

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 PROPOSED PLAN
OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO
LI-CYCLE HOLDINGS CORP., LI-CYCLE CORP., LI-CYCLE AMERICAS CORP.,
LI-CYCLE U.S. INC., LI-CYCLE INC. AND LI-CYCLE NORTH AMERICA HUB, INC.

Applicants

FACTUM OF THE APPLICANTS
(Comeback Hearing)
(Returnable May 22, 2025)

May 21, 2025

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PART I. INTRODUCTION

1. On this motion, Li-Cycle¹ seeks relief that is designed to further its goal of achieving a going concern outcome for a significant portion of the Business for the benefit of its stakeholders.
2. In particular, Li-Cycle seeks approval of: a Sale and Investment Solicitation Process (“**SISP**”); a Stalking Horse Agreement with Glencore for purposes of acting as a stalking horse bid in the SISP; a DIP Facility from Glencore to fund Li-Cycle’s restructuring; a KERP to incentivize key employees to continue to support the Business and the SISP during the process; an extension of the stay of proceedings to July 7, 2025; and related relief.
3. Prior to the commencement of these proceedings, Li-Cycle conducted a robust canvassing of the market with the assistance of leading investment bank Moelis & Company (“**Moelis**”) over approximately 1.5 years (the “**Moelis Process**”). However, in all of the circumstances, Li-Cycle was not able to identify an executable transaction sufficient to continue the Business as a going concern.
4. Through intense negotiations in the lead-up to these CCAA Proceedings, Li-Cycle secured the support of Glencore, its most significant contractual counterparty and secured lender, to provide limited DIP financing and to act as a stalking horse bidder in a SISP.
5. The Stalking Horse Agreement provides for Glencore to purchase the equity of U.S. SpokeCo and Europe Parent, as well as the assets (other than Excluded Assets) of various

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Affidavit of William E. Aziz sworn May 16, 2025 (the “**Aziz Affidavit**”) or, if not defined therein, in the Affidavit Ajay Kochhar sworn May 12, 2025 (the “**Kochhar Affidavit**”). The Applicants and their global subsidiaries are referred to herein as “**Li-Cycle**”.

other entities including Global HQ and HubCo for, among other things, a credit bid of USD \$40 million plus the assumption of various liabilities plus cash sufficient to satisfy all of the Charges.

6. Through the proposed SISP, Li-Cycle, with the assistance of the Financial Advisor and the Monitor, would seek higher and better bids in the market while simultaneously working with Glencore to seek to address various conditions precedent and finalize the list of Excluded Assets.

7. Through this process, funded by the much-needed DIP Facility, Li-Cycle is hopeful that it will be able to implement a going-concern transaction for the benefit of its stakeholders in the timeframe available. Without the DIP Facility, Li-Cycle does not have sufficient cash to continue operating beyond the near term and would not be able to fund either a sales process or an orderly liquidation.

8. The relief sought by Li-Cycle on this motion takes the form of two orders:

- (a) an Amended and Restated Initial Order approving, among other things: (i) an extension of the Stay of Proceedings to July 7, 2025; (ii) the DIP Facility and DIP Lender's Charge; (iii) the KERP and KERP Charge; (iv) the Transaction Fee Charge; and (v) payment of certain pre-filing amounts to critical suppliers; and,
- (b) a Sale and Investment Solicitation Process Order ("**SISP Order**"), among other things: (i) approving the SISP for the Property and Business of the Applicants; (ii) authorizing and approving the Applicants' execution of the

Stalking Horse Agreement for the purposes of acting as the stalking horse bid in the SISP; and (iii) approving the payment of the Bid Protections and Bid Protections Charge to the Stalking Horse Bidder.

9. Neither of these orders finally approve the transaction set out in the Stalking Horse Agreement or provide for a vesting of any assets free and clear of liens or claims. If the SISP is approved, such approval and vesting orders will be sought at a later date, after a further canvassing of the market in the court-supervised process.

10. Approval of the DIP Facility and the SISP and the other relief sought on this motion will help Li-Cycle to complete a broad canvassing of the market and provide it the best chance to achieve a value-maximizing outcome for its stakeholders. The relief sought by Li-Cycle on this motion is reasonable and appropriate in the circumstances and supported by the Monitor and Glencore.

PART II. THE FACTS

A. The Business of Li-Cycle and its Financial Challenges

11. Li-Cycle is a global lithium-ion battery resource recovery company headquartered in Toronto, Ontario. At its “Spokes”, Li-Cycle recycles batteries to produce, among other things, black mass containing valuable metals. Li-Cycle has one operating Spoke in Germany and four Spokes where operations are currently suspended in Ontario, New York, Arizona and Alabama. At its planned “Hubs”, Li-Cycle would process black mass to produce critical battery-grade materials which could then be used in the manufacture of batteries. Li-Cycle’s

first commercial Hub is partially constructed in Rochester, New York, although construction has been suspended since October 2023.²

12. The Applicants commenced these CCAA Proceedings as a result of the numerous challenges that they encountered since the Fall of 2023 that severely strained their liquidity. Without access to additional financing, the Applicants are forecast to run out of cash imminently.³ The Applicants have commencing Chapter 15 proceedings in the U.S. and obtained a temporary stay.⁴

B. Extensive Pre-Filing Marketing Processes

13. In two phases over the course of 1.5 years, Li-Cycle conducted a broad market canvass with the assistance of Moelis. More recently, on May 12, 2025, Li-Cycle commenced further canvassing of the market with the assistance of Alvarez & Marsal Canada Securities ULC (the “**Financial Advisor**”), which it intends to continue in these CCAA Proceedings. The following is a summary of these extensive marketing efforts:

- (a) First Phase of Moelis Process (November 2023-February 2024): 144 potential strategic and financial investors were contacted, 57 of whom executed non-disclosure agreements and were granted access to a data room. 50 management presentations were conducted along with numerous follow-up calls, site visits, and additional information provided.⁵

² Kochhar Affidavit at paras. 47-54, Application Record, Tab 2.

³ Aziz Affidavit at para. 22, Motion Record of the Applicants dated May 16, 2025 (“**Motion Record**”), Tab 2.

⁴ Aziz Affidavit at paras. 15-19, Motion Record, Tab 2.

⁵ Kochhar Affidavit at paras. 151-154, Application Record, Tab 2.

- (b) Second Phase of Moelis Process (November 2024-February 2025): 149 potential strategic and financial investors were contacted, 52 of whom had prior executed and active non-disclosure agreements, or executed non-disclosure agreements anew, and were granted access to a data room. 22 management presentations were conducted, along with various follow-up calls and additional information provided.⁶
- (c) Financial Advisor Process (Commenced May 12, 2025): A teaser and NDA have been distributed to 144 potential bidders, including 78 strategic buyers and 66 financial sponsors. 16 NDAs have been executed and another 12 are currently in process. All interested parties with executed NDAs have received a confidential information memorandum and have been active in the data room.⁷

C. The DIP Facility

14. The Applicants and Glencore International AG (the “**DIP Lender**”) entered into the DIP Term Sheet in respect of the DIP Facility on May 14, 2025, subject to Court approval. The DIP Facility is in the maximum aggregate principal amount of \$10.5 million, potentially increasing by up to \$1.25 million if the Stalking Horse Bidder elects to exclude certain assets related to the Rochester Hub pursuant to the Stalking Horse Agreement, and bears interest at rate of 11.3% per annum.⁸

15. The DIP Facility is subject to customary covenants, conditions precedent, and representations and warranties made by the Applicants to the DIP Lender. The DIP Facility is

⁶ Kochhar Affidavit at paras. 159-162, Application Record, Tab 2.

⁷ Aziz Affidavit at para. 48, Motion Record, Tab 2.

⁸ Aziz Affidavit at para. 24, Motion Record, Tab 2; Exhibit “D” to the Aziz Affidavit, Motion Record, Tab 2D.

conditional on, among other things, the granting of the DIP Lender's Charge over all of the Property of the Applicants.⁹

D. The Stalking Horse Agreement

16. The Applicants entered into the Stalking Horse Agreement with Glencore Canada Corporation (the "**Stalking Horse Bidder**") on May 14, 2025, subject to Court approval. The Stalking Horse Agreement contemplates that, if selected as the Successful Bidder under the SISP, the Stalking Horse Bidder, or one or more of its designees, would, subject to the terms of the Stalking Horse Agreement, acquire, with the exception of the Excluded Assets:

- (c) all of the Purchased Assets of Holdings, Global HQ, Canada SpokeCo, North America OpCo and US HubCo related to Li-Cycle's U.S. and European operations;
- (d) all of the Transferred Intellectual Property of Global HQ;
- (e) the shares of US SpokeCo held by North America OpCo; and
- (f) the Swiss Transferred Equity Interests of Europe Parent held by Holdings (of which Germany SpokeCo is a subsidiary) (collectively, the "**Stalking Horse Assets**").¹⁰

17. The Purchase Price for the Stalking Horse Assets includes, among other things, a credit bid of \$40 million plus the assumption by the Stalking Horse Bidder (or its designated

⁹ Aziz Affidavit at para. 25, Motion Record, Tab 2.

¹⁰ Aziz Affidavit at para. 31, Motion Record, Tab 2.

affiliate) of certain other Assumed Liabilities plus an amount of cash sufficient to satisfy all of the Charges granted in the Amended and Restated Initial Order or the SISP Order.¹¹

18. The Stalking Horse Agreement contains certain conditions precedent, including a condition relating to *Investment Canada Act* approval. While Glencore will take assets subject to various Permitted Encumbrances, including priority mechanics' liens, the Stalking Horse Agreement permits Glencore to modify the list of Excluded Assets up to closing, provided that there is no change to the Purchase Price. To accommodate the potential increase in wind-up costs associated with excluding additional assets at the Rochester Hub, the DIP Facility may be increased by up to \$1.25 million on terms described in the Stalking Horse Agreement and DIP Term Sheet.¹²

19. In the event that a different transaction is selected as the Successful Bid for the Stalking Horse Assets, the Stalking Horse Bidder will be entitled to: (i) an expense reimbursement of up to \$200,000 (the “**Expense Reimbursement**”); and (ii) a break fee of \$1.0 million (the “**Break Fee**”) which, together with the Expense Reimbursement, represents 3% of the Purchase Price.¹³

PART III. ISSUES AND THE LAW

20. The issues before this Court and the position of the Applicants on each are as follows:

¹¹ Aziz Affidavit at para. 32, Motion Record, Tab 2.

¹² Aziz Affidavit at para. 32, Motion Record, Tab 2.

¹³ Aziz Affidavit at para. 32, Motion Record, Tab 2.

- (a) Should the stay of proceedings be extended? *Yes. The stay of proceedings should be extended to July 7, 2025 to provide the Applicants with the breathing space to conduct the SISP.*
- (b) Should the DIP Facility be approved and the DIP Lender's Charge be granted? *Yes. The DIP Facility is required to fund the Applicants' operations and allow them to pursue the SISP. The terms are reasonable and appropriate.*
- (c) Should the Stalking Horse Agreement be approved and the Bid Protections Charge be granted? *Yes. The terms of the Stalking Horse Agreement and the Bid Protections are reasonable for the purposes of acting as a stalking horse bid in the SISP.*
- (d) Should the SISP be approved? *Yes. The SISP will provide a flexible and efficient process for canvassing the market, leveraging the extensive pre-filing marketing efforts that have already been undertaken.*
- (e) Should the KERP be approved, the KERP Charge be granted and the confidential KERP be sealed? *Yes. The KERP terms are reasonable and will facilitate the stability of the business and the effective conduct of the SISP.*
- (f) Should the increase to the maximum amount of the Administration Charge be approved? *Yes. The amount of the Administration Charge is appropriate in the circumstances of this cross-border proceeding.*

- (g) Should the Transaction Fee Charge be approved? ***Yes. The Transaction Fee Charge is appropriate to incentivize professionals to achieve a SISP outcome that will benefit the Applicants' stakeholders.***

A. Stay Extension

21. Sections 11.02(2) and 11.02(3) of the CCAA provide that the Court may grant or extend a stay of proceedings for any period that the Court considers necessary, if the Court is satisfied that: (i) circumstances exist that make the order appropriate; and (ii) the applicant has acted, and is acting, in good faith and with due diligence.¹⁴

22. Since the granting of the Initial Order, the Applicants have acted in good faith and with due diligence to stabilize the business and advance their restructuring objectives.¹⁵

23. The requested extension of the Stay Period to July 7, 2025 – the date that the Applicants will seek approval of any Successful Bid(s) in the SISP – is reasonable and appropriate.¹⁶ This Court has granted stay extensions from the comeback hearing to the date for approval of a Successful Bid in a SISP on multiple occasions.¹⁷

¹⁴ *Hudson's Bay Company, Re*, [2025 ONSC 1897](#) at para. 17 [*HBC Comeback*].

¹⁵ Aziz Affidavit at para. 14, Motion Record, Tab 2.

¹⁶ Aziz Affidavit at para. 20, Motion Record, Tab 2.

¹⁷ See e.g. [Eastern Meat Solutions Inc. et al. Re](#) (Court File No. CV-24-00720622-00CL), Endorsement of Justice Penny dated May 31, 2024 at para. 3; [ClearPier Acquisition Corp. et al. Re](#) (Court File No. CV-25-00740088-00CL), Endorsement of Justice Conway dated April 10, 2025 at para. 4.

B. Approval of DIP Facility and DIP Lender's Charge

(i) *Jurisdiction to Approve DIP Financing*

24. Section 11.2 of the CCAA provides the Court with the express statutory authority to approve the DIP Term Sheet and the DIP Lender's Charge.¹⁸ Section 11.2(2) further provides the Court with the express statutory authority to order that the DIP Lender's Charge rank in priority over the claim of any secured creditor of the company.¹⁹

25. Section 11.2(4) sets out the following non-exhaustive list of criteria to be considered by the Court in deciding whether to grant the DIP Lender's Charge:

- (a) the period during which the Applicants are expected to be subject to proceedings under the CCAA;
- (b) how the Applicants' business and financial affairs are to be managed during the proceedings;
- (c) whether the Applicants' management has the confidence of its major creditors;
- (d) whether the DIP Facility would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants;
- (e) the nature and value of the Applicants' property;

¹⁸ CCAA, s. 11.2(1).

¹⁹ CCAA, s. 11.2(2).

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) whether the Monitor supports the DIP Lender's Charge.²⁰

26. Overall, the Court must determine whether the proposed DIP Facility and DIP Lender's Charge "will best serve the interests of the stakeholders of the Applicants as a whole by enhancing the prospects of a successful restructuring."²¹ Even where it can be established that some creditors may be potentially prejudiced, where the benefits of financing to all stakeholders outweigh the potential prejudice to those creditors, it will be appropriate to approve the DIP financing.²²

(ii) *DIP Term Sheet and DIP Lender's Charge Should be Approved*

27. The criteria militate in favour of approval of the DIP Term Sheet and DIP Lender's Charge:

(a) the Applicants had approximately \$10.519 million in cash remaining as of the week ended May 9, 2025 and are expected to run out of cash imminently;²³

(b) a portion of the DIP Facility will provide liquidity to fund the ongoing operations of Europe Parent and Germany SpokeCo – non-Applicants that operate Li-Cycle's only operational Spoke in Germany. This will allow those entities to remain solvent and avoid a domestic insolvency filing and liquidation;²⁴

²⁰ CCAA, s. 11.2(4); *In Re Hudson's Bay Company*, [2025 ONSC 1530](#) at para. 84 [*HBC Initial Order*].

²¹ *HBC Initial Order* at para. 87.

²² *Pride Group Holdings Inc. et al.*, [2024 ONSC 2026](#) at para. 27.

²³ Aziz Affidavit at para. 22, Motion Record, Tab 2.

²⁴ Aziz Affidavit at para. 28, Motion Record, Tab 2.

- (c) the Applicants sought alternative DIP financing options and obtained only one other DIP proposal, which had higher fees and would have introduced additional complexities given Glencore's existing secured position;²⁵
- (d) the terms of the DIP Term Sheet are the product of intense negotiations and are reasonable in the circumstances;²⁶
- (e) all secured creditors that are likely to be affected by the DIP Lender's Charge have been notified of this motion. Holders of priority mechanics liens and the DOE will not be primed by the DIP Lender's Charge;²⁷
- (f) the DIP Facility is necessary to fund the Applicants' operations and expenses related to the SISP which will allow the Applicants to pursue a value-maximizing outcome for the benefit of their stakeholders;²⁸ and
- (g) the Monitor is of the view that the DIP Term Sheet and the amount and priority of the DIP Lender's Charge are appropriate in the circumstances.

28. Accordingly, the DIP Term Sheet and the DIP Lender's Charge should be approved by this Court.

²⁵ Aziz Affidavit at para. 27, Motion Record, Tab 2.

²⁶ Aziz Affidavit at para. 26, Motion Record, Tab 2.

²⁷ Kochhar Affidavit at para. 87, Application Record, Tab 2.

²⁸ Aziz Affidavit at para. 28, Motion Record, Tab 2.

C. **Approval of SISP, Stalking Horse Agreement and Bid Protections Charge**

(i) ***Test for Approval of Stalking Horse Sale Process***

29. Approval of sale processes including stalking horse agreements with a credit bid have become common features in CCAA proceedings.²⁹ Courts widely recognize that a stalking horse bid is “a reasonable and useful element of a sales process”³⁰ and “maximizes value of a business for the benefit of its stakeholders and enhances the fairness of the sale process.”³¹

30. In *Validus Power Corp.*, Justice Osborne distilled various lists of factors to be considered in approving a stalking horse bid sale process from cases such as *Brainhunter*,³² *CCM*,³³ and *Freshlocal*,³⁴ into the following question:

[T]aking into account the support for and opposition to the terms of the proposed SISP and stalking horse agreement, while recognizing whether and how those parties supporting or opposing it are economically affected by the outcome, will the proposed process (including its stalking horse bid component and all other material terms), if approved and approved at this time, likely result in the best recovery on the assets being sold pursuant to a fair and transparent process?³⁵

²⁹ Between January 1, 2023 and May 31, 2023, there were 57 cases involving a sale process with a stalking horse credit bid: Jessica L Cameron, Anthony Mersich & Kaitlyn Wong, “Saddle Up: The Rise of Stalking Horse Credit Bids in Canadian Insolvency Proceedings”, (2023) Ann Rev Ins Law 11.

³⁰ *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para. 7 [*CCM*]; *Cannapiece Group Inc. v. Marzili*, 2022 ONSC 6379 at para. 4 [*Cannapiece*].

³¹ *Danier Leather Inc. (Re)*, 2016 ONSC 1044 at para. 20 [*Danier*].

³² In *Brainhunter Inc. (Re)*, 2009 CanLII 72333 (ON SC), the Court indicated that the factors that are applied by the Court in exercising its general statutory discretion to approve a sale process could also be applied to considering whether to approve a stalking horse sale process: (i) Is a sale transaction warranted at this time?; (ii) Will the sale benefit the whole “economic community”?; (iii) Do any of the debtors’ creditors have a bona fide reason to object to a sale of the business?; and (iv) Is there a better viable alternative?: para. 13.

³³ In *CCM*, the Court set out the following factors to be considered in approving a sale process including a stalking horse credit bid: (i) the fairness, transparency and integrity of the proposed process; (ii) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (iii) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale: para. 6.

³⁴ In *Freshlocal Solutions Inc., Re*, 2022 BCSC 1616, the Court set out the following factors to be considered in approving a stalking horse bid: (i) how did the stalking horse agreement arise?; (ii) what are the stability benefits?; (iii) does the timing support approval?; (iv) who supports or objects to the stalking horse agreement?; (v) what is the true cost of the stalking horse agreement?; and (vi) is there an alternative?: paras. 24-32 [*Freshlocal*].

³⁵ *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367 at para. 37 [*Validus*].

31. Stalking horse agreements have been recognized as having the following benefits, among others:

- (a) They provide stability for the debtor's business during the restructuring process, since the debtor's employees, suppliers and customers will have comfort that the sales process will result in a successful sale and therefore a continuation of the debtor's business;³⁶
- (b) They establish a baseline price and transactional structure for superior bids from interested parties;³⁷ and
- (c) They can provide a reasonable estimate of the value of the debtor's business and assets to other bidders due to the considerable due diligence that the stalking horse bidder would have already undertaken.³⁸

(ii) *Stalking Horse Agreement Should be Approved*

32. The Applicants are only seeking approval of the Stalking Horse Agreement for the sole purpose of it acting as the Stalking Horse Bid in the SISP. Approval of the Stalking Horse Agreement would be sought at a separate hearing at the conclusion of the SISP if it is selected as the Successful Bid.

³⁶ *Stelco Inc. (Re)*, [2004 CanLII 45462 \(ON SC\)](#) at para. 7; *Cannapièce* at [para. 4](#)

³⁷ *Danier* at para. [20](#); *Vallidus* at para. [42](#).

³⁸ *Freshlocal* at para. [25](#).

33. The Stalking Horse Agreement is the product of significant negotiation and provides valuable consideration. The factors militate in favour of approving the Stalking Horse Agreement to act as the Stalking Horse Bid in the SISP:

- (a) The Stalking Horse Agreement includes the assumption of liabilities that provide benefit to Li-Cycle's stakeholders and the prospect of a positive, going-concern outcome and continued employment for some of the Applicants' employees;³⁹
- (b) Glencore's willingness to provide the much-needed DIP Facility is conditional on entering into the Stalking Horse Agreement;
- (c) Glencore currently has approximately \$205.6 million in secured debt; and
- (d) The Applicants have limited liquidity and limited alternative options in the circumstances and available timeframe.⁴⁰

34. The terms of the Stalking Horse Agreement are reasonable for the purposes of acting as a stalking horse bid in the SISP and will not unduly impede a further robust canvassing of the market in the SISP.⁴¹ Approval of the Stalking Horse Agreement is supported by the Monitor and should be granted by the Court.

(iii) Bid Protections and Bid Protections Charge Should be Approved

35. Break fees and expense reimbursements "represent the price for stability" and "some premium over simply providing for expenses may be expected."⁴² Courts have recognized that

³⁹ Aziz Affidavit at para. 34, Motion Record, Tab 2.

⁴⁰ Aziz Affidavit at para. 36, Motion Record, Tab 2.

⁴¹ Aziz Affidavit at para. 38, Motion Record, Tab 2.

⁴² *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, [2020 ONSC 3517](#) at para. 26.

bid protections within the range of 1.8% to 5% may be reasonable, including when involving a credit bidder.⁴³ In this case, the Bid Protections represent just 3% of the credit bid portion of the purchase price (i.e. not taking into account the value of the assumed liabilities and cash payments) under the Stalking Horse Agreement. The Bid Protections and corresponding Bid Protections Charge are fair and reasonable and consistent with precedent:

Case	Break Fee	Expense Reimbursement	Total	% of Estimated Transaction Value
This Case	\$1 million	\$200,000	\$1.2 million	3% ⁴⁴
<i>Fire & Flower</i> ⁴⁵	\$650,000	\$100,000	\$750,000	3.4%
<i>Validus Power Corp.</i> ⁴⁶	\$1.26 million	\$1 million	\$2.26 million	3.85%
<i>LoyaltyOne Co.</i> ⁴⁷	\$3 million	\$1 million	\$4 million	2.5%

36. The Bid Protections Charge in the maximum amount of \$1.2 million is also appropriate and consistent with precedent.⁴⁸ The Bid Protections are only payable if another transaction is selected as the Successful Bid for the Stalking Horse Assets and are payable from the proceeds of that transaction.⁴⁹ The Bid Protections and Bid Protections Charge are supported by the Monitor and should be approved by the Court.

⁴³ *Validus* at para. [111](#), citing *CCM* at para. [13](#).

⁴⁴ Calculated on the basis of the credit bid portion of the Purchase Price under the Stalking Horse Agreement.

⁴⁵ *Re Fire & Flower* (Court File No. CV-23-00700581-00CL), Endorsement of Osborne J. dated June 25, 2023.

⁴⁶ *Validus* at paras [110-114](#).

⁴⁷ *LoyaltyOne Co., Re* (Court File No. CV-23-0069601700CL), Endorsement of Justice Conway dated March 20, 2023 at para. 4 [*LoyaltyOne*].

⁴⁸ *Validus* at para. [115](#); *LoyaltyOne* at para. [4](#).

⁴⁹ *Validus* at para. [115](#).

(iv) Terms of the SISP are Appropriate

37. The SISP contemplates a two-phase stalking horse sale process conducted by the Applicants with the assistance of the Financial Advisor for all of the Applicants' Business and Property. The SISP provides for the following milestones (the "SISP Milestones"):

Milestone	Deadline
Teaser Letter and NDA sent to Known Potential Bidders	By May 12, 2025
Phase 1 Bid Deadline	June 6, 2025 at 5:00 p.m.
Phase 2 Bid Deadline	June 27, 2025 at 5:00 p.m.
Selection of Successful Bid(s) and Back-Up Bidder(s) or designation of Auction	June 30, 2025 at 5:00 p.m.
Auction Date (if designated)	July 2, 2025
Approval of Successful Bid(s)	July 7, 2025 at 5:00 p.m.
Closing – Successful Bid(s)	July 16, 2025 at 5:00 p.m.
Outside Date – Closing	July 18, 2025

38. The SISP Milestones strike a reasonable balance between the need to move quickly given the Applicants' limited liquidity and the need to seek the highest price. The SISP Milestones take into account the extensive marketing efforts conducted in the Moelis Process and the marketing efforts already underway by the Financial Advisor since May 12, 2025, the relatively discrete group of potential counterparties who have already been made aware of the opportunity, and the liquidity constraints facing the Applicants.⁵⁰

⁵⁰ Aziz Affidavit at para. 53, Motion Record, Tab 2.

39. The SISP provides for nearly seven weeks from the commencement of the process on May 12, 2025 to the submission of binding bids on June 27, 2025. Even if the time is only counted from the date of court approval, the SISP would run for more than 5 weeks and would rely heavily on the work done prior to the SISP approval, which has been recognized as appropriate in other cases.⁵¹ SISPs providing for 3-5 week bid periods have been approved in other recent cases.⁵² In the course of approving a 4-week SISP, this Court recently held that it is appropriate to defer to the expertise of a court officer that was involved in designing the SISP.⁵³

40. The SISP is fair, reasonable and recommended by the CRO, the Financial Advisor and the Monitor and provides the best opportunity to seek higher and better bids for the benefit of stakeholders.⁵⁴

D. KERP and KERP Charge

(i) *Jurisdiction to Approve a KERP and KERP Charge*

41. The jurisdiction to approve a KERP and grant a KERP charge is grounded in the court's general power under section 11 of the CCAA to make any order it sees fit in a CCAA proceeding.⁵⁵ Courts have frequently recognized the importance and utility of KERPs in

⁵¹ See e.g. *Sanjel Corporation (Re)*, [2016 ABQB 257](#) at paras. [69-80](#); *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) at paras. [97-119](#).

⁵² See e.g. *Re Field Trip Health & Wellness Ltd. et al.* (Court File No. CV-23-00696599-00CL) SISP Order dated March 31, 2023 at p. 8, reflecting a start date of March 31, 2023 and a Bid Deadline of April 24, 2023; *Firm Mortgage Fund Inc. v. Stateview Homes (Hampton Heights) Inc. et al.* (Court File No. CV-23-00700356-00CL), Sale Approval Order dated June 15, 2023 at p. 6 which provided for a 30-day sale process; *Kingsett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes (Minu Towns) Inc. et al.* (Court File No. CV-23-00698576-00CL), Sale Process Approval Order dated June 5, 2023, which approved a 4-5 week process set out in the First Report of the Receiver, [s. 5.2](#).

⁵³ *iSpan Systems LP*, [2023 ONSC 6212](#) at [para. 45](#).

⁵⁴ Aziz Affidavit at paras. 53-55, 78-80, Motion Record, Tab 2.

⁵⁵ CCAA, s. 11; *Cinram International Inc. (Re)*, [2012 ONSC 3767](#) at para. [91](#) [*Cinram*].

restructuring proceedings.⁵⁶ A company able to retain the critical skills and knowledge of its employees has a greater chance of successfully restructuring for the benefit of all stakeholders.⁵⁷

42. The courts have developed the following list of factors to be considered when deciding whether to approve a KERP and grant a KERP charge:

- (a) whether the Monitor and/or CRO support the KERP (to which great weight is attributed);
- (b) whether the employees to which the KERP applies would consider other employment options if the KERP were not secured by the KERP charge;
- (c) whether the continued employment of the employees to which the KERP applies is important for the stability of the business and to enhance the effectiveness of the marketing process;
- (d) the employees' history with the debtor and any special knowledge and skills they possess;
- (e) the difficulty in finding a replacement to fulfill the responsibilities of the employees to which the KERP applies;
- (f) whether the KERP was approved by the board of directors, including the independent directors;

⁵⁶ See e.g. *Cinram* at paras. [90-93](#); *Timminco Ltd., Re*, [2012 ONSC 506](#) at paras. [71-75](#) [*Timminco*]; *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#) at para. [13](#) [*Bridging*].

⁵⁷ *Timminco* at para. [72](#).

(g) whether the KERP is supported or consented to by secured creditors of the debtor;
and

(h) whether the payments under the KERP are payable upon the completion of the restructuring process.⁵⁸

(ii) *KERP and KERP Charge Should be Approved*

43. The Applicants have established a KERP to incentivize 25 key employees (the “**KERP Employees**”) to remain in their employment during these CCAA Proceedings until July 31, 2025 or the consummation of a transaction in the SISP.⁵⁹ The factors to be considered by the Court militate in favour of approving the KERP:

(a) the Monitor and the CRO each support the KERP;⁶⁰

(b) without the KERP and KERP Charge, the KERP Employees will likely consider other employment options;⁶¹

(c) the KERP Employees occupy key roles with the Applicants and could not be readily or easily replaced in the near term due to their (i) institutional knowledge of the operations and processes of the Applicants and, (ii) important roles in the ensuring the stability of the business and the efficient conduct of the SISP;⁶²

(d) the KERP was approved by the Board of Directors;⁶³

⁵⁸ *Cinram* at para. 91; *Aralez Pharmaceuticals Inc., Re*, [2018 ONSC 6980](#) at para. 29.

⁵⁹ Aziz Affidavit at para. 87, Motion Record, Tab 2.

⁶⁰ Aziz Affidavit at para. 92, Motion Record, Tab 2.

⁶¹ Aziz Affidavit at para. 85, Motion Record, Tab 2.

⁶² Aziz Affidavit at para. 85, Motion Record, Tab 2.

⁶³ Aziz Affidavit at para. 84, Motion Record, Tab 2.

- (e) Glencore has been consulted and supports the KERP; and
- (f) the KERP is designed to incentivize the KERP Employees to remain in their roles over the long term in order to achieve a successful restructuring.⁶⁴

44. The amount of the KERP Charge is also reasonable having regard to the importance of the ongoing employment of the KERP Employees and the scope and complexity of these CCAA Proceedings. The Amended and Restated Initial Order approves the Applicants paying to the Monitor:

- (a) the KERP Employee Funds, for the benefit of participants in the KERP (being the aggregate of CAD \$869,973.92 and USD \$672,075.46); and
- (b) \$113,000 (\$100,000 + HST), as security for the Work Fee of Maplebriar (the “**Maplebriar Work Fee Funds**” and collectively with the KERP Employee Funds, the “**KERP Funds**”).⁶⁵

45. KERP charges in excess of the \$2 million being sought in this case have been granted in other CCAA proceedings.⁶⁶ For example, in *Essar Steel Algoma*, a KERP for 23 employees was secured by a charge of approximately \$3.4 million.⁶⁷ Accordingly, it is appropriate for the Court to approve the KERP and grant the KERP Charge sought.

⁶⁴ Aziz Affidavit at para. 87, Motion Record, Tab 2.

⁶⁵ Aziz Affidavit at paras. 89-90, Motion Record, Tab 2.

⁶⁶ See e.g. *Cinram* at [para. 93](#) (\$3 million); *Essar Steel Algoma Inc., Re* (Court File No. CV-15-000011169-00CL), Order re KERP Approval issued December 7, 2015 at paras. 1-2 (\$3.4 million); *Target Canada Co., Re* (Court File No. CV-15-10832-00CL), Initial Order issued January 15, 2015 at paras. 24-25 (\$6.5 million).

⁶⁷ Affidavit of Rajat Marwah at paras. 7-8, [Motion Record of the Applicants \(Re: KERP Approval\) in Essar Steel Algoma Inc., Re, Court File No. CV-15-000011169-00CL](#), Tab 2.

(iii) The Confidential KERP Should be Sealed

46. The Applicants seek an order sealing Confidential Exhibit “H” to the Aziz Affidavit, which includes Schedule “A” to the KERP containing the names and compensation details of the individual KERP Employees, pending further order of the Court.

47. In order to grant the requested sealing order, the Court must be satisfied that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁶⁸

48. Courts have recognized in numerous cases that it would be detrimental to the operations of the company to disclose the identities of KERP beneficiaries and the quantum of payments.⁶⁹ In this case, the sealing order is proportional as the Applicants have publicly disclosed the aggregate amount of the KERP to balance the principle of court openness while minimizing risks to retention and privacy. The salutary effects of granting this order outweigh any deleterious effects. The three factors of *Sherman Estate* have been satisfied and the sealing order should be granted.

⁶⁸ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

⁶⁹ See e.g. *Bridging* at [paras. 23–28](#); *Just Energy Corp. (Re)*, [2021 ONSC 1793](#) at [paras. 123–24](#).

E. Increase to Administration Charge

49. The Applicants are seeking to increase the Administration Charge of \$2 million to \$2.5 million to secure the professional fees and disbursements of the Monitor, the CRO, the CFO, legal counsel to the Monitor and legal counsel to Li-Cycle, which is consistent with recent precedents:

CCAA Proceedings	Administration Charge (Amended and Restated Initial Order)
<i>Sandvine Corporation et al.</i> ⁷⁰	USD \$5,400,000
<i>Chesswood Group Limited et al.</i> ⁷¹	USD \$2,000,000
<i>Pride Group Holdings Inc et al.</i> ⁷²	\$3,000,000

F. Approval of Transaction Fee

50. As part of the Initial Order, the Court approved the retention of the CRO and the retention of Maplebriar Holdings Inc. to provide the services of Ajay Kochhar, the former CEO and founder of Li-Cycle, to assist the Financial Advisor with running the SISP. The Administration Charge currently provides protection in respect of the monthly work fees of the CRO and the KERP Charge is proposed to cover Maplebriar's monthly work fee.⁷³

⁷⁰ [Sandvine Corporation et al. \(Court File No. CV-24-00730836-00CL\)](#), Amended and Restated Initial Order issued November 15, 2024 at para. 47; Endorsement of Justice Osborne at para. 12.

⁷¹ [Chesswood Group Limited et al, Re \(Court File No. CV-24-00730212-00CL\)](#), Amended and Restated Initial Order issued November 7, 2024 at para. 48.

⁷² [Pride Group Holdings Inc et al., Re. \(Court File No. CV-24-00717340-00CL\)](#), Amended and Restated Initial Order dated April 5, 2024 at para. 60.

⁷³ Kochhar Affidavit at paras. 202, 208, Application Record, Tab 2.

51. These charges do not secure the Restructuring Fees potentially payable to the CRO and Maplebriar pursuant to their respective engagement letters.⁷⁴ The proposed Amended and Restated Initial Order provides for a court-ordered charge over the present and after-acquired assets of the Applicants (the “**Transaction Fee Charge**”) in the amount of \$1 million as security for these Restructuring Fees.

52. The Court has the jurisdiction to grant charges in respect of the fees of a financial advisor pursuant to s. 11.52 of the CCAA,⁷⁵ with such charges being the typical “basis on which financial advisors are incentivized to continue to work for companies involved in restructuring”.⁷⁶ The proposed Transaction Fee Charge of \$1 million is consistent with the remuneration of financial advisors in recent CCAA Proceedings:

CCAA Proceedings	Transaction Fee Charge
<i>Sandvine Corporation</i> ⁷⁷	USD \$7,000,000
<i>Shelter Cove</i> ⁷⁸	CAD \$1,500,000
<i>MAV Group</i> ⁷⁹	USD \$1,700,000

53. The Transaction Fee Charge is supported by the Monitor and should be approved by the Court.

⁷⁴ Kochhar Affidavit at para. 221, Application Record, Tab 2.

⁷⁵ CCAA, s. 11.52.

⁷⁶ *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. 152.

⁷⁷ *Sandvine Corporation et al.* (Court File No. CV-24-00730836-00CL), Amended and Restated Initial Order issued November 15, 2024 at para. 47.

⁷⁸ *2039882 Ontario Limited o/a Shelter Cove* (Court File No. CV-24-00713069-00CL), Amended and Restated Initial Order issued February 6, 2024 at para. 12.

⁷⁹ *MAV Group* (Court File No. CV-23-00709610-00CL), Amended and Restated Initial Order dated November 24, 2023 at para. 43.

G. Payment of Pre-filing Amounts is Appropriate

54. The proposed Amended and Restated Initial Order also provides the Applicants with the authority to pay certain suppliers for amounts owing for goods or services actually supplied to Applicants prior to the date of the Initial Order.⁸⁰ Payment of these pre-filing amounts are subject to the approval of the Monitor and must be in accordance with the Budget provided pursuant to the DIP Term Sheet.

55. The ability to pay certain critical suppliers for pre-filing amounts, subject to obtaining the approval of the Monitor, is facilitative and practical in nature and has been granted on multiple occasions.⁸¹ The Monitor is supportive of the relief sought. Accordingly, it is appropriate to authorize the payment of pre-filing amounts to critical suppliers.

PART IV. ORDER REQUESTED

56. For the reasons set out above, the Applicants request that this Court grant the proposed Amended and Restated Order and the proposed SISP Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of May, 2025.



McCarthy Tétrault LLP

Lawyer for the Applicants

⁸⁰ Amended and Restated Initial Order at para. 7(c), Tab 3 of the Motion Record; Aziz Affidavit at para. 4, Motion Record, Tab 2.

⁸¹ *HBC Initial Order* at para. [113](#).

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [2039882 Ontario Limited o/a Shelter Cove \(Court File No. CV-24-00713069-00CL\)](#), Amended and Restated Initial Order issued February 6, 2024
2. *Aralez Pharmaceuticals Inc., Re*, [2018 ONSC 6980](#).
3. *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#).
4. *Cannapiece Group Inc. v. Marzili*, [2022 ONSC 6379](#).
5. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#).
6. [Chesswood Group Limited et al, Re \(Court File No. CV-24-00730212-00CL\)](#), Amended and Restated Initial Order issued November 7, 2024
7. *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, [2020 ONSC 3517](#).
8. *Cinram International Inc. (Re)*, [2012 ONSC 3767](#).
9. [ClearPier Acquisition Corp. et al, Re \(Court File No. CV-25-00740088-00CL\)](#), Endorsement of Justice Conway dated April 10, 2025
10. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#).
11. [Eastern Meat Solutions Inc. et al, Re \(Court File No. CV-24-00720622-00CL\)](#), Endorsement of Justice Penny dated May 31, 2024
12. [Essar Steel Algoma Inc., Re \(Court File No. CV-15-000011169-00CL\)](#), Order re KERP Approval issued December 7, 2015
13. [Firm Mortgage Fund Inc. v. Stateview Homes \(Hampton Heights\) Inc. et al. \(Court File No. CV-23-00700356-00CL\)](#), Sale Approval Order dated June 15, 2023
14. *Freshlocal Solutions Inc., Re*, [2022 BCSC 1616](#)
15. *Hudson’s Bay Company, Re*, [2025 ONSC 1897](#)
16. *Hudson’s Bay Company, Re*, [2025 ONSC 189](#).
17. *iSpan Systems LP*, [2023 ONSC 6212](#).
18. *Just Energy Corp. (Re)*, [2021 ONSC 1793](#).
19. [Kingsett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes \(Minu Towns\) Inc. et al \(Court File No. CV-23-00698576-00CL\)](#), Sale Process Approval Order dated June 5, 2023
20. [LoyaltyOne Co., Re \(Court File No. CV-23-0069601700CL\)](#), Endorsement of Justice Conway dated March 20, 2023

21. [MAV Group \(Court File No. CV-23-00709610-00CL\)](#), Amended and Restated Initial Order dated November 24, 2023
22. *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
23. *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#).
24. *Pride Group Holdings Inc. et al.*, [2024 ONSC 2026](#)
25. [Pride Group Holdings Inc et al., Re, \(Court File No. CV-24-00717340-00CL\)](#), Amended and Restated Initial Order dated April 5, 2024
26. [Re Field Trip Health & Wellness Ltd. et al. \(Court File No. CV-23-00696599-00CL\)](#) SISP Order dated March 31, 2023
27. [Re Fire & Flower \(Court File No. CV-23-00700581-00CL\)](#), Endorsement of Osborne J. dated June 25, 2023
28. [Sandvine Corporation et al. \(Court File No. CV-24-00730836-00CL\)](#), Amended and Restated Initial Order issued November 15, 2024
29. *Sanjel Corporation (Re)*, [2016 ABQB 257](#).
30. *Stelco Inc. (Re)*, [2004 CanLII 45462 \(ON SC\)](#)
31. *Sherman Estate v. Donovan*, [2021 SCC 25 \(CanLII\)](#), [2021] 2 SCR 7.
32. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#).
33. [Target Canada Co., Re \(Court File No. CV-15-10832-00CL\)](#), Initial Order issued January 15, 2015
34. *Timminco Ltd., Re*, [2012 ONSC 506](#).
35. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, [2023 ONSC 6367](#).

**SCHEDULE “B”
RELEVANT STATUTES**

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

s. 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.

s. 11.02

Stays, etc. — other than initial application

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

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

s. 11.2

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court

considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in [paragraph 23\(1\)\(b\)](#), if any.

s. 11.52(1)

Court may order security or charge to cover certain costs. — On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

(b) any financial, legal or other experts engaged by the company for the purpose of proceeding under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

s. 11.52(2)

Priority. – The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR ARRANGEMENT WITH RESPECT TO LI-CYCLE HOLDINGS CORP. ET AL.

Court File No. CV-25-00743053-00CL

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

Proceeding Commenced at Toronto

**FACTUM
(Comeback Hearing)
(Returnable May 22, 2025)**

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