



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:** CV-23-00709183-00CL

**DATE:** 02-JUN-2025

**NO. ON LIST:** 5

**TITLE OF PROCEEDING:** PEOPLES TRUST COMPANY v. CROWN CREST CAPITAL  
MANAGEMENT CORP. et al.

**BEFORE:** JUSTICE CONWAY

**PARTICIPANT INFORMATION**

**For Moving Party (Monitor):**

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**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info

**For Other, Self-Represented:**

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**ENDORSEMENT OF JUSTICE CONWAY:**

- [1] All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of KPMG Inc. dated May 30, 2025.
- [2] KPMG brings this motion in several capacities - as the Monitor of the Simply Green Debtors in the CCAA Proceedings, the Proposal Trustee in the NOI proceedings of the HCSI Entities, and the Proposed Monitor of the HCSI Entities in the proposed consolidated CCAA proceedings with the Simply Green Debtors.
- [3] KPMG seeks four orders today:
- a. SISP Approval Order;
  - b. Second Amended and Restated Initial Order to lay the groundwork for the SISP. The SARIO:
    - 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 and grants a sealing order with respect to certain confidential provisions thereof;
    - iii. approves the engagement of CIBC as sales agent in respect of the SISP pursuant to the terms of the CIBC Engagement Letter, and grants a sealing order with respect to certain confidential provisions thereof;
    - iv. approves an amendment to the existing DIP Term Sheet and approval of the DIP Joinder to add the HCSI Entities as obligors under the DIP Term Sheet;

- v. approves a proposed KERP and grants a sealing order with respect to certain confidential provisions thereof; and
- vi. extends the Stay of Proceedings (as defined below) to October 31, 2025.

c. Two discharge and termination orders for the NOI Proceedings of the HCSI Entities.

- [4] The only opposition on the motion was from class counsel with respect to the SISP Approval Order, as described below. As a result of amendments made to that order, class counsel is no longer opposed. There is no other opposition to any of the orders.
- [5] I address the various issues on this motion in the order set out in KPMG's factum.

#### Continuance of NOI Proceedings under CCAA

- [6] The HCSI Entities originally operated the RNC Business channel through which they provided HVAC equipment to builders of residential homes, leased the equipment to purchasers of those homes, and then assigned the lease agreements to the Simply Green Debtors. Historically, the Simply Green Debtors provided operational funding for the HCSI Entities' business but this ceased as of the Initial Order Date. No new originations have occurred from these entities since the Initial Order Date. Their business is languishing.
- [7] The HCSI Entities commenced NOI Proceedings on May 23, 2025 and obtained a stay of proceedings. KPMG now seeks to continue the HCSI NOI Proceedings under the CCAA proceedings pursuant to s. 11.6(a) of the CCAA. I am satisfied that the test for doing so has been met: see *Clothing for Modern Times Ltd.*, 2011 ONSC 7522, at para 9. This will enable the HCSI Entities to be included in the SISP (which those companies agreed to in the class action Settlement Agreement). The continuance and consolidation of the NOI Proceedings is supported by the other 50% shareholder of the HCSI Entities, the DIP Lender, and KPMG, which has consented to act as Monitor of those companies.
- [8] I grant the order continuing and consolidating the NOI Proceedings with the existing CCAA proceedings. There is no question that the HCSI Entities owe in excess of \$5 million, conduct business in Canada, and are insolvent. The CCAA applies to each of those companies.
- [9] Now that the NOI Proceedings have been continued and consolidated, I grant the discharge and termination orders for each of the HCSI Entities. I approve the Proposal Trustee's fees as set out in the order.

#### The SISP Approval Order

- [10] The SISP is warranted at this time. The class proceedings had been an impediment to running a SISP but have now settled. The Monitor will run the SISP in consultation with the Sales Agent and PTC.
- [11] I reviewed the two-stage process set out in the SISP and the timelines. Mr. Ullmann, class counsel, objected to PTC having too much control over the process. The language in paragraphs 16(c) and 23(c) stated that PTC could make certain determinations under the SISP “in its sole and unfettered discretion”. The language of the SISP has now been revised in those paragraphs to provide that the Monitor will make the determinations “in consultation with the Sales Agent, the CRO and PTC”. Counsel for the Monitor, the class, and PTC approved the revised language. It is satisfactory to me and clarifies that it is the Monitor running the SISP.
- [12] The SISP Approval Order approves the engagement of CIBC as Sales Agent pursuant to the CIBC Engagement Letter. It provides for the CIBC Work Fee and Completion Fee, secured by the Sales Agent Charge in the maximum amount of the \$3.5 million. I am satisfied that the Sales Agent is experienced in running SISPs in CCAA proceedings and that the fees (supported by the Monitor and the CRO) are acceptable.

[13] I grant the SISP Approval Order.

#### Additional Relief

- [14] The Fifth CRO Amendment formalizes the payment of the work fee to the CRO and provides for a success fee. It is approved.
- [15] The KERP will incentivize seven employees to remain with the Simply Green Debtors during the SISP. The maximum aggregate amount is \$775,000. The Monitor supports the retention process. It is approved.
- [16] The Monitor requests a sealing order for the unredacted copies of the CIBC Engagement Letter, the Fifth CRO Amendment, and the KERP summary.
- [17] I am satisfied that the requested sealing order for these unredacted materials meets the test in *Sierra Club/Sherman Estates* and that disclosure of this information would pose a risk to the public interest in enabling stakeholders of a company in CCAA proceedings to maximize the realization of assets. The KERP information in question is commercially sensitive and personal information that could harm the privacy interests of the recipients. The fee information in the CIBC Engagement Letter and Fifth CRO Amendment include formulas tied to transaction proceeds. If known, it could undermine the ability of the Monitor and Sales Agent to consummate a value maximizing transaction. **I direct counsel for the Monitor to file a hard copy of the unredacted materials with the Commercial List office in a sealed envelope with a copy of the orders and this Endorsement.**

- [18] The Fifth DIP Amendment and DIP Joinder are approved. The amendment increases the borrowing limit from \$34 million to \$38.6 million, which is required to conduct the SISP. The joinder adds the HCSI Entities as obligors under the facility on a going forward basis.
- [19] The Reports and activities of KPMG are approved, as are the fees and disbursements of the Monitor and its counsel.
- [20] Finally, the stay is extended to October 31, 2025. I am satisfied that the Simply Green Debtors are acting in good faith and with due diligence, there is sufficient cash to continue to operate, and the extension will enable the Monitor to run the SISP.
- [21] Four orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

A handwritten signature in blue ink, appearing to read "Conway J.", is positioned below the text of paragraph [21]. The signature is written in a cursive style with a large, looped initial 'C'.