores on June 15, 2025. The Liquidator made HBC aware that the GOB Sale would conclude by this date well in advance so that steps could be taken by HBC to mitigate the cost of the Pathlight Leases to the FILO Lenders. Indeed, it was the FILO Agent's understanding, based on correspondence between the FILO Agent and the Monitor, that the costs of the Pathlight Leases would be borne by Pathlight following conclusion of the GOB Sale.²²

²⁰ Fredericks Affidavit at para 13.

²¹ Fredericks Affidavit at para 9.

²² Fredericks Affidavit at paras 60-61.

26. Consistent with paragraph 12 of the ARIO, and the understanding reached by the FILO Agent and the Monitor, HBC could, one month prior to the conclusion of the GOB Sale, have provided notice to Pathlight of its intention to disclaim the Pathlight Leases.²³ Under the ARIO, if Pathlight did not consent to such disclaimer, it would have been required to assume responsibility for all rental payments due under the Pathlight Leases after June 15, 2025.

27. The FILO Agent has attempted to consensually resolve the issues with the Central Walk Transaction in a manner that safeguards the FILO Lenders' interest. Counsel to the FILO Agent sent a letter to HBC on June 22, 2025 (the "**June 22 Letter**") insisting that disclaimers be sent in respect of the Pathlight Leases by June 30, 2025.²⁴ The FILO Agent made clear it would seek relief from the Court should this critical step not be taken. HBC did not take this step and neither HBC nor its advisors have provided any explanation for their failure to do so.²⁵

28. It is the FILO Agent's position that unless Pathlight or Ruby Liu Corp. agrees to cover the costs related to the pursuit of the Central Walk Transaction, something the FILO Agent requested in the June 22 Letter, the Central Walk Transaction should be terminated and no further funds should be spent in its pursuit and the Central Walk Leases should be disclaimed.²⁶

²³ *In the matter of Hudon's Bay Company ULC Compagnie De La Baie D'Huson SRI et al.*, (CV-25-00738613-00CL), [Order \(Amended and Restated Initial Order\)](#) dated March 21, 2025 (the "**ARIO**").

²⁴ Fredericks Affidavit at para 65.

²⁵ Fredericks Affidavit at para 14.

²⁶ Fredericks Affidavit at para 15.

29. The imprudent Central Walk Transaction is the most pronounced, but just one example of, the substantial prejudice that has been inflicted upon the FILO Lenders. HBC has mismanaged its liquidation in several ways that have siphoned value away from the FILO Lenders:²⁷

- (a) despite ample notice from the Liquidator of the anticipated dates when stores would be vacated, HBC failed to deliver disclaimer notices in respect of certain leases for which no bids were received in the Lease Monetization Process in a timely manner, substantially increasing the occupation rent paid on a post-filing basis resulting in \$6 million of unnecessary and avoidable expenses;²⁸
- (b) HBC mismanaged the closure of stores and failed to request the removal of unsold FF&E (which is not required to be completed by the Liquidator unless requested under the Liquidation Agreement) prior to the Liquidator vacating the stores.²⁹ The costs for removal of FF&E, projected to be approximately \$14 million, could have been substantially reduced if HBC had made a timely request for the Liquidator to orchestrate the removal;³⁰ and
- (c) HBC has agreed to incur significant costs to remove external signage from former locations to the prejudice of the FILO Lenders in a forecasted amount of \$4 million. The FILO Agent was not consulted in connection with this purported obligation and such expense was not provided for in the Fourth Cash Flow or any prior cash flow

²⁷ Fredericks Affidavit at paras 10, 16.

²⁸ Fredericks Affidavit at paras 76-77.

²⁹ Fredericks Affidavit at para 79.

³⁰ Fredericks Affidavit at para 80

forecast filed by HBC. The FILO Agent was blindsided. It had no opportunity to raise an objection or express any concern.³¹

30. It would be reasonable for the FILO Lenders to expect their position to improve given substantial increase over forecast in receipts that HBC has experienced, but instead their position has become not only worse, but significantly so.³² Despite realizing over \$54 million more in proceeds from the GOB Sale than forecasted, the FILO Lenders' anticipated recovery has decreased by at least \$29 million. Instead of distributing these additional proceeds of the FILO Lenders' collateral to the FILO Agent to reduce its exposure, HBC has incurred, or adjusted its budget such that the Fifth Cash Flow projects it will incur, over \$56 million of costs not contemplated by the Fourth Cash Flow.³³ The cumulative cash flow forecast for the period from May 3, 2025 to September 12, 2025 indicates that HBC will have spent over \$100 million more by the end of that period than it will have generated in proceeds for the benefit of its creditors.³⁴

31. A key reason for the current situation is that there is no further alignment of interest between HBC's management and board of directors and the interests of creditors. HBC is not an operating retail entity, but rather the dormant, insolvent remains of one. The Monitor has the ability to supervise HBC's conduct, but it does not currently have authority to make decisions

³¹ Fredericks Affidavit at para 81; The FILO Agent is not seeking any declaratory relief with respect to the Applicants' obligations to remove the external signage at this time. It is the FILO Agent's position that this matter can be addressed at a later date.

³² Fredericks Affidavit at para 84.

³³ Fredericks Affidavit at para 55.

³⁴ Fredericks Affidavit at para 73.

that are required to protect the interests of stakeholders. A change is required to ensure that the interests of creditors are respected and protected.³⁵

PART III - ISSUES

32. The principal issues on the Motion are:

- (a) Should the Court expand the powers of the Monitor in the manner proposed in the Expanded Powers Order?
- (b) Should the Court authorize and direct the Monitor (or the Applicants themselves) to cause the Applicants to terminate the Central Walk APA and disclaim the Central Walk Leases?
- (c) Should the Court direct the Applicants to make a distribution to the FILO Agent in the amount of \$6 million?
- (d) Should the Court grant an Order sealing the Confidential APA Exhibit?

33. For the reasons set out herein, the FILO Agent submits that the answer to each of the foregoing questions is “yes”.

³⁵ Fredericks Affidavit at para 19.

PART IV - THE LAW AND DISCUSSION

A. The expansion of the Monitor's powers is appropriate

34. When all attempts at a going-concern transaction have failed and the secured creditors security is declining in value, this Court has repeatedly found that the objective of the CCAA proceeding should be to maximize the chances of recovery for creditors.³⁶

35. Since late April 2025, these CCAA proceedings have solely consisted of a liquidation.³⁷ As discussed above, recent events have led the FILO Lenders to lose all confidence in the Applicants being able to oversee the liquidation. In the circumstances, the FILO Agent seeks an order expanding the powers of the Monitor to permit the Monitor to assume the functions currently performed by HBC's management and board. It is well accepted that the Court has the jurisdiction to grant the Monitor enhanced powers pursuant to sections 11 and 23(1)(k) of the CCAA, which provides that the Monitor shall "carry out any other functions in relation to the company that the court may direct."³⁸ Such orders must be appropriate in light of what is needed in the circumstances, when considering the objectives of the CCAA.³⁹

³⁶ Fredericks Affidavit at para 74; *Nuance Pharma Ltd. v. Antibe Therapeutics Inc.*, [2024 ONSC 7210](#) at para 101.

³⁷ Fredericks Affidavit at para 52.

³⁸ CCAA, sections 11 and 23(1k); *Harte Gold Corp. (Re)*, [2022 ONSC 653](#) at paras 91-92; *Urbancorp Cumberland 2 GP Inc. (Re)*, [2017 ONSC 7649](#) at para 20; *Inca One Gold Corp. (Re)*, [2024 BCSC 1478](#) [*Inca One (BCSC 1478)*] at para 36.

³⁹ *Inca One (BCSC 1478)*, *supra* at para 36.

36. In fact, the current circumstances not only justify the expansion of the powers of the Monitor, but would fully justify the appointment of a receiver to protect the interests of secured creditors.⁴⁰ A receivership is generally considered appropriate where:

- (a) the debtor is not operating an active business;
- (b) the debtor has acted in a manner to ground an objective basis for loss of confidence in management;
- (c) there is no germ of a plan such that a stay is merely an attempt to postpone an inevitable liquidation; and
- (d) the secured creditors will face prejudice as a result of a significant erosion of their security/collateral from the debtor's ongoing operations.⁴¹

37. As stated by Justice Mesbur in *Callidus v Carcap*:

I note that Callidus' security is declining in value. Both secured creditors' rights in it are being eroded. The court must put an end to the continued hemorrhaging of money. Given the respondents' failure to come up with even a rudimentary restructuring plan, it is time for a receiver to take control, and manage the business to the extent necessary to result in an orderly liquidation to protect the interests of all stakeholders.⁴² [*emphasis added*]

⁴⁰ *Callidus v. Carcap*, [2012 ONSC 163](#) [*Carcap*] at para 53; *Ashcroft Urban Developments Inc. (Re)*, [2024 ONSC 7192](#) [*Ashcroft*]; *Canadian Imperial Bank of Commerce v. Community Pork Ventures Inc.*, [2005 SKQB 294](#); *Inca One Gold Corp. (Re)*, [2024 BCSC 1970](#).

⁴¹ *JBT Transport Inc. (Re)*, [2025 ONSC 1436](#) at para 39.

⁴² *Carcap*, *supra* at para 53.

38. Similarly, in *Ashcroft Urban Developments Inc. (Re)*, Justice Mew terminated the CCAA proceedings after secured creditors lost faith in management and moved for the appointment of a receiver:

The receivership remedy gives effect to the bargain made between the secured lenders and the applicants, and transfers control of the process from debtors in whom confidence has been lost to creditors who should be entitled to make good on their security while there are still good prospects of them being made whole.⁴³ [*emphasis added*]

39. Notably, the FILO Agent is not seeking the appointment of a receiver as a primary remedy (although it has, for completeness, included that relief as an alternative). To work cooperatively and cost effectively with the existing professionals in this proceeding who have the requisite knowledge of HBC's business, the FILO Agent seeks the expansion of the Monitor's powers, such that the Monitor will be empowered to perform the functions of HBC's management and board of directors and protect the interests of HBC's creditors.

40. This Court granted analogous relief to a secured creditor in *General Electric Capital Canada Inc. v Euro United Corp.* where Justice Blair found that, "the appointment of an interim receiver, while leaving the CCAA framework otherwise in place, will inject certainty into the situation [and] remove the element of lack of confidence by the creditors in those in control [...]."⁴⁴ [*emphasis added*]. Likewise, the expansion of the Monitor's powers will leave the CCAA framework in place and inject certainty and stability into the current landscape, and remove the lack of confidence of the FILO Agent in HBC's management and directors.

⁴³ *Ashcroft*, *supra* at para 113.

⁴⁴ *General Electric Capital Canada Inc. v. Euro United Corp.*, [1999 CanLII 14848 \(ON SC\)](#) at para 18.

41. This is a natural progression from this Court's prior findings. This Court has already observed that it expects the Monitor to ensure that value is maximized in these CCAA proceedings. As stated in the Endorsement:

In my view, it is the role of the Monitor, and one I expect the Monitor here to fulfil, to ensure that cash and other liquid assets of the Company are used only for appropriate purposes, in a manner accretive to the maximization of value in the CCAA proceeding and in accordance with the terms of any relevant Court orders. [...]⁴⁵

42. At the time the Endorsement was made, the Court declined to approve the RFA, noting that:

[...] the controls already in place, the obligations on the Applicants as parties to this proceeding, and the oversight of the Court-appointed Monitor, are sufficient to protect the interests of the Lenders while balancing those interests against the rights of other stakeholders during this interim period when so many factors remain at play, significant unknowns remain, and the SISP and Lease Monetization Process are ongoing [*emphasis added*].⁴⁶

43. Unlike on March 29, 2025, there is now one dominant factor at play: the maximization of value for HBC's creditors. The validity and enforceability of the security which secures the obligations owed to the FILO Lenders has now been confirmed by the Monitor's independent counsel. The SISP has failed to identify a going-concern solution. The GOB Sale is over. HBC has exited its stores. Operational employees have been terminated. The Lease Monetization Process has resulted in a conditional agreement, signed nearly 2 months ago, for which no plan or path to closing has been identified. The guardrails instituted by the Court in the Endorsement

⁴⁵ *Hudson's Bay Company, Re*, [2025 ONSC 1897](#) [*Hudson's Bay*] at para 17.

⁴⁶ *Hudson's Bay*, *supra* at para 20.

have buckled under the weight of HBC's excesses. The current circumstances not only favour, but necessitate the relief sought by the FILO Agent.

44. The actions of the current management of HBC, and HBC's level of spending, cannot be justified. It is imperative that the Court intervene so that the costs of HBC's wind down can be more effectively managed by its own officer, to restore the faith, confidence and trust of creditors in this process.

45. With creditor recoveries eroding by the day, other issues are likely to come to the fore, such as those of allocation as between lenders, creditor disputes, and realization on uncertain assets like pension plan surpluses. This calls for enhanced involvement and control by a court officer, an accountable fiduciary, that is required to act with a view to the interests of creditors rather than the continued involvement of management.

B. The Court should authorize and direct the termination of the Central Walk APA

46. The FILO Agent seeks an order authorizing and directing the Monitor, if the powers of the Monitor are expanded as requested, to cause the Applicants to terminate the Central Walk APA and disclaim the Central Walk Leases. In the alternative, if the Court declines to expand the powers of the Monitor at this time, the FILO Agent asks that the Applicants be directed to terminate the Central Walk APA and disclaim the Central Walk Leases.

47. The Lease Monetization Process provides as follows:

In the event that there is disagreement or clarification required as to the interpretation or application of this Lease Monetization Process or the responsibilities of the Monitor, the Broker or the Applicants hereunder, the Court will have jurisdiction to hear such matter and provide advice and directions upon application of any interested

person.⁴⁷

48. The Central Walk APA is a product of the Lease Monetization Process. There can be no doubt that this Court has the authority to issue directions to the Monitor and the Applicants in respect of the Central Walk APA.

49. Further, through section 11, the CCAA endows the supervising court with broad equitable jurisdiction, empowering it to craft remedies that are not only legally sound, but also just and fair in the circumstances.”⁴⁸ This discretion is considered the “engine that drives” the CCAA’s statutory scheme.⁴⁹ Unlike more rigid statutory regimes, the CCAA is intentionally flexible, recognizing that complex insolvencies often demand innovative and pragmatic solutions: third party releases⁵⁰, reverse vesting orders⁵¹, non-debtor stays⁵² and in extraordinary circumstances, substantive consolidation⁵³, relieving debtors from the obligation to pay post-filing municipal taxes⁵⁴ and granting relief from restrictive covenants in pre-filing contractual arrangements⁵⁵. This discretion allows the Court to respond to the unique dynamics of each case.⁵⁶ In doing so, the Court acts not merely as an arbiter of legal rights, but as a steward of fairness and practicality.

⁴⁷ *In the Matter of Hudon’s Bay Company ULC Compagnie De La Baie D’Huson SRI et al.*, (CV-25-00738613-00CL), [Order \(Lease Monetization\)](#) dated March 21, 2025 [Lease Monetization].

⁴⁸ CCAA, section 11.

⁴⁹ 269354-9186 *Québec Inc. v Callidus Capital Corp.*, [2020 SCC 10](#) [*Callidus Capital*] at para 48.

⁵⁰ See, for example, *Metcalf & Mansfield Alternative Investments II Corp.*, (Re), [2008 ONCA 587](#).

⁵¹ See, for example, *Harte Gold Corp. (Re)*, [2022 ONSC 653](#).

⁵² See, for example, *JTI-Macdonald Corp. Re*, [2019 ONSC 1625](#).

⁵³ See, for example, *PSINet Ltd.*, Re, [2002 CanLII 49587](#) (ONSC).

⁵⁴ See, for example, *Essar Steel Algoma Inc. et al Re*, [2017 ONSC 3031](#).

⁵⁵ See, for example, *Arrangement relatif à Xebec Adsorption Inc.*, [2023 QCCS 466](#).

⁵⁶ *Callidus Capital*, *supra* at para 48.

50. The Court's exercise of discretion under section 11 is informed by the requirement that any such order must further the remedial objectives of the CCAA and be guided by baseline considerations of appropriateness, good faith and due diligence.⁵⁷ An order under section 11 is considered appropriate where it "advances the policy objectives underlying the CCAA".⁵⁸ These objectives include the timely and efficient resolution of a debtor's insolvency.⁵⁹ In *Callidus Wagner C.J. and Moldaver J.*, writing for a unanimous Supreme Court of Canada held:

Together, Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect the wide ranging and potentially "catastrophic" impacts insolvency can have...These objectives include: providing for timely, efficient and impartial resolution of a debtor's insolvency; preserving and maximizing the value of a debtor's assets; ensuring fair and equitable treatment of the claims against a debtor; protecting the public interest; and, in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company.

51. The Supreme Court of Canada elaborated:

Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage. As we will explain, the architecture of the CCAA leaves the case-specific assessment and balancing of these remedial objectives to the supervising judge. [emphasis added]

52. Given this guidance, this Court clearly has the jurisdiction to authorize and direct the termination of the Central Walk APA.

⁵⁷ *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) [*Century Services*] at para 59; *Callidus Capital*, *supra* at para 48.

⁵⁸ *Callidus Capital*, *supra* at para 50; *Century Services*, *supra* at para 7.

⁵⁹ *Callidus Capital*, *supra* at paras 40, 46.

53. The Lease Monetization Process requires any “Successful Bid” to be subject to Court approval.⁶⁰ No such approval has been sought, scheduled or obtained. Any obligation of HBC on the Central Walk APA is contingent upon the approval of this Court. The Court can find now, on the evidence before it, that the Central Walk APA should not and cannot be approved. The costs of its pursuit and the inequity of funding those costs results in manifest unfairness to HBC’s principal economic stakeholder. Continuing to advance a transaction that is resulting in manifest unfairness to HBC’s principal stakeholder cannot be said to advance the policy objectives underlying the CCAA. To the contrary, maximizing creditor recovery requires the granting of the relief sought by the FILO Agent on this motion.

54. The Court must be able to retain control of the process that it initiated and supervises. If the Court lacked this power, it could lead to a commercially absurd result as the Lease Monetization Process contains no outside date for Court approval or the closing of a Successful Bid. HBC could unilaterally elect to extend any outside date for closing for several months, or in theory, years. During this time it could continue to conscript the FILO Lenders into financially supporting a process that they believe is too costly and uses their priority collateral to benefit another creditor. If this Court were to conclude that it lacks such authority, HBC’s ability to extend and manipulate the process would be absolute and unfettered. That cannot be the case.

55. The funds currently in HBC’s possession represent the FILO Lenders’ cash collateral. As that cash collateral is spent, it is not replenished. If HBC is ultimately unsuccessful in consummating the Central Walk Transaction the FILO Lenders’ collateral will have been

⁶⁰ Lease Monetization, *supra*.

irretrievably eroded as there will be no recovery, only costs. The FILO Lenders should not be compelled to bear the cost of these negotiations and the sole risk that they will fail.⁶¹

56. This case can be distinguished from cases where a company requires the use of cash collateral to fund essential working capital needs and wind-down expenses, generally.⁶² There is nothing essential about the Central Walk Transaction – in fact, its pursuit is imprudent, costly and unnecessary.

57. The Lease Monetization Process requires the Applicants to send a notice of disclaimer on or before July 15, 2025 with respect to any Lease that is not subject to a Successful Bid (as defined therein). It follows that if the Central Walk APA is terminated, disclaimer notices must immediately be sent by HBC in respect of all the Central Walk Leases.⁶³ Given the 30 day notice period following the issuance of a disclaimer, every day that a disclaimer is not sent is a day that the FILO Lender's cash collateral is irrevocably diminished. Time is truly of essence.

C. The Court should direct the distribution of \$6 million to the FILO Agent

58. The Applicants were previously authorized to make distributions to the FILO Agent from time to time from the cash proceeds of the ABL Priority Collateral held by the Applicants in such

⁶¹ Fredericks Affidavit at para 64.

⁶² See, for example, *In the Matter of Pride Group Holdings Inc. et al*, (CV-24-00717340-00CL), [Order \(Endorsement\)](#) dated February 28, 2025.

⁶³ Lease Monetization, *supra* at para 7.

amounts and at such times as are acceptable to the Applicants and the Monitor to repay the FILO Obligations.⁶⁴

59. HBC received \$6 million of proceeds from the assignment of the Undisputed Central Walk Leases. These proceeds are not contemplated by the Fifth Cash Flow and, therefore, the Monitor is currently holding \$6 million over and above HBC's budgeted expenses. The FILO Agent submits that this excess amount of the FILO Lenders' collateral should be distributed to the FILO Agent.⁶⁵

D. The Confidential APA Exhibit should be sealed

60. On July 10, 2025, the FILO Agent filed a Supplementary Motion Record that contains a copy of the Central Walk APA (the "**Confidential APA Exhibit**"). The Central Walk APA was filed confidentially because the Central Walk APA was provided to the FILO Agent subject to the terms of a non-disclosure agreement signed by the FILO Agent (the "**NDA**"). The proposed Expanded Powers Order includes a provision sealing the Confidential APA Exhibit pursuant to section 137(2) of the *Courts of Justice Act*⁶⁶, such that it does not form part of the public court record pending further order of the court.

61. The Courts granting a sealing order consider three factors:⁶⁷

- (a) whether court openness poses a serious risk to an important public interest;

⁶⁴*In the Matter of Hudon's Bay Company ULC Compagnie De La Baie D'Huson SRI et al.*, (CV-25-00738613-00CL), [Order \(Stay Extension & Distributions\)](#) dated May 13, 2025 at para 5.

⁶⁵ Fredericks Affidavit at para 71.

⁶⁶ R.S.O. 1990, c.C.43.

⁶⁷ *Sherman Estate v. Donovan*, [2021 SCC 25](#) [*Sherman Estate*] at para 38.

- (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and
- (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.

62. Each of these considerations supports the sealing of the Confidential APA Exhibit:

- (a) **Public interest:** It is self-evident that in order to make full, frank and fair disclosure to the Court of all facts relevant in this matter, the Central Walk APA, the subject matter of the relief sought, has to be before the Court. The FILO Agent, however, was legally compelled to file it under seal, because the Central Walk APA was provided to it expressly subject to the NDA. This Court has noted that where exposure of information would cause a breach of a confidentiality agreement, the commercial interest affected by disclosure can be “characterized more broadly as the general commercial interest of preserving confidential information.”⁶⁸
- (b) **Lack of a reasonable alternative:** There is no reasonable alternative to the sealing order that would protect the commercial interests at stake. The Central Walk APA has to be filed to discharge the FILO Agent’s obligations regarding transparency but the NDA prevents the FILO Agent from filing the Central Walk APA in the public record without the consent of HBC, which was sought and not provided.

⁶⁸ *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) [*Sierra Club*] at para 55.

- (c) **Proportionality:** The general commercial interest of preserving confidential information is a significant interest with a public character.⁶⁹ Parties to commercial agreements that preserve confidential information, which are often necessary in commercial contexts, need to feel confident that such agreements will be upheld. Exposure of confidential information may put a commercial party's interests at serious risk, and sealing orders have been granted by this Court in such situations before.⁷⁰ Any benefit that the stakeholders of HBC, or the public at large, may receive from making the Central Walk APA is lesser in comparison.

PART V - CONCLUSION

63. For the reasons set out above, the FILO Agent respectfully requests that this Court grant the Expanded Powers Order in the form of the draft Expanded Powers Order attached to the FILO Agent's Motion Record at Tab 3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of July, 2025.



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⁶⁹ *Sierra Club, supra* at para 53; *Sherman Estate, supra* at para 41.

⁷⁰ *Babra v. Acquisition SL LLC*, [2012 ONSC 609](#) at para 22.

SCHEDULE “A”

LIST OF AUTHORITIES

<u>Case</u>	
1.	<i>Nuance Pharma Ltd. v. Antibe Therapeutics Inc.</i> , 2024 ONSC 7210
2.	<i>Harte Gold Corp. (Re)</i> , 2022 ONSC 653
3.	<i>Urbancorp Cumberland 2 GP Inc. (Re)</i> , 2017 ONSC 7649
4.	<i>Inca One Gold Corp. (Re)</i> , 2024 BCSC 1478
5.	<i>Callidus v. Carcap</i> , 2012 ONSC 163
6.	<i>Ashcroft Urban Developments Inc. (Re)</i> , 2024 ONSC 7192
7.	<i>Canadian Imperial Bank of Commerce v. Community Pork Ventures Inc.</i> , 2005 SKQB 294
8.	<i>Inca One Gold Corp. (Re)</i> , 2024 BCSC 1970
9.	<i>JBT Transport Inc. (Re)</i> , 2025 ONSC 1436
10.	<i>General Electric Capital Canada Inc. v. Euro United Corp.</i> , 1999 CanLII 14848 (ON SC)
11.	<i>Hudson’s Bay Company, Re</i> , 2025 ONSC 1897
12.	<i>269354-9186 Québec Inc. v Callidus Capital Corp.</i> , 2020 SCC 10
13.	<i>Metcalf & Mansfield Alternative Investments II Corp., (Re)</i> , 2008 ONCA 587.
14.	<i>Harte Gold Corp. (Re)</i> , 2022 ONSC 653.
15.	<i>JTI-Macdonald Corp. Re</i> , 2019 ONSC 1625.
16.	<i>PSINet Ltd., Re</i> , 2002 CanLII 49587 (ONSC).
17.	<i>Essar Steel Algoma Inc. et al Re</i> , 2017 ONSC 3031.
18.	<i>Arrangement relatif à Xebec Adsorption Inc.</i> , 2023 QCCS 466.
19.	<i>Century Services Inc. v Canada (Attorney General)</i> , 2010 SCC 60
20.	<i>In the Matter of Pride Group Holdings Inc. et al</i> , (CV-24-00717340-00CL), Order (Endorsement) dated February 28, 2025.

21.	<i>Sherman Estate v. Donovan</i> , 2021 SCC 25
22.	<i>Sierra Club of Canada v Canada (Minister of Finance)</i> , 2002 SCC 41
23.	<i>Babra v. Acquisition SL LLC</i> , 2012 ONSC 609

**SCHEDULE “B”
RELEVANT STATUTES**

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

General power of court

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

Duties and functions

23 (1) The monitor shall

(k) carry out any other functions in relation to the company that the court may direct.

Courts of Justice Act, R.S.O. 1990, Chapter C.32

Sealing documents

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

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM OF RESTORE CAPITAL, LLC
(TERMINATION OF APA AND EXPANSION OF MONITOR'S
POWERS)

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