

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 CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

PEOPLES TRUST COMPANY

Applicant

AND

CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

Respondents

FACTUM OF THE MONITOR
(Class Action Settlement Approval Order)

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Martino Calvaruso (LSO# 57359Q)

Tel: 416.862.6665

Email: mcalvaruso@osler.com

Fax: 416.862.6666

Counsel to KPMG Inc., in its capacity as
Monitor

TO: **THE SERVICE LIST**

PART I - NATURE OF THE MOTION

1. This factum is filed in support of a motion by KPMG Inc. (“**KPMG**”), in its capacity as the monitor (in such capacity, the “**Monitor**”) of Crown Crest Financial Corp., Simply Green Home Services Inc., Simply Green Home Services Corp, Crown Crest Capital Management Corp., Crown Crest Funding Corp., and Crown Crest Capital Trust (collectively, the “**Crown Crest Leasing Group**” or the “**Debtors**”) in the within proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” and the proceedings, the “**CCAA Proceedings**”), which were commenced on November 9, 2023, by the issuance of an initial order by this Court (the “**CCAA Court**”) on the application of Peoples Trust Company (the “**Initial Order**” and “**PTC**”).

2. The Monitor brings this motion in order to seek the approval of a settlement agreement that will resolve two interrelated class action proceedings that involve the Debtors and the Debtors’ business. The first of these proceedings is a proposed class proceeding (the “**Bonnick Action**”) which was commenced against the Debtors and the other Corporate Defendants (as defined below), along with Crown Crest Leasing Group’s former CEO, Lawrence Krimker (“**Krimker**”), approximately two years prior to the granting of the Initial Order. The plaintiffs in the Bonnick Action allege, among other things, that the Corporate Defendants’ conduct in relation to certain consumer agreements (the “**Consumer Agreements**” or “**Leases**”) entered into in Ontario violate the *Consumer Protection Act, 2002*¹ (the “**ONCPA**”), and seek a number of remedies, including the rescission, cancellation or declared unenforceability of the Consumer Agreements, and the award of general damages calculated on an aggregate basis. On December 21, 2023, approximately six weeks after the granting of the Initial Order, a companion national class proceeding was

¹ S.O. 2002, c. 30, Sch. A.

commenced against PTC (the “**PTC Action**,” and together with the Bonnick Action, the “**Class Actions**”), which relates to similar alleged issues regarding the Consumer Agreements and seeks similar relief. The same counsel represents the Plaintiffs (defined below) in both Class Actions.

3. In order to fully and finally resolve the Class Actions, the plaintiffs in the Class Actions (collectively, the “**Plaintiffs**”) and the Settling Defendants (as defined below) entered into a settlement agreement on November 1, 2024 (the “**Settlement Agreement**”), following months of good faith negotiations and a mediation facilitated by the Honourable Former Justice McEwen (the “**Mediation**”) in the summer and fall of 2024. Under the terms of the Settlement Agreement, the Debtors will obtain the benefit of a release by the Class (as defined below) of all claims relating in any way to any conduct alleged (or that could have been alleged) in the Class Actions. In exchange, the Class will be entitled to an initial cash payment of \$17 million, which will be paid by PTC and Krimker, certain Lease modification terms (including permanent reductions in buyout fees and a cap on annual escalation of monthly Lease payments), and a court order confirming that no NOSI or similar lien anywhere in Canada shall be enforceable against the Class. Further, the Settlement Agreement grants the Class a participation right in the proceeds ultimately generated by a sale and investment solicitation process (“**SISP**”) in the CCAA Proceedings, in the amount of 25% of any purchase price paid over \$250 million.

4. The Settlement Agreement was approved on February 21, 2025, by Justice Akbarali, the case management judge of the Class Actions (the “**Class Action Judge**”), who found the Settlement Agreement to be fair and reasonable and in the best interests of the Class. The Class Action Judge acknowledged in her endorsement that the Settlement Agreement remains subject to the approval of the CCAA Court.

5. Accordingly, in order to implement the Settlement Agreement and provide the time needed to continue the restructuring of the Debtors (including the implementation of a SISP), the Monitor seeks the following orders from the CCAA Court:

- (a) an Order (the “**Settlement Approval Order**”) which will, among other things, approve the Class Action Settlement (as defined in the Settlement Approval Order) and the Settlement Agreement; and
- (b) an Order (“**Fifth Stay Extension Order**”) which will, among other things: (i) approve the Fourth DIP Amendment and increase the approved borrowing under the Debtors’ DIP Facility (each as defined below) to \$34 million; and (ii) extend the Stay of Proceedings (as defined below) to July 4, 2025.

6. Owing to the nature of the Class Actions – which, among other things, seek the rescission or declared unenforceability of the Consumer Agreements, which constitute the Debtors’ only meaningful assets – it is imperative that the Class Actions be resolved in order to permit the CCAA Proceedings to move forward. Without the certainty and finality provided by the Settlement Agreement, the Debtors would be required to engage in time-consuming and costly litigation with respect to the Class Actions, which would likely take years to resolve. The risk posed by this ongoing litigation would, in practice, prevent the implementation of a successful SISP, as potential purchasers would be unwilling to participate without first obtaining greater certainty regarding the enforceability of the Consumer Agreements. Further, in the event that the Plaintiffs succeed in their claims for rescission or declared invalidity, the Consumer Agreements will effectively cease to exist, removing the only meaningful asset from the Debtors’ estate. In such circumstances, the restructuring of the Debtors would become impossible, and there would be no recovery for any of the Debtors’ creditors.

7. The Settlement Agreement is therefore fair and reasonable in the circumstances and should be approved by the CCAA Court. The resolution of the Class Actions is in the interests of all of the Debtors' creditors and stakeholders (including those creditors not party to the Settlement Agreement), as it will permit the CCAA Proceedings to move forward and maximize the return obtained on the Debtors' assets, to the benefit of creditors and stakeholders generally. The compensation provided under the Settlement Agreement is both reasonable and commensurate with the litigation risk faced by the Debtors should the Class Actions proceed to trial.

PART II - SUMMARY OF FACTS

8. The facts regarding this motion are more fully set out in the Sixth Report of the Monitor.²

A. The CCAA Proceedings

9. On November 9, 2023, the CCAA Court granted the Initial Order, among other things: (i) appointing KPMG as the Monitor (ii) granting a stay of proceedings against the Debtors, the Monitor, the CRO (defined below), or affecting the Business or the Property (as defined in the Initial Order) (the "**Stay of Proceedings**") for an initial 10-day period; (iii) granting certain expanded powers to the Monitor, including applying to the CCAA Court, on its own behalf or on behalf of the Debtors, for any orders necessary or advisable to carry out its powers and obligations under the Initial Order or other order of the CCAA Court in the CCAA Proceedings; (iv) approving the appointment of HWS Consulting Inc. ("**HWS**"), as the Chief Restructuring Officer (the "**CRO**") of the Debtors and authorizing the CRO to oversee the Business and the Property of the Debtors, including the power to enter into agreements on behalf of the Debtors; and (v) approving

² Sixth Report of the Monitor dated March 25, 2024 ("**Sixth Report**"). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Sixth Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

the terms of an interim financing facility (the “**DIP Facility**”) provided by PTC (in such capacity, the “**DIP Lender**”) to the Debtors.³

10. At the comeback hearing held on November 17, 2023, the CCAA Court issued the Amended and Restated Initial Order (the “**ARIO**”), which incorporated certain amendments to the Initial Order, including extended the Stay of Proceedings to February 10, 2024 and increasing the maximum borrowings under the DIP Facility to \$10 million.

11. The CCAA Court subsequently granted four additional stay extension orders. At the recent stay extension hearing on January 9, 2025, the CCAA Court issued an Order, among other things: (i) extending the Stay of Proceedings to and including April 4, 2025 (the “**Stay of Proceedings**”); and (ii) approving the Third DIP Amendment, which increased the maximum borrowings permitted under the DIP Facility to \$30 million and extended the maturity date to April 4, 2025.⁴

B. The Class Actions

(a) The Bonnick Action

12. On July 7, 2021, approximately two years prior to the granting of the Initial Order, the Bonnick Action was commenced by the plaintiff Alga Adina Bonnick (later joined by Goran Stoilov Donev) against Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Crown Crest Funding Corp., Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario) Inc., Simply Green Home Services Inc., and Simply Green Home Services Corp. (together, the “**Corporate Defendants**”) and Krimker. On December 29, 2021,

³ Sixth Report at para. 2.

⁴ For a detailed summary of these subsequent orders, see Sixth Report at paras. 4-7.

Sotos LLP (“**Class Counsel**”) was granted carriage of both the Bonnick Action and an overlapping proposed class proceeding commenced by Paula Blackford-Hall et al.⁵

13. The proposed class in the Bonnick Action consists of all individuals in Ontario who: (i) are or were party to a Consumer Agreement for HVAC or HVAC-related equipment with any person who directly or indirectly assigned that Consumer Agreement to one of the Corporate Defendants between July 17, 2013 and the date of certification; and (ii) against whose property the Corporate Defendants registered, or caused to be registered, a Notice of Security Interest (“**NOSI**”) on title or other encumbrance on title.⁶

14. The plaintiffs in the Bonnick Action allege that during the proposed class period, the conduct of the Corporate Defendants contravenes the ONCPA, including the following specific allegations:⁷

- (a) the Consumer Agreements breach the direct agreements provisions of the ONCPA by failing to disclose certain material information;
- (b) the Consumer Agreements breach the leasing provisions of the ONCPA, including by failing to furnish a disclosure statement;
- (c) the Corporate Defendants have engaged in unfair practices, contrary to ss. 14 and 15 of the ONCPA; and
- (d) the registration of NOSIs amounts to slander of title.

⁵ Sixth Report at paras. 31-32.

⁶ Sixth Report at para. 36.

⁷ Sixth Report at para. 34.

15. The plaintiffs in the Bonnick Action seek, among other relief:⁸

- (a) an order that certain Consumer Agreements be rescinded, cancelled, or declared unenforceable;
- (b) general damages calculated on an aggregate basis or otherwise for all payments made to the Corporate Defendants, along with punitive and special damages;
- (c) a declaration that the Corporate Defendants have been unjustly enriched;
- (d) the disgorgement of the Corporate Defendants' profits;
- (e) an interlocutory injunction barring the defendants from engaging in the conduct particularized in the plaintiffs' claim, and an order permanently enjoining the defendants from engaging in such conduct;
- (f) proprietary relief in relation to the Consumer Agreements; and
- (g) the lifting of the corporate veil so as to impose liability directly on Krimker.

16. At the time of the Initial Order, defenses had been filed, certification materials had been exchanged, and the parties were proceeding towards a contested certification and summary judgment hearing before the Class Action Judge scheduled for October 2024.⁹

⁸ Sixth Report at para. 33.

⁹ Sixth Report at para. 38.

(b) The PTC Action

17. On December 21, 2023, approximately six weeks after the granting of the Initial Order, the plaintiffs Alga Adina Bonnick, Goran Stoilov Donev and Sharah-Jane Shaw, again represented by Class Counsel, commenced the PTC Action.¹⁰

18. The PTC Action relates to similar alleged disclosure and unfairness issues in the Consumer Agreements and seeks similar relief on a national scale. In particular, the PTC Action alleges that:¹¹

- (a) PTC and the Corporate Defendants together breached the ONCPA, along with similar consumer protection legislation across Canada;
- (b) PTC and the Corporate Defendants have committed slander of title by causing the registration of NOSI against class members' home titles;
- (c) the Consumer Agreements are unconscionable and invalid; and
- (d) PTC and the Corporate Defendants have been unjustly enriched to the extent that they retained any amounts under the Consumer Agreements.

19. In addition, the PTC Action alleges that PTC is jointly and severally liable for unlawful means conspiracy and predominant purpose conspiracy with the Corporate Defendants.¹²

¹⁰ Sixth Report at para. 39.

¹¹ Sixth Report at para. 40.

¹² Sixth Report at para. 40.

C. The Mediation

20. Following the granting of the Initial Order, the risk represented by the Class Actions threatened to interfere with the successful restructuring of the Debtors, whether pursued by way of a SISP or some other restructuring alternative. In particular, based on discussions with potentially interested parties and certain financial advisory firms, the Monitor and the CRO understood that the potential rescission or declaration of invalidity of the Consumer Agreements – the Debtors’ central assets – meant there would be little to no interest in the Debtors’ business or assets without first obtaining greater clarity regarding the enforceability of the Consumer Agreements through the resolution of the Class Actions. Further, should the Plaintiffs ultimately be successful in the Class Actions, and the remedy of rescission granted, the Debtors would be left with little to no assets, and there would be no prospect of a successful restructuring.¹³

21. In order to resolve the Class Actions and obtain the clarity required to proceed with the Debtors’ restructuring, the Monitor and its counsel actively engaged with Class Counsel and other counsel of record involved in the Class Actions. At the encouragement of the Monitor and with the approval of the CCAA Court, the class action parties (together with the Monitor and the CRO) agreed to participate in the Mediation with the Honourable Thomas J. McEwen and McEwen Resolutions Inc. as mediator (the “**Mediator**”) in August and September 2024 to see if a consensual settlement of the issues in the Class Actions could be achieved. At the time, the Monitor and the Debtors had provided their written consent to lift the Stay of Proceedings for the limited purpose of proceeding with the Mediation, and if the Mediation failed, to proceed with the motions for certification and summary judgment, as permitted under the terms of the ARIO.¹⁴ Ultimately,

¹³ Sixth Report at para. 42. Affidavit of Josef Prosperi sworn March 25, 2025 (“**March 25 Prosperi Affidavit**”) at para. 16.

¹⁴ Sixth Report at para. 45.

the Mediation did not lead to a negotiated solution; however, the Mediator agreed to be available to facilitate further discussions.¹⁵

D. The Settlement Agreement

(a) Terms of the Settlement Agreement

22. Following the Mediation, the Class Actions proceeded to a contested certification and summary judgment motion before the Class Action Judge, which commenced on October 1, 2024.

23. Following the first day of the certification motion, the class action parties, with the facilitation of the Monitor, reached a tentative settlement of the Class Actions. On November 1, 2024, the Plaintiffs and the Settling Defendants signed the final Settlement Agreement.¹⁶

24. The Settlement Agreement provides for the full resolution of all claims relating to the Consumer Agreements across Canada. Under the terms of the Settlement Agreement:¹⁷

- (a) **Initial Payment and Participation Rights:** The Plaintiffs will receive: (i) an initial cash payment \$17 million (which will be entirely paid by PTC and Krimker) within thirty days of the Effective Date,¹⁸ and (ii) participation rights in the proceeds generated by the SISP in the amount of 25% of the purchase price paid over \$250

¹⁵ Sixth Report at paras. 43-44.

¹⁶ Sixth Report at paras. 46-47. See Sixth Report at fn. 1, for a full list of the “**Settling Defendants**.” A copy of the Settlement Agreement is attached as Appendix “C” to the Sixth Report.

¹⁷ For a more fulsome summary of the key terms of the Settlement Agreement, see para. 48 of the Sixth Report.

¹⁸ The “**Effective Date**” is defined in the Settlement Agreement as thirty (30) days after the Settlement Approval Date, unless any appeal is taken from the Approval Order or the CCAA Approval Order, in which case it is the date upon which all appeals have been fully disposed of on the merits in a manner that affirms the Approval Order and/or the CCAA Approval Order.

million in relation to any transaction concluded in accordance with the SISP, to be paid within ten days of closing of a Successful Bid.¹⁹

- (b) **Lease Modifications:** In addition, the parties to the Settlement Agreement agreed to various Lease modification terms, including: (i) a permanent cap of 3.5% for Settlement Class Members on any annual escalation of monthly payments under all Leases held as of the date of the Settlement Agreement; (ii) a permanent reduction by 25% to the contractual buyout/termination fees for certain Leases held as of the date of the Settlement Agreement; (iii) cancelling certain Leases with an aggregate value of \$13.5 million; (iv) consenting to a court order that no NOSI or similar lien will be enforceable against the Class Members by the Settling Defendants or any parties to whom they assign their interest in the Leases (including a buyer in the SISP); and (v) committing to consent to the discharge of particular NOSIs by Class Members in the future.²⁰
- (c) **Releases:** Upon the Effective Date, both the Plaintiffs, on behalf of the Class, and the Settling Defendants²¹ are deemed to have released and forever discharged all Releasees from any and all “Released Claims,” including all claims relating in any way to any conduct that is alleged or could have been alleged in the Class Actions, including any claim for rescission of any Leases.²²

¹⁹ Sixth Report at para. 47(a)-(b).

²⁰ Sixth Report at para. 48(c)-(f).

²¹ The “**Releasors**” are defined in the Settlement Agreement as follows: jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members, on behalf of themselves and any Person or entity claiming by or through them as a present or former, direct or indirect, parent, subsidiary, affiliate, division or department, predecessor, successor, shareholder, partner, director, owner of any kind, agent, principal, employee, contractor, attorney, heir, executor, administrator, insurer, reinsurer, devisee, assignee, trustee, servant, contractor or representative of any kind.

²² Sixth Report at para. 48(g).

25. Overall, the Settlement Agreement provides for a minimum total value of \$32,946,000, including the value of the cancelled Leases, the annual cap on Lease escalations, and the buyout discount on remaining Leases, but not including any participation amount from the SISP.²³

(b) Approval of the Settlement Agreement

26. Under the terms of the Settlement Agreement, the Plaintiffs are required to bring motions to: (i) certify the Settlement Class for settlement purposes only (the “**Certification Order**”); and (ii) obtain approval of the Class Action Judge of the Settlement Agreement (the “**Approval Order**”). As soon as is practicable following the Approval Order, counsel for the Monitor is required to schedule a motion to obtain the approval of the CCAA Court.²⁴

27. On November 15, 2024, the Class Action Judge granted the Certification Order which, among other things, certified the consolidated class proceeding for settlement purposes and approved a notice plan and proposed notices of the class action settlement approval hearing.²⁵ The Certification Order defines the “Settlement Class” as “All Persons in Canada who are or were party to a Lease at any time between July 17, 2013 and January 15, 2025, except Excluded Persons” (hereinafter, the “**Class**”).²⁶

28. The notices of settlement notified recipients that: (i) the Approval Hearing had been scheduled for February 4, 2025; and (ii) class members could opt out of the Class Action Settlement by no later than January 15, 2025, or submit objections or comments to Class Counsel

²³ Sixth Report at para. 49.

²⁴ Sixth Report at para. 48(j).

²⁵ *Bonnick v. Krimker et al.*, 2024 ONSC 6331.

²⁶ Sixth Report at para. 54. “**Excluded Persons**” means any putative Class Member who validly opts out of this proceeding in accordance with the terms of the Certification Order and each Defendant.

by December 31, 2024. Ultimately, 31 putative class members opted out of the Class Action Settlement.²⁷ Only two members of the Class objected to the Class Action Settlement.²⁸

29. The Class Action Judge heard the Approval Hearing on February 4, 2025, and approved the Class Action Settlement on February 21, 2025, finding that it was fair, reasonable, and in the best interests of the Class.²⁹ The Class Action Judge acknowledged in her endorsement that the Settlement Agreement remains subject to the approval of the CCAA Court.³⁰

PART III - THE ISSUES AND THE LAW

30. This factum addresses the following issues:

- (a) the Court should approve the Settlement Agreement;
- (b) the Court should approve the Fourth DIP Amendment; and
- (c) the Court should extend the Stay of Proceedings until July 4, 2025;

A. The Settlement Agreement Should be Approved

(a) This Court has Jurisdiction to Approve the Settlement Agreement

31. It is undisputed that CCAA courts have the jurisdiction to approve settlement agreements entered into by debtors during the course of CCAA proceedings, including in respect of proposed class actions.³¹ This authority derives from the general discretion granted to the court by s. 11 of

²⁷ Sixth Report at paras. 53-56. Many of the 31 putative class members who opted-out of the Class Action Settlement did so because they had commenced individual litigation in relation to their Consumer Agreements.

²⁸ Sixth Report at para. 59(f).

²⁹ Sixth Report at paras. 57-59; *Bonnick v. Krimker et al.*, 2024 ONSC 1151 [Approval Order Endorsement]. See Sixth Report at Appendix “D” for a copy of the Approval Order Endorsement.

³⁰ Sixth Report at para. 60.

³¹ *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#) at para. 22 [*Robertson*].

the CCAA,³² and reflects the court's authority to act in the greater good in a manner consistent with the purpose and spirit of the CCAA.³³

32. In determining whether to approve a proposed settlement, CCAA courts consider the following three factors:³⁴

- (a) whether the settlement is fair and reasonable in the circumstances;
- (b) whether the settlement will benefit the debtor and its stakeholders generally; and
- (c) whether the settlement is consistent with the purpose and spirit of the CCAA.

33. In determining whether a settlement is fair and reasonable, the court must consider whether the proposed settlement properly balances the interests of all parties and treats all parties equitably, including creditors who are not signatories to the settlement agreement.³⁵ It is important to note that the requirement to treat all creditors equitably does not mean all creditors must be treated in precisely the same manner – as noted by the court in *Calpine*, settlements entered into during CCAA proceedings will almost invariably effect other creditors to some extent:

[...] such agreements almost inevitably will have the effect of changing the financial landscape of the CCAA debtor to some extent. This is so whether the settlement involves the resolution of a simple claim by a single debtor or the kind of complicated claim illustrated in a complex restructuring such as [...] Settling with one or two claimants will invariably have an effect on the size of the estate available for other claimants.³⁶

³² *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#) at para. 11 [*Gandi*]; *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#) at paras. 68-71 [*Nortel*]; *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#) at para. 13 [*Northern Pulp*].

³³ *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#) at para. 75 [*Calpine*].

³⁴ *Robertson*, at para. 22; see also *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#) at para. 49 [*Sino-Forest*]; *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#) at para. 14.

³⁵ *Nortel*, at para. 73.

³⁶ *Calpine*, at para. 62.

34. As a result, courts have repeatedly held that, in considering what is fair and reasonable, the courts must consider the benefits that the settlement offers to creditors as a whole, while at the same time ensuring that objecting creditors are not suffering excessive prejudice or having their rights unjustly confiscated.³⁷ In line with this principle, courts have repeatedly observed that equitable treatment of creditors “is not necessary equal treatment,”³⁸ and have held that where certain creditors hold claims of a distinctive “factual or legal nature,” such creditors may be treated distinctively from other unsecured creditors.³⁹

35. The Monitor submits that the criteria outlined above are satisfied in the circumstances, as: (i) the Settlement Agreement will benefit all creditors and stakeholders by resolving the Class Actions, which will provide valuable certainty and finality while permitting the Debtors to avoid time-consuming and costly litigation; (ii) the Settlement Agreement will benefit all creditors and stakeholders by permitting the restructuring of the Debtors to proceed, including the anticipated SISP, if approved by the CCAA Court; (iii) the initial payment and participation rights provided for under the Settlement Agreement are fair and reasonable in the circumstances, and accord with the degree of litigation risk faced by the Debtors; and (iv) the Settlement Agreement is the outcome of good faith negotiations between the class action parties and is supported by the Monitor, the CRO, and PTC, the Debtors’ fulcrum creditor.

³⁷ *Air Canada (Re)*, [2004 CanLII 11700](#) (ONSC) at para. 9 [*Air Canada*]; *Calpine*, at para. 62.

³⁸ *Air Canada*, at para. 9

³⁹ *Laurentian University of Sudbury (Re)*, [2022 ONSC 5645](#) at para. 36.

(b) The Settlement Agreement Will Benefit All Creditors and Stakeholders by Avoiding Risky, Time-Consuming and Costly Litigation

36. The resolution of the Class Actions and the approval of the Settlement Agreement is needed in order to remove the spectre of risky, time-consuming and costly litigation, which would likely take years to resolve and would, if successful, subject the Debtors to substantial liability.

37. As outlined above, the Class Actions raise many complex legal issues, including the potential rescission or declared invalidity of the Consumer Agreements (which constitute the Debtors' only material assets). The Plaintiffs have put forward a number of arguments, which cumulatively constitute a significant risk to the Debtors' operations and assets moving forward. The risks inherent in permitting the Class Actions to move forward can be observed from the Approval Order Endorsement, in which the Class Action Judge noted that the proposed class occupied a "strong legal position" with respect to its claims regarding the Consumer Agreements.⁴⁰

38. Should the Settlement Agreement not be approved, there is a risk that the Class Actions would succeed at trial, exposing the Debtors to substantial liability. While precise numbers are not available, the proposed class in the Bonnick Action is estimated to be in the tens of thousands (the Corporate Defendants estimate that there are approximately 40,000 unique lessors, associated with approximately 54,265 Leases).⁴¹ This proposed class seeks damages for, among other things: (i) the amount that payments under the leases exceed the value of the goods and services provided to the class members; (ii) the registration of undisclosed amounts on title; (iii) all amounts paid to remove the security interests from title, (iv) damage to their credit; and (v) all their out of pocket and inconvenience damages. As an alternate to damages, the proposed class also seeks the

⁴⁰ Approval Order Endorsement, at para. 33.

⁴¹ Sixth Report at para. 62(h). The number of lessors where a NOSI was also registered would be subsumed within this aggregate estimate.

disgorgement of any profits generated as a result of the alleged wrongful conduct. Based on the size of the proposed class and the categories of damages sought, any damages award would potentially be very substantial.⁴²

39. By fully and finally resolving the Class Actions, the approval of the Settlement Agreement will eliminate this risk, thereby providing essential certainty and finality to the Debtors moving forward, to the benefit of creditors and stakeholders generally.⁴³ In particular, the Settlement Agreement will provide the Debtors with the benefit of the releases therein, which release the Debtors from all claims relating in any way to any conduct that is alleged in or could have been alleged in the Class Actions, including based on allegations that the Leases do not comply with or are in breach of consumer protection legislation or other applicable law or constitute unenforceable contracts.⁴⁴ Moreover, the Class Action Settlement does not constitute an admission of liability by any of the Corporate Defendants. Should the Settlement Agreement not be approved, the Debtors will not benefit from these releases; further, given that the national Class has been certified only for settlement purposes, if the Settlement Agreement is not approved, the Bonnick Action will revert back to an Ontario-only class, potentially exposing the Debtors to future additional claims from outside of Ontario.⁴⁵

40. In addition to releasing the Debtors' from potentially significant liability, the Settlement Agreement will also enable the Debtors to avoid the delay and costs which will be incurred if the Class Actions proceed to trial, which would inevitably take a considerable amount of time and substantially delay the Debtors' ongoing restructuring – as noted by the Class Action Judge, any

⁴² Sixth Report at para. 62(h).

⁴³ Courts have held that where a settlement agreement avoids the risk of a successful claim, this supports the approval of the settlement: *Walter Energy Canada Holdings, Inc. (Re)*, [2017 BCSC 1968](#) at para. 34(c) [*Walter Energy*].

⁴⁴ Sixth Report at para. 62(b).

⁴⁵ Sixth Report at para. 62(f).

litigation of the Class Actions would likely take years to resolve.⁴⁶ The avoidance of unnecessary and costly litigation provides an especially important benefit in the context of CCAA proceedings, and courts have approved settlement agreements where the resolution of the settled claims by way of litigation would have required significant costs and effort, and where the settlement would provide certainty to a difficult and complex restructuring, to the benefit of stakeholders generally.⁴⁷

41. Further, the settling of outstanding litigation in this manner is consistent with the spirit and purpose of the CCAA, which is a flexible instrument designed to balance the conflicting interests of stakeholders while ultimately facilitating the successful restructuring of a debtor.⁴⁸ Courts have held that where a settlement agreement brings significant creditors closer to an ultimate settlement of their claims, such a settlement is consistent with the spirit and purpose of the CCAA,⁴⁹ and have further held that settlement of claims within the CCAA should be encouraged, as settlements increase the chance of a successful restructuring:

[...] the chances of achieving a successful restructuring proceeding increase where the parties can agree on certain issues. Settlement agreements between the parties in these types of proceedings are very much encouraged where resolutions take place in the boardroom, as opposed to the courtroom. There is every reason to encourage such settlements, with approval and implementation subject to appropriate judicial oversight.⁵⁰

42. By shielding the Debtors from further costly and time-consuming litigation in relation to the Consumer Agreements – and in the process removing a pressing distraction during a complex and ongoing restructuring – the Settlement Agreement meaningfully increases the chance of a

⁴⁶ Sixth Report at para. 62(e); Approval Order Endorsement, at para. 41.

⁴⁷ *Northern Pulp*, at para. 17(a)-(b); *Walter Energy*, at para. 34(b); *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#) at para. 10 [*Maple Bank*].

⁴⁸ *Nortel*, at para. 74

⁴⁹ *Nortel*, at para. 74.

⁵⁰ *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1773](#) at para. 15.

successful restructuring, to the benefit of creditors and stakeholders generally, in a manner consistent with the spirit and purpose of the CCAA.

(c) The Settlement Agreement Will Benefit All Creditors and Stakeholders by Permitting the CCAA Proceedings to Move Forward

43. Given the risk posed by the ongoing litigation, the resolution of the Class Actions and the approval of the Settlement Agreement is needed before the CCAA Proceedings which, to date, have been hampered by uncertainty, will be able to effectively move forward.

44. In particular, the approval of the Settlement Agreement is a necessary pre-condition for the implementation of a successful SISP. Without the certainty provided by the Settlement Agreement, the enforceability of the assets to be sold by way of a SISP – namely, the Consumer Agreements – will remain unsettled, as they will still be subject to potential recession or declared invalidity should the Class Actions ultimately succeed. In such circumstances, potential purchasers are unlikely to participate in the SISP, a reluctance which has been confirmed by way of the Monitor’s preliminary discussions with potentially interested parties and certain financial advisory firms,⁵¹ as well as numerous discussions held by the CRO with key industry players and potential sales agents with experience in the residential HVAC sector.⁵² These discussions have made clear that without the settlement of the Class Actions, the sale of the Consumer Agreements would be extremely difficult, if not impossible, to complete, to the detriment of all stakeholders.⁵³

45. The required certainty can only be provided by the proposed Settlement Agreement. It is not tenable to wait for the outcome of the Class Actions prior to administering the SISP, as the

⁵¹ Sixth Report at para. 62(c).

⁵² March 25 Prosperi Affidavit at para. 16.

⁵³ March 25 Prosperi Affidavit at para. 16.

resolution of the Class Actions could take years, during which time the Debtors' estate would incur significant additional costs, including the need for additional DIP financing to maintain operations during the CCAA Proceedings.⁵⁴ Further, in the event that the Plaintiffs ultimately succeeded in their claim for rescission or declared invalidity, the Consumer Agreements would effectively cease to exist, depriving the Debtors' estate of its only meaningful asset and rendering a SISP pointless.

46. In contrast, should the Settlement Agreement be approved, the uncertainty of the Class Actions will no longer be looming over the Debtors' assets, and the upcoming SISP will therefore be able to maximize the return on those assets to the benefit of creditors and stakeholders generally. Courts have recognized the value of a settlement agreement in unlocking the value of a debtor's assets, and have approved settlement agreements where the settlement promised to provide the debtor with the opportunity to work towards a successful restructuring,⁵⁵ including where the settlement will facilitate the sale of the business or assets of the debtor.⁵⁶

(d) The Initial Payment and Participation Rights are Reasonable in the Circumstances, and are Proportionate to the Litigation Risk Faced by the Debtors

47. Given the nature of the allegations raised in the Class Actions (as outlined above), and the detrimental impacts if the Class Actions are not resolved, the terms of the Settlement Agreement properly reflect the litigation risk which the Debtors would face if the Class Actions proceeded to a trial on the merits,⁵⁷ and properly balance the interests of all creditors and stakeholders.

⁵⁴ March 25 Prosperi Affidavit at para. 17.

⁵⁵ *Northern Pulp*, at para. 17(c)-(d).

⁵⁶ *Gandi*, at para. 15.

⁵⁷ See *Imperial Tobacco Canada Limited et al. (Re)*, (June 27, 2019), Ont S.C.J. [Commercial List], Court File No. CV-19-616077-00CL ([Endorsement of Justice McEwen](#)), at pp. 1-2, in which Justice McEwen approved a settlement partially on the basis that the quantum and other terms "reflect, accurately, the litigation risk faced by the parties if the matter proceeded to a hearing."

48. As noted above, the initial cash payment in the Settlement Agreement will be paid entirely by PTC and Krimker.⁵⁸ The participation amount set out in the Settlement Agreement, which is capped at 25% of the proceeds of any transaction(s) concluded in the SISP over \$250 million, is reasonable in the circumstances. The participation right is a critical term of the Class Action Settlement, as facilitated by the Mediator, and it is highly unlikely that the Plaintiffs would have entered into the Settlement Agreement without the inclusion of the participation right,⁵⁹ an outcome which, as noted above, would in practice mean there would be no SISP and no proceeds available for distribution to secured or unsecured creditors. Further, the 25% figure is proportionate to the litigation risk posed by the Class Actions, as the potential liability faced by the Debtors should the Class Actions succeed – which, as noted above, is likely to be very substantial owing to the sheer size of the proposed class and the categories of damages sought – would likely exceed the quantum of the Debtors’ other unsecured claims.⁶⁰

49. Finally, it is important to note that in each of the Class Actions, the Plaintiffs claim rescission of the Consumer Agreements as a critical head of relief. Given that the Consumer Agreements are the Debtors’ only material assets, if the Settlement Agreement is not approved and the Plaintiffs, on behalf of a certified class, ultimately succeed in their claim for rescission, the Debtors would be left with no material assets to market as part of a SISP. In these circumstances, there would be no prospect of restructuring the Debtors’ business, and no recovery whatsoever for any of the Debtors’ unsecured creditors.⁶¹ Given the unique nature of the Plaintiffs’ claims against

⁵⁸ Sixth Report at para. 62(g).

⁵⁹ March 25 Prosperi Affidavit at para. 18.

⁶⁰ Sixth Report at para. 62(h). As at November 16, 2023, the Monitor was aware of approximately \$5 million in outstanding unsecured claims. The Monitor is also aware of certain other unsecured claims, the largest of which is a contingent claim asserted by MNP Corporate Finance Inc. (“MNP”) against the Debtors, in which MNP asserted at trial its damages to be in the approximate amount of \$15.6 million (including interest calculated at 1.5% per month compounded). No decision was rendered prior to the issuance of the Initial Order.

⁶¹ Sixth Report at para. 62(d).

the Debtors' assets – and the unique risk those claims pose to the Debtors' ongoing restructuring – it is clear that the Plaintiffs hold claims of a distinctive factual and legal nature, such that any differential treatment of the Class is both reasonable in the circumstances, and ultimately in the interest of creditors and stakeholders generally.

50. By preventing the possibility of such a disastrous outcome, the Settlement Agreement (including the release of all claims relating to the Consumer Agreements) provides clear and substantial benefits to the Debtors' creditors and stakeholders as a whole, including those creditors and stakeholders who are not party to the Settlement Agreement. Courts have approved settlement agreements where the settlement resolved a claim which, had it been successful, would have deprived other creditors of any opportunity for a meaningful recovery.⁶²

(e) The Settlement Agreement is the Outcome of Good Faith Negotiations and is Supported by the Monitor, the CRO and PTC

51. The Settlement Agreement is the result of months of negotiations between the parties, as facilitated by the Mediator, and constituted, in the words of the Class Action Judge, a “good faith, arms-length bargaining” process,⁶³ which ultimately led to a negotiated solution of the issues between the parties.⁶⁴ The Monitor and the CRO, which supported the negotiations and the Mediation, support the Settlement Agreement as fair and reasonable in the circumstances.⁶⁵

52. Each of these facts strongly supports the approval of the Settlement Agreement. In approving settlements, courts have noted favourably where the settlement was the outcome of substantial, good faith negotiation between the parties – including by way of impartial mediation

⁶² *Walter Energy*, at para. 34.

⁶³ Approval Order Endorsement, at para. 47.

⁶⁴ Sixth Report at para. 62(a).

⁶⁵ Sixth Report at paras. 61-62; March 25 Prosperi Affidavit at para. 19.

– and where the monitor has played a significant role in the resolution of the dispute.⁶⁶ Further, courts place significant weight on the support of the monitor for a settlement, especially where the subject matter of the settlement is complex – in such circumstances, the court will take into account the business judgment of the monitor, a court officer involved in the negotiation of the settlement.⁶⁷

53. Further, PTC, as the Debtors’ fulcrum creditor, is the Debtors’ stakeholder most interested in the compromises represented by the Settlement Agreement, and is supportive of same. As at February 28, 2025, PTC was owed approximately \$274 million by the Debtors.⁶⁸

B. The Fourth DIP Amendment Should be Approved

54. As discussed above, the DIP Facility is currently subject to a borrowing limit of \$30 million. As of March 22, 2025, the Debtors have borrowed \$28.6 million against the DIP Facility.⁶⁹

55. On March 24, 2025, the DIP Lender and the Debtors entered into an amendment to the DIP Term Sheet (the “**Fourth DIP Amendment**”). Pursuant to the Fourth DIP Amendment, the borrowing limit under the DIP Facility is to be increased to \$34 million, and the maturity date is to be extended to July 4, 2025, or such later date as the DIP Lender may agree.⁷⁰

56. The Debtors, with the assistance of the Monitor and in consultation with the CRO, have prepared an updated cash flow forecast for the purpose of projecting the estimated liquidity needs of the Debtors for the period from March 23, 2025, to July 5, 2025 (the “**Updated Cash Flow Forecast**” and the “**Forecast Period**”).⁷¹ The Updated Cash Flow Forecast makes clear the Debtors’ need for additional liquidity in order to continue operating during the Forecast Period.

⁶⁶ *Northern Pulp*, at para. 18.

⁶⁷ *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#) at para. 27; *Maple Bank*, at para. 9.

⁶⁸ Sixth Report at para. 62(i).

⁶⁹ Sixth Report at paras. 64-65.

⁷⁰ Sixth Report at para. 66.

⁷¹ Sixth Report at paras. 23-25. The Cash Flow Forecast is attached at Appendix “B” to the Sixth Report.

Over the course of the Forecast Period, the Debtors are projected to incur a net cash outflow of approximately \$3.6 million on the following basis:⁷² (i) operating cash receipts are anticipated to total approximately \$19.9 million; (ii) operating disbursements are anticipated to total approximately \$8.3 million; and (iii) payments made to service concurrent lease agreements and debts owing to PTC are anticipated to total approximately \$15.2 million.

57. In order to make up for the anticipated net cash outflow, the Updated Cash Flow Forecast projects the use of cash on hand as of the beginning of the Forecast Period and additional borrowings under the DIP Facility in the amount of \$4 million over the Forecast Period.⁷³

58. Based on the Updated Cash Flow Forecast, the Monitor submits that the Fourth DIP Amendment is reasonable and necessary in the circumstances, as the Debtors will require the additional liquidity to operate going forward.⁷⁴

C. The Stay Period Should be Extended

59. Pursuant to section 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (a) circumstances exist that make the order appropriate; and (b) the debtor company satisfies the Court that it has acted, and is acting, in good faith and with due diligence. There is no statutory time limit on how long a stay of proceedings can be extended.

60. The Stay Period currently expires on April 4, 2025. The Monitor, for and on behalf of the Debtors, asks that the Stay Period be extended to and including July 4, 2025. The Monitor submits that extending the Stay Period is warranted for the following reasons:⁷⁵

⁷² Sixth Report at paras. 26-29.

⁷³ Sixth Report at para. 29.

⁷⁴ Sixth Report at paras. 67-68.

⁷⁵ Sixth Report at para. 71. See also March 25 Prosperi Affidavit at para. 14.

- (a) the Debtors, under the stewardship of the CRO and supervision of the Monitor, are acting in good faith and with due diligence;
- (b) the extension of the Stay Period will permit the class action parties to effectuate the Settlement Agreement, should it be approved by the CCAA Court;
- (c) the extension of the Stay Period will allow the Monitor, in consultation with the CRO and the DIP Lender, to finalize and seek approval of the SISP (the Monitor has tentatively scheduled a hearing on April 29, 2025 to bring a motion, for and on behalf of the Debtors, to seek approval of the SISP);
- (d) as of the date of the Sixth Report, the Monitor is not aware of any party opposed to an extension of the Stay Period; and
- (e) the extension of the Stay Period should not materially prejudice any creditor of the Debtors as the Updated Cash Flow Forecast reflects that the Debtors are projected to have sufficient funding to continue to operate in the normal course through the proposed stay extension period.

PART IV - NATURE OF THE ORDER SOUGHT

61. For the reasons set out above, the Monitor requests that this Court grant the proposed Settlement Approval Order and the proposed Fifth Stay Extension Order substantially in the form of the draft orders included at Tabs 3 and 4 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of March, 2025.



OSLER, HOSKIN & HARCOURT LLP
per Marleigh Dick

SCHEDULE “A”: LIST OF AUTHORITIES

1. *1057863 B.C. Ltd. (Re)*, [2024 BCSC 1111](#)
2. *Air Canada (Re)*, [2004 CanLII 11700](#) (ONSC)
3. *Calpine Canada Energy Ltd. (Re)*, [2007 ABQB 504](#)
4. *Great Basin Gold Ltd. (Re)*, [2012 BCSC 1773](#)
5. *Imperial Tobacco Canada Limited et al. (Re)*, (June 27, 2019), Ont S.C.J. [Commercial List], Court File No. CV-19-616077-00CL ([Endorsement of Justice McEwen](#))
6. *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corp.*, [2013 ONSC 1078](#)
7. *Laurentian University of Sudbury (Re)*, [2022 ONSC 5645](#)
8. *Maple Bank GmbH (Re)*, [2016 ONSC 7218](#)
9. *Nortel Networks Corp.*, (Re), [2010 ONSC 1708](#)
10. *Nortel Networks Corporation (Re)*, [2018 ONSC 6257](#)
11. *Return on Innovation Capital Ltd. v. Gandi Innovations Ltd.*, [2010 ONSC 1759](#)
12. *Robertson v. ProQuest Information & Learning Co.*, [2011 ONSC 1647](#)
13. *The Cash Store Financial Services Inc. (Re)*, [2015 ONSC 7538](#)
14. *Walter Energy Canada Holdings, Inc. (Re)*, [2017 BCSC 1968](#)

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

Date March 28, 2025



Signature
Marleigh Dick

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies’ Creditors Arrangement Act, RSC 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.

[...]

Stays, etc. — initial application

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

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

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

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

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

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

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

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

Restriction

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

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

Court File No. CV-23-00709183-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
CROWN CREST CAPITAL MANAGEMENT CORP., CROWN CREST FINANCIAL
CORP., CROWN CREST FUNDING CORP., SIMPLY GREEN HOME SERVICES INC.,
SIMPLY GREEN HOME SERVICES CORP., AND CROWN CREST CAPITAL TRUST

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

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE MONITOR

OSLER, HOSKIN & HARCOURT LLP

100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)

Tel: 416.862.4908

Email: mwasserman@osler.com

Shawn T. Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Martino Calvaruso (LSO# 57359Q)

Tel: 416.862.6665

Email: mcalvaruso@osler.com

Counsel to KPMG Inc., in its capacity as Monitor