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Court File / Estate No.: 31-3226764
31-3226766

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

-AND-

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

**IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3,
AS AMENDED**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HCSI HOME COMFORT INC., IN THE CITY OF VAUGHAN, IN THE PROVINCE OF
ONTARIO**

AND

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
HCSI HOME COMFORT 2 INC., IN THE CITY OF NORTH YORK, IN THE
PROVINCE OF ONTARIO**

FACTUM
(Continuation and Consolidation of NOI Proceedings, SISP Approval and Other Relief)

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Monitor of the Simply Green Debtors,
Proposal Trustee of HCSI 1 and HCSI 2 in
the NOI Proceedings and Proposed Monitor
of HCSI 1 and HCSI 2

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 capacities as:
 - (a) the monitor (in such capacity, the “**Monitor**”) 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 (collectively, the “**Simply Green Debtors**”) in its proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, (the “**CCAA**” and the “**CCAA Proceedings**”), which commenced on November 9, 2023;
 - (b) the proposal trustee (in such capacity, the “**Proposal Trustee**”) in connection with the Notices of Intention to Make a Proposal (each, an “**NOI**”) filed on May 23, 2025 by HCSI Home Comfort Inc. (“**HCSI 1**”) and HCSI Home Comfort 2 Inc. (“**HCSI 2**” and together with HCSI 1, the “**HCSI Entities**”) pursuant to s. 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, (the “**BIA**” and the “**NOI Proceedings**”); and
 - (c) the proposed Monitor of the HCSI Entities in the proposed consolidated CCAA proceedings with the Simply Green Debtors.

2. The Simply Green Debtors are in the business of leasing home improvement equipment to retail consumers. The Simply Green Debtors’ lease portfolio (which, as of the Initial Order Date (as defined below), totalled approximately 84,000 leases) is spread across the common law provinces of Canada. In Ontario, approximately 11,000 leases were originated through the Simply Green Debtors’ joint ventures partners, HCSI 1 and HCSI 2, as part of the Simply Green Debtors’ RNC Business (as defined below), and subsequently assigned to the Simply Green Debtors.

3. The HCSI Entities have no financial capacity of their own, are unable to raise additional financing and cannot operate independently of the Simply Green Debtors, who are their largest creditors. The Simply Green Debtors ceased providing funding to the HCSI Entities since the Initial Order Date. As a result, the HCSI Entities and their businesses are languishing and the value of their property is eroding. The shareholders of the HCSI Entities, which include the Simply Green Debtors, all agree that the status quo is not sustainable. On May 23, 2025, the HCSI Entities commenced the NOI Proceedings, which KPMG as the Proposal Trustee now seeks to have continued under the CCAA and consolidated with the CCAA Proceedings.

4. Since the commencement of the CCAA Proceedings, the Monitor has been working to stabilize the Simply Green Debtors' business and identify one or more value maximizing transactions. Until recently, a major impediment in doing so was the existence of two proposed class actions (the "**Class Actions**") in which the plaintiffs sought, among other relief, the rescission of the leases making up the Simply Green Debtors' lease portfolio. On April 4, 2025, the Court issued the Settlement Approval Order (as defined below) which approved the settlement of the Class Actions, as it relates to the Simply Green Debtors, thereby removing a significant cloud over the Simply Green Debtors' property and paving the way for the implementation of a sales process in the CCAA Proceedings. The HCSI Entities are "Settling Defendants" under the Class Action settlement and have agreed to allow their property to be marketed and sold as part of such sales process.

5. KPMG therefore brings this motion seeking an order (the "**SISP Order**"), among other things, approving a sales and investment solicitation process ("**SISP**") with respect to the Business and the Property of both the Simply Green Debtors and the HCSI Entities (hereinafter, assuming the relief sought in the within motion is granted, referred to collectively as the "**Debtors**").

6. To pave the way for a successful SISP, KPMG is seeking certain additional relief in this motion, in the form of the Second Amended and Restated Initial Order (the “**SARIO**”), which, among other things: (i) authorizes the continuation under the CCAA of the NOI Proceedings involving the HCSI Entities, and their consolidation with the existing CCAA Proceedings; (ii) approves an amendment to the existing CRO Engagement Letter (as defined below) and grants a sealing order with respect to the same; (iii) approves the engagement of Canadian Imperial Bank of Commerce (“**CIBC**”) as sales agent in respect of the SISP (the “**Sales Agent**”) pursuant to the terms of the CIBC Engagement Letter (as defined below), and grants a sealing order with respect to the same; (iv) approves an amendment to the existing DIP Term Sheet (as defined below) and approval of the DIP Joinder (as defined below) to add the HCSI Entities as obligors under the DIP Term Sheet; (v) approves a proposed key employee retention plan (the “**KERP**”) and grants a sealing order with respect to the same; and (vi) extends the Stay of Proceedings (as defined below) to October 31, 2025.

7. If the SARIO is granted, KPMG as Proposal Trustee also seeks “Discharge and Termination Orders” under the BIA, which will, among other things, discharge the Proposal Trustee and terminate the NOI Proceedings.

8. The proposed SISP represents the best path forward for both the Simply Green Debtors and the HCSI Entities, as it will enable the Monitor and the Sales Agent to test the market and obtain the best possible value for the Debtors’ Property, for the benefit of all stakeholders.

PART II - SUMMARY OF FACTS

9. The facts regarding this motion are more fully set out in the Joint Report of KPMG,¹ and in the Affidavit of Joseph Prospero.²

A. The CCAA Proceedings

10. The CCAA Proceedings were commenced by way of an initial order (the “**Initial Order**”) granted by the Court on November 9, 2023 (the “**Initial Order Date**”), which, among other things: (i) appointed KPMG as the Monitor; (ii) granted a stay of proceedings (the “**Stay of Proceedings**”) for an initial 10-day period; (iii) approved the appointment of HWS Consulting Inc. (“**HWS**”), as the Chief Restructuring Officer (the “**CRO**”) of the Simply Green Debtors pursuant to the terms of an engagement letter dated November 8, 2023 (as amended, the “**CRO Engagement Letter**”); and (vi) approved the terms of an interim financing facility (the “**DIP Facility**,” pursuant to the terms of the “**DIP Term Sheet**”) provided by Peoples Trust Company (“**PTC**”) (in such capacity, the “**DIP Lender**”). At the comeback hearing held on November 17, 2023, the Court issued the Amended and Restated Initial Order (the “**ARIO**”), which incorporated certain amendments to the Initial Order, including an extension of the Stay of Proceedings.³

11. The Court subsequently granted five stay extension orders which, among other things: (i) extended the Stay of Proceedings; (ii) approved various amendments to the CRO Engagement Letter; and (iii) approved various amendments to the DIP Term Sheet. The most recent stay

¹ Joint Report of KPMG dated May 26, 2025 (“**Joint Report**”). Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Joint Report. Unless otherwise stated, all monetary amounts referred to in this factum are expressed in Canadian dollars.

² Affidavit of Joseph Prospero sworn May 26, 2025 (“**Prospero Affidavit**”).

³ See Joint Report at paras. 2-4 for a detailed summary of the Initial Order and the ARIO.

extension order (the “**Fifth Stay Extension Order**”), issued on April 4, 2025, extended the Stay of Proceedings to and including July 4, 2025.⁴

12. Also on April 4, 2025, the Court issued the Settlement Approval Order which, among other things, approved and gave effect to, as it relates to the Debtors, the settlement of the Class Actions and the agreement signed with respect to the same (the “**Settlement Agreement**”), which provides for the full resolution of all claims against the “**Settling Defendants**” (which includes the Simply Green Debtors and the HCSI Entities), including any all claims relating to the portfolio of Leases held by the Settling Defendants in Canada.⁵

B. The RNC Business and the HCSI Entities

13. The Simply Green Debtors are in the business of leasing home improvement equipment to retail consumers. In Ontario, one channel through which lease agreements were originated was by providing HVAC equipment to builders of residential homes, and then entering into lease agreements with the purchasers of the new homes (the “**RNC Business**”).⁶

14. Since 2017, the majority of the RNC Business was originated through HCSI 1 (and following a reorganization in 2020, HCSI 2), which were the Simply Green Debtors’ joint venture partners.⁷ The lease agreements in question were generally originated by the HCSI Entities and assigned to the Simply Green Debtors as follows:⁸

⁴ For a detailed summary of these subsequent orders, see Joint Report at paras. 5-8, 10.

⁵ Joint Report at para. 9.

⁶ Joint Report at paras. 36-37.

⁷ Joint Report at para. 37. HCSI 1 has two shareholders: Rolene Holdings Inc. (“**Rolene**”) and Old Simply Green (together, the “**HCSI 1 Shareholders**”), each of whom holds 50% of the outstanding shares of HCSI 1. HCSI 2 has two shareholders: Rolene and New Simply Green (together, the “**HCSI 2 Shareholders**” and, together with the HCSI 1 Shareholders, the “**HCSI Shareholders**”), each of whom holds 50% of the outstanding shares of HCSI 2. See Joint Report at paras. 38-41 for a detailed description of the ownership of the HCSI Entities.

⁸ See Joint Report at para. 42 for a detailed description of the process by which lease agreements were originated.

- (a) Residential home builders would enter into builder site agreements (the “**BSAs**”) with Home Corp,⁹ whereby, in return for an installation allowance, the home builder authorized the applicable HCSI Entity to supply HVAC equipment to be installed in the newly constructed homes and agreed to include an acknowledgement in all agreements of purchase and sale that the HVAC equipment had been supplied on a “rental basis” and that the purchaser agreed to enter into a lease agreement with the applicable HCSI Entity.
- (b) Pursuant to a Supply Agreement, HCSI 1 or HCSI 2 (as applicable) agreed to supply HVAC equipment for each approved BSA, while Old Simply Green or New Simply Green (as applicable) agreed to provide all lease administration requirements.
- (c) Prior to October 2020, HCSI 1 would then assign certain tranches of leases to CCCT, operating as lease program financier, pursuant to a Master Assignment and Program Agreement dated August 1, 2017, of which approximately 5000 leases remain active (the “**HCSI 1 Leases**”). Following an internal reorganization in 2020, HCSI 2 replaced HCSI 1, and new lease agreements were assigned to New Simply Green (which also agreed to provide lease administration requirements) pursuant to a Master Assignment and Program Agreement dated October 13, 2020. Of these leases, approximately 6000 remain active (the “**HCSI 2 Leases**,” and together with the HCSI 1 Leases, the “**HCSI Leases**”).

15. The HCSI Entities have historically relied on funding provided by the Simply Green Debtors to operate the RNC Business; however, this funding ceased as of the Initial Order Date. The HCSI Entities do not have the financial resources or the operational capacity to independently

⁹ Home Corp is a third-party entity which is under common control with Rolene.

fund new HVAC equipment purchases or to independently service the HCSI Leases. The HCSI Entities are also unable under the Shareholders Agreements to raise additional financing. While the Simply Green Debtors have continued to service existing HCSI Leases, there have been no new originations since the Initial Order Date.¹⁰ The HCSI Entities, and the HCSI Entities' businesses, are languishing.

16. Substantially all of the monthly cash flows received by the HCSI Entities (approximately \$0.5 million per month) are used to repay amounts owing to CCCT and New Simply Green, as applicable. As such, absent a sale of the HCSI Property,¹¹ the HCSI Entities do not have the ability to repay their outstanding obligations to the Simply Green Debtors and other third-party creditors.¹²

C. The NOI Proceedings

17. On May 22, 2025, the CRO, on behalf of the Simply Green Debtors, delivered a letter to the HCSI Entities (the "**Demand Letter**") demanding immediate repayment of the aggregate amount of \$10,421,732, which represents unsecured amounts owing by the HCSI Entities to the Simply Green Debtors related to advances by the Simply Green Debtors for the purchase of HVAC equipment and other charges.¹³

¹⁰ Joint Report at paras. 44-45, 51.

¹¹ The "**HCSI Property**" refers to the HCSI Entities' current and future assets, property and undertakings, if any: Joint Report, at para. 55

¹² Joint Report at para. 50. The balance sheet of HCSI 1 reflects secured borrowings of approximately \$11.8 million and \$5.5 million in other unsecured amounts due to related parties (in respect of HVAC equipment purchases and other charges). The balance sheet of HCSI 2 reflects secured borrowings of approximately \$17.3 million and \$4.9 million in other unsecured amounts due to related parties. The Monitor understands that the secured amounts relate to the assignment transactions with CCCT and New Simply Green, which assignments appear to be reflected in the books and records as financing transactions: Joint Report, at paras. 47-48.

¹³ Joint Report at para. 57.

18. On May 23, 2025, following the receipt of the Demand Letter and with the consent of each of the HCSI Shareholders, the HCSI Entities resolved to commence the NOI Proceedings. The NOI Proceedings were commenced with a view to obtaining the benefit of the automatic stay of proceedings under the BIA, with the intention being to immediately continue and consolidate the NOI Proceedings within the CCAA Proceedings, in order to facilitate the sale of the HCSI Property through the SISP. KPMG was named as Proposal Trustee.¹⁴

19. Since the filing of the NOIs, no steps have been taken in the NOI Proceedings other than the issuance by the Proposal Trustee of the prescribed notices to the creditors of the HCSI Entities, advising of the NOI Proceedings and the upcoming motion in the CCAA Proceedings.¹⁵

D. The SISP

20. Since the date of the Fifth Stay Extension Order, the Monitor has continued to advance, in consultation with the CRO and the DIP Lender, the development of a SISP in respect of some or all of the Debtors' Business or Property, with a view to entering into one or more value-maximizing transactions. With the granting of the Settlement Approval Order, the Monitor now proposes to implement the proposed SISP, which will be conducted by the Monitor and the Sales Agent, in consultation with the CRO and the DIP Lender.¹⁶

21. The proposed SISP contemplates a two-phase process, to be run by the Monitor and the Sales Agent, which is proposed to commence on June 2, 2025. A detailed summary of the proposed SISP has been set out by KPMG in the Joint Report.¹⁷

¹⁴ Joint Report at paras. 11-12, 58-59.

¹⁵ Joint Report at para. 60; Supplemental Joint Report of KPMG dated May 30, 2025 (the "**Supplemental Joint Report**") at para. 9.

¹⁶ Joint Report at para. 67.

¹⁷ Joint Report at paras. 69-74.

PART III - THE ISSUES AND THE LAW

22. This factum addresses the following issues:
- (a) the NOI Proceedings should be continued under the CCAA and consolidated with the existing CCAA Proceedings;
 - (b) the Discharge and Termination Orders should be granted;
 - (c) the SISP should be approved;
 - (d) the engagement of CIBC as Sales Agent should be approved;
 - (e) the Fifth CRO Amendment should be approved;
 - (f) the KERP should be approved;
 - (g) the requested sealing orders should be granted;
 - (h) the Fifth DIP Amendment and the DIP Joinder should be approved; and
 - (i) the Stay of Proceedings should be extended to October 31, 2025.

A. The NOI Proceedings Should be Continued and Consolidated Under the CCAA

(a) The Test for Continuance is Met

23. Section 11.6(a) of the CCAA provides the Court with the jurisdiction to continue BIA Part III proposal proceedings under the CCAA. In *Clothing for Modern Times Ltd. (Re)*, the court set out the requirements that must be fulfilled in order for a continuance to be granted:¹⁸

¹⁸ [2011 ONSC 7522](#) at para. 9 [*Modern Times*]. See also *The Body Shop Canada Limited (Re)*, [2024 ONSC 3882](#) at para. 10 [*Body Shop*]; *Comstock Canada Ltd., (Re)*, [2013 ONSC 4756](#) at paras. 36-45 [*Comstock*]; *Urbancorp Toronto Management Inc., (Re)*, [2016 ONSC 3288](#) at paras. 36-40 [*Urbancorp*].

- (a) that no proposal has been filed under the BIA (which the court referred to as the “sole statutory condition” to obtaining a continuance);
- (b) that the proposed continuance is consistent with the purposes of the CCAA; and
- (c) that “evidence which serves a reasonable surrogate” for the information required under s. 10(2) of the CCAA has been provided to the court.¹⁹

24. Each of these conditions has been fulfilled. As set out above, no steps have been taken in the NOI Proceedings other than delivery of the prescribed BIA notices, and no proposals have been filed.²⁰ Further, the information required by s. 10(2) of the CCAA has been provided by way of the Updated Cash Flow Forecast found in the Joint Report (which includes the HCSI Entities),²¹ and by the attachment of unaudited financial statements prepared for the HCSI Entities.²²

25. Finally, the continuance of the NOI Proceedings is consistent with the purposes of the CCAA. As set out above, the HCSI Entities do not have the financial or operational capacity to operate independently; they have historically relied on funding provided by the Simply Green Debtors. Such funding ceased as of the Initial Order and the HCSI Entities are unable to raise additional funding; as a result, the business of the HCSI Entities is languishing, and the value of the HCSI Property is continually eroding.²³

¹⁹ Section 10(2) of the CCAA requires that an initial application be accompanied by: (i) a statement indicating, on a weekly basis, the projected cash flow of the debtor company; (ii) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and (iii) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

²⁰ Joint Report at paras. 60, 63.

²¹ See Joint Report at paras. 27-34.

²² See Joint Report at Appendices “F” and “G” for the financial statements of HCSI 1 and HCSI 2, respectively.

²³ Joint Report at paras. 44-45, 51-53, 61(d). The continuation of NOI Proceedings may be particularly appropriate where the entities subject to the NOI are part of a highly interconnected corporate group: *Urbancorp*, at para. 39.

26. The purposes of the CCAA – which include the need to avoid the social and economic losses arising from liquidation, and preserving the status quo in order to achieve a fair reorganization²⁴ – are therefore clearly engaged in the circumstances:

- (a) The HCSI Shareholders, the CRO, and KPMG all agree that the status quo is not sustainable, and that the best way to maximize the value of the HCSI Property is to market and sell it as part of the SISF. Adding the HCSI Entities to the CCAA Proceedings will ensure that the Monitor and the CRO are able to oversee and exercise their Court-granted powers with respect to the marketing and sale of the HCSI Property, and will further ensure that the HCSI Property can be sold free and clear pursuant to a Court-issued vesting order (which any potential purchaser of the HCSI Property will likely require in the circumstances, and without which there is a risk that any purchaser will not attribute fair market value to the HCSI Property). By continuing the NOI Proceedings under the CCAA, the prescribed stay of proceedings in the BIA will not apply, thereby providing the Monitor and the CRO with the stability and flexibility needed to market and sell the HCSI Property.²⁵
- (b) As Settling Defendants, the HCSI Entities have agreed to allow the HCSI Property to be marketed and sold as part of the SISF, which will allow the HCSI Entities to receive the benefit of the releases set out in the Settlement Agreement. The releases will effectively cleanse the HCSI Leases of any claims of the Class, thereby

²⁴ *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#) at paras. 15, 69, 70 and 77. Note that the purposes of the CCAA can be fulfilled even where the proposed reorganization involves a sale process, rather than a plan of arrangement: *Body Shop*, at para. 14; *Modern Times*, at para. 12.

²⁵ Joint Report at paras. 53, 55, 61(f). The maximization of recovery is an important consideration in considering whether to grant a continuance: *Modern Clothing*, at para. 13; *Comstock*, at para. 38.

increasing the value of the HCSI Leases and increasing the likelihood that a third-party purchaser will acquire them.²⁶

- (c) Should the relief sought be granted, the HCSI Entities will be added as obligors under the DIP Term Sheet and will have sufficient liquidity to fund their obligations until the end of the proposed Stay of Proceedings.²⁷
- (d) The continuance and consolidation of the NOI Proceedings is supported by: (i) Rolene, the other 50% shareholder of the HCSI Entities; (ii) the DIP Lender; and (iii) KPMG, which has consented to act as Monitor of the HCSI Entities.²⁸

27. For these reasons, the continuation of the NOI Proceedings under the CCAA is consistent with the purposes of the CCAA and represents the best path forward for the HCSI Entities and their stakeholders. Consolidation with the existing CCAA Proceedings is also reasonable and appropriate in the circumstances, as the HCSI Entities are closely affiliated with the Simply Green Debtors, and their respective Property will be jointly sold via the SISF pursuant to the terms of the Settlement Agreement. In such circumstances, courts will grant procedural consolidation in order to avoid an unnecessary and expensive multiplicity of proceedings.²⁹ NOI Proceedings continued under the CCAA may be procedurally consolidated with existing CCAA Proceedings.³⁰

(b) The HCSI Entities are Companies to Which the CCAA Applies

28. The CCAA applies to a “debtor company” or affiliated debtor companies where the total amount of claims against the debtor or its affiliates exceeds five million dollars. HCSI 1 and HCSI

²⁶ Joint Report at para. 54.

²⁷ Joint Report at para. 61(h).

²⁸ Joint Report at para. 61(g), (i), (j).

²⁹ *Electro Sonic Inc. (Re)*, [2014 ONSC 942](#) at paras. 4-6; *Mustang GP Ltd., (Re)*, [2015 ONSC 6562](#) at para. 25.

³⁰ See, i.e., *SemCanada et. al. (Re)*, (July 30, 2008), A.B.K.B., 0801-08510 (Amended and Restated Initial Order), at para. 5, which is attached to this factum as Schedule “C”.

2 are each a “company” for the purposes of s. 2 of the CCAA because they do business in or have assets in Canada.³¹ A “debtor company” means, *inter alia*, a company that is insolvent.³² Whether a company is insolvent is evaluated by reference to the definition of “insolvent person” in the BIA, and the expanded concept of insolvency adopted in *Stelco*, in which the court held that a debtor is insolvent where there is a looming liquidity crisis such that it is reasonably foreseeable that the debtor will run out of cash unless its business is restructured.³³

29. HCSI 1 and HCSI 2 are both companies to which the CCAA applies, as they have liabilities exceeding five million dollars,³⁴ and face the kind of imminent liquidity crisis that clearly satisfies the expanded *Stelco* test. As set out above, the amounts set out in the Demand Letter and owing to the Simple Green Debtors (which are the largest creditors of the HCSI Entities) remain outstanding, and there is no prospect of repayment.³⁵ Without the sale of the HCSI Property, the HCSI Entities will not have the ability to repay their outstanding obligations to the Simply Green Debtors and their other creditors.³⁶

(c) The Discharge and Termination Orders Should be Granted

30. Should the proposed SARIO be granted, the HCSI Entities will become parties to the CCAA Proceedings, and the NOI Proceedings will have run their course. In such circumstances,

³¹ *Lydian International Limited (Re)*, [2019 ONSC 7473](#) at paras. 35-36. The HCSI Entities are both incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44, and are headquartered in Ontario: Joint Report at para. 38.

³² CCAA, ss. 2 and 3(1).

³³ *Stelco Inc. (Re)*, [2004 CarswellOnt 1211](#) at para. 26.

³⁴ Joint Report at para. 61(c).

³⁵ Joint Report at para. 61(d).

³⁶ Joint Report at para. 50.

the courts have found that it is reasonable and necessary to terminate NOI proceedings, discharge the proposal trustee, and approve the activities, conduct, and fees of the proposal trustee.³⁷

B. The SISP Should be Approved

31. CCAA courts have the jurisdiction to approve a sale process in relation to a CCAA debtor's business and assets. The court in *Nortel* identified a number of factors that should be considered in determining whether to authorize a sale process, including: (i) whether a sale transaction is warranted at the time; (ii) whether the sale will benefit the entire economic community; (iii) whether any of the debtors' creditors have a bona fide reasons to object to the sale; and (iv) whether there is a better viable alternative.³⁸

32. The Monitor submits that each of the *Nortel* criteria are satisfied in respect of the SISP:³⁹

- (a) **The SISP is Warranted at this Time:** The SISP is warranted and necessary at this time. The Settlement Approval Order has now been granted and approves the Settlement Agreement, as it relates to the Debtors, in which the Settling Defendants agreed to allow the HCSI Property to be marketed and sold as part of the SISP.⁴⁰ The operations of the Simply Green Debtors are currently being funded by the DIP Lender, and by commencing the SISP as soon as practicable, the Debtors will have an opportunity to enhance the value of their respective Business and Property, rather than continuing to incur debt.⁴¹ The SISP was developed by the Monitor and

³⁷ *Body Shop*, at paras. 27-28; *Hakim Optical Laboratory Limited et al. (Re)*, (May 15, 2025), Ont. S.C.J. [Commercial List], Court File No. BK-25-03212487-0031 ([Endorsement of Justice Kimmel](#)) at para. 25 [*Hakim Optical*].

³⁸ *Nortel Networks Corp. (Re)* (2009), [2009 CanLII 39492 \(ON SC\)](#) at paras. 48-49. Although the *Nortel* criteria were articulated prior to the 2009 amendments to the CCAA, the same criteria apply under the post-2009 CCAA: *Brainhunter Inc. (Re)*, [2009 CanLII 72333 \(ON SC\)](#) at paras. 15-17.

³⁹ A copy of the proposed SISP is attached to the Joint Report as Appendix "K".

⁴⁰ Joint Report at paras. 54, 68.

⁴¹ Joint Report at para. 75(f).

the CRO, in consultation with the Sales Agent and PTC, and is supported by the Monitor, the CRO, and PTC as appropriate in the circumstances.⁴²

- (b) **The Sale Process Will Benefit the Entire Economic Community:** The SISP is a fair, transparent, and effective means of maximizing the value of the Debtors' Property.⁴³ The SISP contains auction provisions designed to maximize the sale value in the event of multiple overlapping Qualified Bids; further, by providing PTC with the right to credit-bid its secured debt should a suitable sale transaction not materialize, the SISP leaves open another route to a successful transaction, to the benefit of stakeholders generally.⁴⁴

- (c) **The Debtors' Creditors do not have Any Reason to Object:** There is no *bona fide* reason for any creditors to object to the proposed SISP, which is an open and transparent process designed to maximize recovery for creditors generally. The proposed SISP will ensure that the Debtors' business and assets will be widely exposed to the market for a sufficient period of time, while also ensuring that the Debtors will continue to operate normally during the SISP.⁴⁵

- (d) **There is No Better Viable Alternative:** No better alternative to the proposed SISP currently exists. As set out above, in the absence of the SISP, the Simply Green Debtors will continue to be dependent on financing from the DIP Lender.⁴⁶ Further, if the SISP is not implemented, the Debtors will be unable to fulfil the requirements

⁴² Joint Report at para. 75(g)-(h); Prosperi Affidavit at para. 18.

⁴³ Joint Report at para. 75.

⁴⁴ Joint Report at para. 75(d)-(e).

⁴⁵ Joint Report at para. 75(b)-(c).

⁴⁶ Joint Report at para. 75(f).

of the Settlement Agreement, to the detriment of all stakeholders, including the Class.

C. The Engagement of the Sales Agent and the Sales Agent Charge Should be Approved

33. The proposed SISP Order approves the engagement of CIBC as Sales Agent, pursuant to an engagement letter dated April 28, 2025 (the “**CIBC Engagement Letter**”). The CIBC Engagement Letter is effective as of February 10, 2025.⁴⁷

34. Under the terms of the CIBC Engagement Letter, the Sales Agent’s responsibilities will include, among other things, organizing the proposed SISP, identifying and engaging with potential purchasers, and providing the Monitor and the CRO with advice and assistance regarding the SISP and any proposed transactions. In exchange, the Sales Agent will be paid: (i) a monthly work fee (the “**CIBC Work Fee**”), which will be credited against any fee otherwise payable to the Sales Agent; and (ii) a base completion fee (the “**Completion Fee**”). Amounts owing to the Sales Agent under the CIBC Engagement Letter will be secured by a charge over the Debtors’ Property (the “**Sales Agent Charge**”) in the maximum amount of \$3.5 million, which will rank junior to the Administration Charge and the DIP Lender’s Charge.⁴⁸

35. The Court has the jurisdiction to approve the engagement of restructuring advisors pursuant to s. 11 of the CCAA, and has sanctioned the engagement of advisors for the purpose of maximizing the returns obtained as part of a SISP.⁴⁹ The Court has the jurisdiction to grant charges

⁴⁷ Joint Report at paras. 76, 80; a copy of the redacted CIBC Engagement Letter is attached to the Joint Report as Appendix “L”.

⁴⁸ Joint Report at paras. 77-78. 81.

⁴⁹ *Biosteel Sports Nutrition Inc.*, (September 21, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00706033-00CL ([Endorsement of Justice Cavanaugh](#)) at para. 12 [*Biosteel*]; *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#) at para. 158(b) [*Tacora*]; *Walter Energy Canada Holdings, Inc., (Re)*, [2016 BCSC 107](#) at para. 35 [*Walter Energy*].

in respect of the fees of an advisor pursuant to s. 11.52 of the CCAA,⁵⁰ with such charges being the typical basis on which advisors are incentivized to work for debtor companies.⁵¹

36. The engagement of the Sales Agent is supported by the Monitor, the CRO, and PTC, and is in the interest of stakeholders generally. The Sales Agent is a qualified advisor with significant experience running SISPs in CCAA proceedings, is familiar with the Debtors' business and assets, and is ready to launch the SISP by the SISP Commencement Date.⁵² The Monitor and the CRO view the quantum of the CIBC Work Fee and the Completion Fee as reasonable and comparable to similar fees granted in other CCAA proceedings, and further view it as appropriate for the Sales Agent to have the benefit of a court-approved charge.⁵³

D. The Fifth CRO Amendment Should be Approved

37. The latest amendment to the CRO Engagement Letter was approved by this Court on January 9, 2025, and maintains the monthly fee payable to the CRO (the "**Work Fee**") of \$65,000 per month for the three-month period from February 2025 through to April 2025.⁵⁴

38. Following further discussions, the CRO and PTC have agreed to a further amendment to the CRO Engagement Letter, pursuant to which the Work Fee will remain at \$65,000 until the later of: (i) the issuance of a termination order in the CCAA Proceedings; or (ii) the termination of the CRO Engagement Letter (the "**Fifth CRO Amendment**"). The CRO and PTC have also agreed to a Success Fee, payable in relation to the proceeds arising from any Restructuring Transaction.⁵⁵

⁵⁰ *Biosteel*, at para. 12; *Walter Energy*, at paras. 39-43.

⁵¹ *Tacora*, at para. 152.

⁵² Joint Report at para. 82.

⁵³ Joint Report at para. 82; *Prosperi Affidavit* at paras. 19-20.

⁵⁴ Joint Report at para. 102.

⁵⁵ See Joint Report at paras. 103-104 for a detailed summary of the Fifth CRO Amendment, including the definition of a Restructuring Transaction.

39. The Monitor was consulted in respect of the Fifth CRO Amendment (including the Success Fee) and is supportive of same. The Fifth CRO Amendment maintains the Work Fee at the level previously approved by the Court and the CRO's total remuneration is comparable to those paid to other chief restructuring officers in similar cases.⁵⁶ The Success Fee reflects the CRO's expected contribution to the SISP.⁵⁷

E. The KERP Should be Approved

40. The CRO, in consultation with the Monitor and PTC, has designed a KERP in order to incentivize seven key employees (the "**KERP Participants**") to remain with the Simply Green Debtors for the duration of the SISP.⁵⁸ Under the terms of the proposed KERP, the KERP Participants will receive retention bonuses ranging between 33% and 85% of their annual base salary (with an average of 56%), up to a maximum aggregate amount of \$775,000.⁵⁹

41. The discretion of a CCAA court to approve a key employee retention program is well established,⁶⁰ and derives from the court's power under s. 11 of the CCAA to make any order it considers appropriate.⁶¹ The factors considered in granting a key employee retention plan vary from case to case; however, some factors are generally present, including: (i) whether the employees are important to the restructuring process; (ii) whether the employees have specialized

⁵⁶ See *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at paras. 4-12, in which the court approved fees amounting to \$52,000 per month; *Nextpoint Financial (Re)*, (July 25, 2023), BCSC Vancouver Registry No. 5-235288 ([Initial Order](#)) at para. 10, citing the CRO engagement letter found at Exhibit S to the [Affidavit of Peter Kravitz](#), sworn July 25, 2023 at p. 1207, in which the court approved fees of \$80,000 per month; *Pride Group Holdings Inc.*, [2024 ONSC 1830](#) at para. 45 [*Pride Group*], in which the court approved a work fee of CAD \$100,000 per month plus HST, commencing on the 1st day of March, 2024 and USD \$75,000 plus applicable taxes, payable on the first day of each month thereafter (which fees are set out in Exhibit L to [the Affidavit of Sulakhan Johal](#) sworn March 26, 2024 at p. 238).

⁵⁷ Joint Report at para. 105. For examples of success fees granted to CROs, see, i.e., *Pride Group*, at paras. 56-59; *Walter Energy*, at para. 38.

⁵⁸ Prosperi Affidavit at para. 23.

⁵⁹ Prosperi Affidavit at para. 27; Joint Report at paras. 85-86, 88(a), (c).

⁶⁰ See, i.e., *Grant Forest Products (Re)*, [2009 CanLII 42046](#) (ONSC) at para. 14 [*Grant Forest Products*]; *Cinram International (Re)*, [2012 ONSC 3767](#) at para. 91.

⁶¹ *Mountain Equipment Co-operative (Re)*, [2020 BCSC 1586](#) at para. 56.

knowledge that cannot be easily replaced; (iii) whether the employees will consider alternate employment options; (iv) whether the retention program was developed in a consultative process; and (v) whether the Monitor supports the retention process.⁶²

42. The factors set out above support the approval of the KERP. The KERP Participants each have in-depth knowledge of the Debtors' Business and Property which cannot be easily replaced, and are therefore essential to both the continued operation of the Debtors during the SISP and to ultimately obtaining a successful, value maximizing outcome in the SISP.⁶³ As the end date of the Simply Green Debtors' operations approaches, certain of the KERP Participants have indicated their intention to seek alternate employment.⁶⁴ Further, the design of the KERP is fair and contains proper safeguards. The KERP Participants will only be eligible for payments under the KERP if they are terminated without cause or if the SISP is successfully completed.⁶⁵ Finally, the KERP was developed in consultation with the Monitor, who approves of the proposed KERP.⁶⁶ CCAA courts place "a great deal of confidence" in the Monitor's support for an employee retention plan.⁶⁷

43. Courts will defer to the business judgment of a party seeking an employee retention plan regarding the scope and quantum of a key employee retention plan where the process for designing the plan has been fair and objectively reasonable and where the end result is also reasonable.⁶⁸ On the basis of the factors identified above, the Court should approve the proposed KERP.

⁶² *Walter Energy*, at paras. 58-59, citing *Grant Forest Products*.

⁶³ *Prosperi Affidavit* at paras. 24-25. *Joint Report* at para. 86.

⁶⁴ *Prosperi Affidavit* at para. 23.

⁶⁵ *Prosperi Affidavit* at para. 27(c); *Joint Report* at para. 88(d).

⁶⁶ *Joint Report* at paras. 86, 89.

⁶⁷ *Grant Forest Products* at paras. 18-19.

⁶⁸ *Grant Forest Products* at paras. 17-18.

F. The Requested Sealing Orders Should be Granted

44. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Monitor requests that the following documents be treated as confidential and sealed and not form part of the public record: (i) the unredacted CIBC Engagement Letter; (ii) the Fifth CRO Amendment; and (iii) the summary of the proposed KERP.

45. The test for a sealing order is set out by the Supreme Court of Canada in *Sherman Estate*. The test considers the following factors: (i) whether court openness poses a serious risk to an important public interest; (ii) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent this risk; and (iii) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.⁶⁹

46. Each of these considerations supports the proposed sealing order. CCAA courts have found that there is a public interest both in maximizing recovery in an insolvency, and in protecting the privacy interests of employees from the disclosure of private and personal information.⁷⁰ CCAA courts have accordingly approved sealing orders where the order is required to protect, among other things, commercially sensitive information found in advisor engagement letters,⁷¹ and commercially sensitive and confidential information relating to the employees of a debtor.⁷²

⁶⁹ *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

⁷⁰ *The Body Shop of Canada Limited. (Re)*, (April 5, 2024), Ont. S.C.J. [Commercial List], Court File No. BK-24-03050417-0031 ([Endorsement of Justice Osborne](#)) at para. 28 [*Body Shop*]; *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at para. 83 [*Danier Leather*].

⁷¹ In respect for a SISP advisor, see *Balboa Inc. et al*, (April 12, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00713245-00CL ([Endorsement of Justice Cavanaugh](#)), at paras. 17-18. In respect of a CRO, see *Pride Group*, at paras. 56-59.

⁷² See, i.e., *Danier Leather*, at paras. 83-84; *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114](#) (ON SC) at paras. 51-52; *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#) at paras. 23-27; *Ted Baker Canada Inc. et al. (Re)*, (May 3, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL ([Endorsement of Justice Black](#)) at para. 20.

47. These public interests are fully engaged. The CIBC Engagement Letter and the Fifth CRO Amendment include formulas for the calculation of the Completion Fee and the Success Fee which are based on potential ranges of transaction proceeds and which could, if disclosed, undermine the ability of the Monitor and Sales Agent to consummate a value maximizing transaction.⁷³ Similarly, the KERP contains commercially sensitive and personal information regarding the KERP Participants, which, if disclosed, could harm the privacy interests of the KERP Participants.⁷⁴

48. There is no reasonable alternative to the requested sealing orders which would protect the commercial and privacy interests of the Debtors and the individual employees. Further, the proposed sealing orders are “discrete, proportional, and limited,”⁷⁵ as the public disclosure of the sealed information would not assist stakeholders in any way. The benefits of the proposed sealing orders far outweigh any negative effects.

49. Finally, the proposed sealing orders are supported by the Monitor.⁷⁶ CCAA courts consider the support of the Monitor to be relevant in determining whether the *Sherman Estate* test is met.⁷⁷

G. The Fifth DIP Amendment and the DIP Joinder Should be Approved

50. The DIP Facility is currently subject to a borrowing limit of \$34 million. As of May 17, 2025, the Simply Green Debtors have borrowed \$30.1 million against the DIP Facility.⁷⁸

51. On May 29, 2025, the DIP Lender and the Simply Green Debtors entered into an amendment to the DIP Term Sheet (the “**Fifth DIP Amendment**”).⁷⁹ Pursuant to the Fifth DIP

⁷³ Joint Report at paras. 83, 106; Prosperi Affidavit at para. 21.

⁷⁴ Joint Report at para. 91; Prosperi Affidavit at para. 29.

⁷⁵ *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#), at para. 63 [*Original Traders*].

⁷⁶ Joint Report at paras. 83, 91, 106.

⁷⁷ *Original Traders*, at paras. 60, 64.

⁷⁸ Joint Report at paras. 94-95.

⁷⁹ The executed version of the Fifth DIP Amendment is attached as Appendix “E” to the Supplemental Joint Report.

Amendment, the borrowing limit under the DIP Facility is to be increased to \$38.6 million to account for the projected funding required to conduct the SISP, and the maturity date is to be extended to November 1, 2025, or such later date as the DIP Lender may agree.⁸⁰ The Monitor views the Fifth DIP Amendment as reasonable, as the Debtors will require the additional liquidity to operate going forward.⁸¹

52. The proposed SARIO also provides that the HCSI Entities and the Simply Green Debtors are authorized to execute a joinder to the DIP Term Sheet (the “**DIP Joinder**”), pursuant to which the HCSI Entities will be added as obligors in respect of liabilities incurred from and after June 2, 2025.⁸² The DIP Joinder is required in order to ensure that the HCSI Entities have sufficient liquidity to fund their obligations during the extended Stay of Proceedings.

H. The Reports and Activities of KPMG Should be Approved

53. KPMG seeks the approval of the actions, conduct and activities outlined in the fifth report of the Monitor dated January 3, 2025 (the “**Fifth Report**”), the sixth report of the Monitor dated March 25, 2025 (the “**Sixth Report**”), and the Joint Report (collectively, the “**Reports**”).

54. Requests to approve a monitor or proposal trustee’s report and activities are not unusual, and there are good policy and practical reasons for the court to do so, including: (i) allowing the monitor to move forward with the next steps; (ii) allowing the monitor to bring its activities before the Court; (iii) enabling the Court to satisfy itself that a monitor’s activities have been conducted

⁸⁰ Joint Report at para. 96.

⁸¹ Joint Report at para. 98. The Monitor’s conclusions are based on the Updated Cash Flow Forecast (summarized at paras. 27-34 of the Joint Report), which projects that the Debtors will incur a net cash outflow of approximately \$7 million during the period from May 18, 2025, to November 1, 2025.

⁸² Joint Report at para. 99. The proposed SARIO provides that the DIP Lender’s Charge will only secure obligations incurred by the HCSI Entities from and after June 2, 2025.

in prudent and diligent manners; (iv) providing protection for a monitor not otherwise provided by the CCAA; and (v) protecting creditors from delay that may be caused by re-litigation of steps.⁸³

55. KPMG submits that the Reports, along with the applicable activities described therein, should be approved. The activities set out in the Reports have been carried out in accordance with the orders of this Court, and KPMG has acted reasonably and in good faith throughout.

I. The Fees of KPMG and its Counsel Should be Approved

56. KPMG additionally seeks the approval of the following fees and disbursements of itself and its counsel, Osler: (i) fees of the Monitor from August 1, 2024, to April 30, 2025, totalling \$364,336.25, along with disbursements in the amount of \$25,503.55; and (ii) fees of Osler from August 1, 2024, to April 30, 2025, totalling \$787,213.00, along with disbursements of \$6,337.62.⁸⁴

57. In considering whether to approve fees and disbursements, the court has regard to the “overriding principle of reasonableness,” and does not engage in a docket-by-docket or line-by-line assessment of the accounts.⁸⁵ The following factors assist a court in assessing the reasonableness of the Monitor’s fees under the CCAA: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the Monitor’s knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when

⁸³ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para. 23.

⁸⁴ Joint Report at paras. 112-113.

⁸⁵ *Nortel Networks Inc.*, [2022 ONSC 668](#) at para. 10 [*Nortel*].

performed in a prudent and economical manner.⁸⁶ This reasoning applies equally to the reports and activities of a proposal trustee in respect of NOI proceedings continued under the CCAA.⁸⁷

58. The fees and disbursements are appropriate and should be approved. KPMG and Osler have acted with diligence throughout these CCAA proceedings. The fees and disbursements of the KPMG and Osler have been reviewed by both the CRO and PTC, who do not oppose the approval of the fees and disbursements. In addition, KPMG has reviewed the fees and disbursements of Osler, which KPMG confirms reflect duly authorized and duly rendered services, and which are reasonable in the circumstances.⁸⁸

J. The Stay of Proceedings Should be Extended

59. Pursuant to s. 11.02 of the CCAA, the Court may grant an extension of a stay of proceedings where: (i) circumstances exist that make the order appropriate; and (ii) 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 of Proceedings currently expires on July 4, 2025. KPMG asks that the Stay of Proceedings be extended to and including October 31, 2025, for the following reasons:⁸⁹

- (a) the Simply Green 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 of Proceedings will permit the Monitor and the Sales Agent, in consultation with the CRO and the DIP Lender, to implement the SISP;

⁸⁶ *Nortel* at para. 11.

⁸⁷ See, i.e., *Body Shop*, at paras. 27-28; *Hakim Optical*, at para. 25

⁸⁸ Joint Report at paras. 114-115.

⁸⁹ Joint Report at para. 101.

- (c) as of the date of the Joint Report, the Monitor is not aware of any party opposed to an extension of the Stay of Proceedings; and
- (d) the extension of the Stay of Proceedings should not materially prejudice any creditor of the Debtors and 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.

61. With respect to the HCSI Entities, the limited 10-day initial CCAA stay period is not necessary in the circumstances, as: (i) all known creditors have been made aware of the NOI Proceedings; (ii) KPMG would not be planning to seek any additional relief at a comeback motion; (iii) the proposed SARIO provides that all parties may bring a motion on seven days notice; and (iv) the HCSI entities have been in NOI Proceedings since May 23, 2025, which will be ten days prior to the hearing of this motion.⁹⁰ Where an existing BIA proceeding is being continued, CCAA courts have frequently granted a stay extension beyond the 10-day statutory stay.⁹¹

PART IV - NATURE OF THE ORDER SOUGHT

62. For the reasons set out above, KPMG requests that this Court grant the proposed SARIO, the proposed Discharge and Termination Orders, and the proposed SISF Order substantially in the form of the draft orders included at Tabs 3, 5, 6 and 7 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 30th day of May, 2025.



OSLER, HOSKIN & HARCOURT LLP
per Marleigh Dick

⁹⁰ Joint Report at para. 101(e).

⁹¹ *Hakim Optical*, at paras. 16-19. See also *Body Shop*, at para. 19.

SCHEDULE “A”: LIST OF AUTHORITIES

1. *Biosteel Sports Nutrition Inc.*, (September 21, 2023), Ont S.C.J. [Commercial List], Court File No. CV-23-00706033-00CL ([Endorsement of Justice Cavanaugh](#))
2. *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114](#) (ON SC)
3. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#)
4. *Cinram International (Re)*, [2012 ONSC 3767](#)
5. *Clothing for Modern Times Ltd., (Re)*, [2011 ONSC 7522](#)
6. *Comstock Canada Ltd., (Re)*, [2013 ONSC 4756](#)
7. *Danier Leather Inc., Re*, [2016 ONSC 1044](#)
8. *Electro Sonic Inc. (Re)*, [2014 ONSC 942](#)
9. *Grant Forest Products (Re)*, [2009 CanLII 42046](#) (ONSC)
10. *Hakim Optical Laboratory Limited et al. (Re)*, (May 15, 2025), Ont. S.C.J. [Commercial List], Court File No. BK-25-03212487-0031 ([Endorsement of Justice Kimmel](#))
11. *Laurentian University of Sudbury*, [2021 ONSC 3885](#)
12. *Lydian International Limited (Re)*, [2019 ONSC 7473](#)
13. *Mountain Equipment Co-operative (Re)*, [2020 BCSC 1586](#)
14. *Mustang GP Ltd., (Re)*, [2015 ONSC 6562](#)
15. *Nextpoint Financial (Re)*, (July 25, 2023), BCSC Vancouver Registry No. 5-235288 ([Initial Order](#))
16. *Nortel Networks Inc.*, [2022 ONSC 668](#)
17. *Ontario Securities Commission v. Bridging Finance Inc.*, [2021 ONSC 4347](#)
18. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, [2023 ONSC 753](#)
19. *Pride Group Holdings Inc.*, [2024 ONSC 1830](#)
20. *SemCanada et. al. (Re)*, (July 30, 2008), A.B.K.B., 0801-08510 (Amended and Restated Initial Order)
21. *Stelco Inc. (Re)*, [2004 CarswellOnt 1211](#) (ONSC)
22. *Tacora Resources Inc. (Re)*, [2023 ONSC 6126](#)
23. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)

24. *Ted Baker Canada Inc. et al. (Re)*, (May 3, 2024), Ont. S.C.J. [Commercial List], Court File No. CV-24-00718993-00CL ([Endorsement of Justice Black](#))
25. *The Body Shop Canada Limited (Re)*, [2024 ONSC 3882](#)
26. *The Body Shop of Canada Limited. (Re)*, (April 5, 2024), Ont. S.C.J. [Commercial List], Court File No. BK-24-03050417-0031 ([Endorsement of Justice Osborne](#))
27. *Urbancorp Toronto Management Inc., (Re)*, [2016 ONSC 3288](#)
28. *Walter Energy Canada Holdings, Inc., (Re)*, [2016 BCSC 107](#)

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

Date May 30, 2025



Signature
Marleigh Dick

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

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person’s locality, stating

- (a) the insolvent person’s intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor’s books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Companies’ Creditors Arrangement Act, RSC 1985, c C-36

Definitions

2 (1) In this Act,

[...]

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (compagnie)

[...]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

[...]

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

[...]

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.

[...]

Court may order security or charge to cover certain costs

11.52 (1) 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 proceedings 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.

Priority

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

[...]

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the Bankruptcy and Insolvency Act,

- (a) proceedings commenced under Part III of the Bankruptcy and Insolvency Act may be taken up and continued under this Act only if a proposal within the meaning of the Bankruptcy and Insolvency Act has not been filed under that Part; and
- (b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the Bankruptcy and Insolvency Act but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from
 - (i) the operation of subsection 50.4(8) of the Bankruptcy and Insolvency Act, or
 - (ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the Bankruptcy and Insolvency Act.

Courts of Justice Act, RSO 1990, c C.43

Documents public

- 137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

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

SCHEDULE "C"

Action No. 0801-08510

I hereby certify this to be a true copy of
the original Order
Dated this 30 day of July 2008
[Signature]
for Clerk of the Court

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

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
SEMCANADA CRUDE COMPANY, SEMCAMS ULC, SEMCANADA ENERGY
COMPANY, A.E. SHARP LTD., CEG ENERGY OPTIONS, INC., 3191278 NOVA
SCOTIA COMPANY and 1380331 ALBERTA ULC

APPLICANTS

BEFORE THE HONOURABLE) AT THE COURTHOUSE, IN THE CITY
MADAME JUSTICE ROMAINE) OF CALGARY, IN THE PROVINCE OF
IN CHAMBERS) ALBERTA, ON WEDNESDAY, THE
) 30th DAY OF JULY, 2008

AMENDED AND RESTATED INITIAL ORDER

UPON the application of SemCanada Crude Company ("SemCanada Crude"), SemCAMS ULC ("SemCAMS"), SemCanada Energy Company ("SemCanada Energy"), A.E. Sharp Ltd. ("Sharp"), CEG Energy Options, Inc. ("CEG"), 3191278 Nova Scotia Company ("319") and 1380331 Alberta ULC ("138") (collectively, the "Applicants") to (i) consolidate the proceeding of SemCAMS in Action No. 0801-08685 (the "SemCAMS Proceeding") with the within proceeding of SemCanada Crude, both of which were commenced by way of two separate orders dated July 22, 2008 (the "Initial Orders") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"); (ii) continue under the CCAA the proceedings of SemCanada Energy, Sharp and CEG commenced by them on July 24, 2008 under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3 as amended (the "BIA") and to consolidate them with the within proceeding; and (iii) declare that 319 and 138 are "affiliated companies" to which the CCAA applies and grant to them the protections of this Order, AND

UPON having read (i) the Notice of Motion, filed, (ii) the Affidavit of David Keay sworn July 29, 2008, filed, and (iii) the First Report to the Court of Ernst & Young Inc. (“E&Y”) in its capacity as Monitor of SemCanada Crude and SemCAMS (the “Monitor”) dated July 30, 2008, and on hearing submissions of counsel for the Applicants, the Monitor, Bank of America and Bank of Montreal; **AND UPON** being satisfied that circumstances exist that make this Order appropriate, **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of motion for this Order is hereby abridged, this application is properly returnable today and further service of the notice of motion, other than to those listed on the Service List attached to the notice of motion, is hereby dispensed with.

APPLICATION

2. The Applicants are companies to which the CCAA applies, and for greater certainty, 319 and 138 are declared to be “affiliated companies” to which the CCAA applies.
3. The terms of the Initial Orders shall be operative and shall continue to govern the period until the granting of this Amended and Restated Initial Order and the terms of the Initial Orders are hereby amended and restated by the terms of this Amended and Restated Initial Order from and after the granting of this Amended and Restated Initial Order, provided that any and all actions taken by or on behalf of the Applicants and the Monitor pursuant to and in accordance with the terms of the Initial Orders and prior to the granting of this Amended and Restated Initial Order are hereby validated; and, for greater certainty, the Charges as defined in such Initial Orders shall continue to apply with respect to claims and obligations covered by such Charges from the effective time and date of such Initial Orders until the effective time and date of this Amended and Restated Initial Order.
4. The SemCAMS Proceeding is hereby continued and consolidated with the within proceeding.

5. The proceedings of SemCanada Energy (Estate No. 25-1092292) commenced in Calgary, Alberta, Sharp (Estate No. 32-1091972) commenced in Hamilton, Ontario, and CEG (Estate No. 23-1092168) commenced in Saskatoon, Saskatchewan, on July 24, 2008 under Part III, Division I of the BIA (the "BIA Proceedings") are hereby continued pursuant to section 11.6 of the CCAA and consolidated with the within proceeding, and the BIA Proceedings with respect to CEG and Sharp are stayed pending recognition of this Order in Saskatchewan and Ontario, respectively.
6. The actions of E&Y as proposal trustee in the BIA Proceedings up to and including the date of this Order are hereby authorized and approved, and E&Y is hereby discharged as proposal trustee from any and all requirements that it would otherwise have to carry out under the BIA in connection with such BIA Proceedings. For greater certainty, all powers, duties, rights and obligations of E&Y are hereby contained in this Order and the provisions of the CCAA.
7. The consolidation of proceedings effected pursuant to paragraphs 2, 4 and 5 hereof is for administrative purposes only and shall not effect a consolidation of the assets and property of the Applicants for any purpose including, without limitation, for the purposes of any plan or plans of arrangement that may hereafter be proposed. Unless otherwise expressly provided in this Order, the Applicants are hereby directed to continue to maintain their separate property and assets.

PLAN OF ARRANGEMENT

8. The Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "Plan") between, among others, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

9. The Applicants shall:

- (a) remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, including all proceeds thereof (the "Property");
 - (b) subject to further order of this Court, continue to carry on business in a manner consistent with the preservation of the Property and their businesses, including, but not limited to, operation of SemCAMS's three sour natural gas processing plants known as (i) Kaybob South No. 3 Gas Plant; (ii) the Kaybob South Amalgamated Plant Nos. 1 and 2; and (iii) the West Whitecourt Gas Plant, and SemCAMS' sweet natural gas processing plant known as West Fox Creek Plant (collectively, the "Plants"), as well as all associated gas gathering and transportation pipelines of SemCAMS (all of which are collectively hereinafter referred to as the "Business"); and
 - (c) be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other Persons (as defined below) (collectively "Assistants") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business, for the carrying out of the terms of this Order or to assist the Applicants with their Restructuring activities (as hereinafter defined) as contemplated by this Order.
10. To the extent permitted by law, the Applicants shall be entitled but not required to pay the following expenses, incurred prior to or after this Order:
- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

11. Except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants to carry on and preserve the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; provided that such capital expenditures shall not exceed \$1,000,000 in aggregate with respect to SemCanada Crude, \$5,000,000 in aggregate with respect to SemCAMS and \$50,000 in aggregate with respect to each of the other Applicants, except by further Order of this Court; and
 - (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

12. The Applicants shall remit, in accordance with legal requirements, or pay:
 - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
 - (i) employment insurance,
 - (ii) Canada Pension Plan, and
 - (iii) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.
- 13. Until such time as the Applicants repudiate a real property lease in accordance with paragraph 15(c) of this Order, the Applicants may pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by any of the Applicants from time to time for the period commencing from and including the date of this Order ("Rent"), but shall not pay any rent in arrears.
- 14. Except as specifically permitted in this Order, the Applicants are hereby directed, until further order of this Court:
 - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of the date of this Order;
 - (b) to grant no security interests, trusts, liens, charges or encumbrances upon or in respect of any of their Property; and

- (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

15. The Applicants shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their businesses or operations and to dispose of redundant or non-material assets not exceeding, with respect to each Applicant, \$250,000 in any one transaction or \$1,000,000 in the aggregate (or in excess of these amounts, by order of this Court);
- (b) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate on such terms as may be agreed upon between any of the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 16 and 17, vacate, abandon or quit any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days' notice in writing to the relevant landlord on such terms as may be agreed upon between the relevant Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the relevant Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan;
- (e) pursue all avenues of refinancing and offers for material parts of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph 15(a), above); and

- (f) settle claims of any of their customers and suppliers that are in dispute, with the approval of the Monitor,

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

16. The Applicants shall provide each of the relevant landlords with notice of the relevant Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal. If the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further order of this Court upon application by the Applicant on at least two (2) days' notice to such landlord and any such secured creditors. If the Applicant repudiates the lease governing such leased premises in accordance with paragraph 15(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute, and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.
17. If a lease is repudiated by the relevant Applicant in accordance with paragraph 15(c) of this Order, then:
 - (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice; and
 - (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant

of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

18. Until and including August 21, 2008, or such later date as this Court may order (the "Stay Period"), no proceeding, suit, complaint, action, grievance, arbitration, application, right, remedy (judicial or extra judicial, statutory or non-statutory) or enforcement process in any court (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, unless the prior written consent of the Applicants and the Monitor is obtained.

NO EXERCISE OF RIGHTS OR REMEDIES

19. During the Stay Period, all rights and remedies of any individual, firm, corporation, partnership, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person"), whether judicial or extra-judicial, statutory or non-statutory against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on;
 - (b) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment;

- (c) prevent the filing of any registration against the Applicants to preserve or perfect a security interest in existence as at the effective time of this Order; or
 - (d) prevent the registration of a claim for lien against the Applicants.
20. Nothing in this Order shall prevent any party from taking an action against the Applicants where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Applicants and the Monitor at least seven (7) days prior to such action being taken.

NO INTERFERENCE WITH RIGHTS

21. During the Stay Period, subject to s.11.1 of the CCAA, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, including, without limitation, any agreement or contract for the supply of crude oil, natural and raw gas, blending agreement, contract operating agreement, gas gathering, processing or handling agreement, construction, ownership and operating agreement (the "CO&O Agreement"), joint sharing use agreement, storage, distribution, processing or similar agreements, except with the written consent of the applicable Applicant and the Monitor, or leave of this Court, and without limitation to the foregoing, the operation of any provision of any such agreement or other arrangement, including without limitation, the CO&O Agreements, that purports to effect or cause a cessation of operatorship or accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend or modify such agreement or arrangement as a result of the occurrence of any default or non-performance by or the insolvency of the relevant Applicant, the making or filing of these proceedings or any allegation, admission or evidence in these proceedings is hereby stayed and restrained; and under no circumstances shall SemCAMS cease to be, or be replaced as, operator of the Plants pursuant to the CO&O Agreements without further Order of this Court.

CONTINUATION OF SERVICES

22. During the Stay Period, all Persons having:

- (a) statutory or regulatory mandates for the supply of goods and/or services; or
- (b) oral or written agreements or arrangements with the Applicants, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, storage, services, electrical supply or other utility, crude oil, natural or raw gas supply, or other services to the Business or the Applicants,

are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending, or terminating the supply of such goods or services as may be required by the Applicants or exercising any other remedy provided under such agreements or arrangements. The Applicants shall be entitled to the continued supply of crude oil, natural or raw gas and continued use of their current premises, electrical supply or other utilities, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by the applicable Applicant in accordance with the payment practices of such Applicant, or such other practices as may be agreed upon by the supplier or service provider and the applicable Applicant and the Monitor, or as may be ordered by this Court. Nothing in this Order has the effect of prohibiting a Person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the date of this Order.

INTERCOMPANY PAYMENTS, ADVANCES, TRANSFERS AND LOANS

23. Notwithstanding any cash management agreement or arrangements or any other agreement to the contrary, but subject to paragraphs 24 and 25 of this Order, no payments, advances or transfers of funds shall be made by any of the Applicants to SemCanada L.P., SemCanada II, L.P., SemGroup L.P., SemOperating G.P., L.L.C. or

any other related or affiliated corporation or entity (collectively, the “Related Entities”) without further order of this Court, other than, with the consent of the Monitor, payment for goods and services provided to any of the Applicants in the ordinary course of business after the date of this Order on arm’s length terms and conditions. Notwithstanding paragraphs 19 to 22 of this Order, cash management services shall not be continued to the Applicants if the effect thereof is to cause funds to be transferred to or from the Applicants or Related Entities.

24. Notwithstanding paragraph 23 of this Order, and subject to the consent of the Monitor and Bank of America or further order of this Court, SemCanada Crude is authorized to make such loans, advances or transfer of funds to SemCAMS or any other affiliate or subsidiary of SemCanada Crude incorporated in Canada or a province thereof, on such terms and conditions as it deems necessary or appropriate; provided, however, that such loan, advance or transfer is secured by security over all the present and after acquired assets of such affiliate or subsidiary ranking in priority to all other Encumbrances (as defined in paragraph 43 of this Order) except any administration charge or directors’ charge that may be granted over such assets in respect of reorganization proceedings of such affiliate or subsidiary.
25. SemCAMS is authorized to borrow, repay and reborrow from SemCanada Crude (the “Inter-Company Lender”), with approval of the Monitor and Bank of America, such amounts from time to time as it may consider necessary or desirable on a revolving basis (the “Inter-Company Advances”) pursuant to a promissory note issued in favour of the Inter-Company Lender as evidence thereof, to fund SemCAMS’s working capital requirements and other general corporate purposes and capital expenditures and to pay such other amounts as are permitted by the terms of this Order, provided that the Inter-Company Advances shall not exceed \$15,000,000 unless permitted by further order of this Court.
26. The Inter-Company Lender shall be entitled to the benefits of and is hereby granted a charge (the “Inter-Company Advances Charge”) on SemCAMS’s current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever

situate including all proceeds thereof (the "SemCAMS Property") to secure all obligations of SemCAMS to the Inter-Company Lender with respect to the Inter-Company Advances made to it which Inter-Company Advances Charge shall not exceed the aggregate amount owed to the Inter-Company Lender in respect of the Inter-Company Advances. The Inter-Company Advances Charge shall have the priority established by paragraphs 41 and 43.

27. *Notwithstanding any other provision of this Order:*

- (a) the Inter-Company Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Inter-Company Advances Charge;
- (b) the foregoing rights and remedies of the Inter-Company Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of SemCAMS or the SemCAMS Property.

28. The Inter-Company Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA, with respect to any Inter-Company Advances.

NO OBLIGATION TO ADVANCE MONEY OR EXTEND CREDIT

29. Notwithstanding anything else contained in this Order, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants, including through the provision of any cash management services, to the extent that such cash management services constitutes a further advance or re-advance of any monies or an extension of credit after the making of this Order. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

30. During the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA and paragraph 20 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

31. The Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 10(a), 12(a), 12(b) and 12(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants, except to the extent that, with respect to any officer or director, such officer or director has participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

The directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$4,000,000, as security for the indemnity provided in paragraph 31 of this Order. The Directors' Charge shall have the priority set out in paragraphs 41 and 43 herein.

32. Notwithstanding any language in any applicable insurance policy to the contrary:
- (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge; and

- (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 31 of this Order.

APPOINTMENT OF MONITOR

- 33. Ernst & Young Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.
- 34. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
 - (a) monitor the Applicants' receipts and disbursements, Business and dealings with the Property;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of the Applicants;
 - (c) assist SemCAMS, to the extent required by SemCAMS, in its dissemination to the Inter-Company Lender and Bank of America on a monthly basis of financial and other information as agreed to between SemCAMS and the Inter-Company Lender which may be used in these proceedings, including reporting on a basis as reasonably required by the Inter-Company Lender;

- (d) advise SemCAMS in its preparation of SemCAMS's cash flow statements and reporting required by the Inter-Company Lender, which information shall be reviewed with the Monitor and delivered to the Inter-Company Lender and the Bank of America on a periodic basis, but not less than monthly, or as otherwise agreed to by the Inter-Company Lender;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) advise the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) advise the Applicants, to the extent required by the Applicants, in reviewing the Applicants' Business and assessing opportunities for cost reduction, revenue enhancement and operating efficiencies;
- (h) give any consent or approval as is contemplated by this Order and any other order made in this proceeding;
- (i) assist the Applicants, to the extent required by the Applicants, in dealing with their creditors, customers, suppliers and other interested Persons;
- (j) assist the Applicants with their Restructuring activities to the extent required by the Applicants;
- (k) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (l) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (m) be at liberty to serve as a “foreign representative” of the Applicants in any proceedings outside of Canada;
- (n) consider, and if deemed advisable by the Monitor, prepare a report, assessment and recommendation on the Plan; and
- (o) perform such other duties as are required by this Order or by this Court from time to time.

35. The Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintain possession or control of the Business or Property, or any part thereof. Nothing in this Order shall require the Monitor to occupy or to take control, care, charge, possession or management of any of the Property that might be environmentally contaminated, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal or waste or other contamination, provided however that this Order does not exempt the Monitor from any duty to report or make disclosure imposed by applicable environmental legislation.

36. The Monitor shall provide any creditor of an Applicant and the Inter-Company Lender (to the extent that any such request be in relation to SemCAMS) with information provided by the relevant Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the relevant Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the relevant Applicant may agree.

37. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
38. The Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis and, in addition, the Applicants are hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicants, retainers in the aggregate amount of \$300,000, for each of the Monitor and its counsel, and \$750,000 for counsel to the Applicants, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.
39. The Monitor and its legal counsel shall pass their accounts from time to time.
40. The Monitor, counsel to the Monitor, if any, and the Applicants' counsel, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$1,750,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 41 and 43 hereof.

VALIDITY AND PRIORITY OF CHARGES

41. The priorities of the Directors' Charge, the Administration Charge and the Inter-Company Advances Charge among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of \$1,750,000);
 - (b) Second – Directors’ Charge (to the maximum amount of \$4,000,000); and
 - (c) Third – In respect of SemCAMS, Inter-Company Advances Charge (to the maximum amount of \$15,000,000).
42. The filing, registration or perfection of the Directors’ Charge, the Administration Charge or the Inter-Company Advances Charge (collectively, the "Charges") shall not be required, and the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.
43. Each of the Directors’ Charge, the Administration Charge and the Inter-Company Advances Charge (all as constituted and defined herein) shall constitute a charge (i) with respect to the Directors’ Charge and the Administration Charge, on the Property and (ii) with respect to the Inter-Company Advances Charge, on the SemCAMS Property, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.
44. Except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors’ Charge, the Administration Charge and, where applicable, the Inter-Company Advances Charge unless the relevant Applicant also obtains the prior written consent of the Monitor, and the beneficiaries of the Directors’ Charge, the Administration Charge and, where applicable, the Inter-Company Advances Charge, or further order of this Court.
45. The Directors’ Charge, the Administration Charge and the Inter-Company Advances Charge shall not be rendered invalid or unenforceable and the rights and remedies of the

chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by:

- (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
- (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications;
- (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA;
- (d) the provisions of any federal or provincial statutes; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any of the Applicants, and notwithstanding any provision to the contrary in any Agreement:
 - (i) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any documents in respect thereof, shall create or be deemed to constitute a new breach by any of the Applicants of any Agreement to which it is a party;
 - (ii) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
 - (iii) the payments made by any of the Applicants pursuant to this order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or

other challengeable, voidable or reviewable transactions under any applicable law.

ALLOCATION

46. Any interested Person may apply to this Court on notice to any other party likely to be affected, for an order to allocate the Administration Charge and the Directors' Charge amongst the various assets comprising the Property, and in the case of the Inter-Company Advances Charge amongst the various assets comprising the SemCAMS Property.

SERVICE AND NOTICE

47. The Monitor shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to the Applicants' known creditors, other than employees and creditors to which the Applicants owe less than \$250.00, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order:

- (a) to all Persons requesting notice; and
- (b) to any other interested Person requesting a copy of this Order.

48. The Applicants and the Monitor shall be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or e-mail to the Applicants' creditors or other interested Persons at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery, facsimile transmission or e-mail shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. The Monitor may post a copy of any or all such materials on its website at such website as the Monitor designates in the notice to be sent by the Monitor under paragraph 47 of this Order, which shall be established for informational purposes.

GENERAL

49. The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
50. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Applicants, the Business or the Property.
51. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
52. Each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
53. Any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
54. The Style of Cause of the within Action shall hereinafter be as follows:

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

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

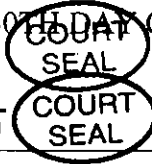
**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SEMCANADA CRUDE COMPANY, SEMCAMS ULC, SEMCANADA ENERGY
COMPANY, A.E. SHARP LTD., CEG ENERGY OPTIONS, INC., 3191278 NOVA
SCOTIA COMPANY and 1380331 ALBERTA ULC**

- 55. The Clerk of the Court is ordered and directed to amend the Style of Cause in this Action and to permit all pleadings currently filed in the SemCAMS Proceeding to be filed herein without amendment.
- 56. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

"B.E.C. ROMAINE"

J.C.Q.B.A.

ENTERED THIS 30TH DAY OF
JULY, 2008 V.A. BRANDT



V.A. BRANDT

Clerk of the Court

Action No. 0801-08510

IN THE COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL DISTRICT OF CALGARY

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
SEMCANADA CRUDE COMPANY,
SEMCAMS ULC, SEMCANADA ENERGY
COMPANY, A.E. SHARP LTD., CEG
ENERGY OPTIONS, INC., 3191278 NOVA
SCOTIA COMPANY and 1380331 ALBERTA
ULC

AMENDED AND RESTATED
INITIAL ORDER

Blake, Cassels & Graydon LLP
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3500, 855 - 2nd Street S.W.
CALGARY, AB T2P 4J8

A. Robert Anderson, Q.C.
Kelly Bourassa
Phone: (403) 260-9624
Fax: (403) 260-9700

CLERK OF THE COURT

JUL 30 2008

CALGARY, ALBERTA

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

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED
IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF HCSI HOME COMFORT
INC. AND HCSI HOME COMFORT 2 INC.

Court File No.: CV-23-00709183-00CL
BK-25-03226764-0031
BK-25-03226766-0031
Court File / Estate No.: 31-3226764
31-3226766

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

PROCEEDING COMMENCED AT TORONTO

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Lawyers for KPMG Inc., in its capacities as Monitor of the Simply
Green Debtors, Proposal Trustee of HCSI 1 and HCSI 2 in the NOI
Proceedings and Proposed Monitor of HCSI 1 and HCSI 2