

Court File No.: _____

**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
KING STREET COMPANY INC., THE KING STREET HOSPITALITY GROUP INC., BONTA
TRADING CO. INC., 2268218 ONTARIO INC., 1733667 ONTARIO LIMITED, THE KING
STREET FOOD COMPANY INC., THE KING STREET RESTAURANT COMPANY INC.,
2112047 ONTARIO LTD., JI YORKDALE INC., JI SQUARE ONE INC., 1771669 ONTARIO INC.
, CXBO INC., 2608765 ONTARIO INC., 2272224 ONTARIO INC., 2327729 ONTARIO INC.,
2577053 ONTARIO INC., 2584858 ONTARIO INC., 2621298 ONTARIO INC., 2641784 ONTARIO
INC., and 2656966 ONTARIO INC.**

Applicants

**FACTUM OF THE APPLICANTS
(Application for an Initial Order)
(Returnable November 6, 2020)**

November 6, 2020

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(CCAA Initial Application)
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PART I – OVERVIEW

1. The Applicants (the “**KSF Group**”) are a hospitality group that owns, develops and operates high-end restaurants in the City of Toronto and the surrounding areas (the “**Greater Toronto Area**”). The KSF Group has historically operated under the following brands (i) *Jacobs and Co Steakhouse*; (ii) *Buca*; (iii) *Bar Buca*; (iv) *La Banane*; (v) *Jamie's Italian*; and (vi) *CXBO*.
2. The KSF Group is seeking a stay of proceedings and other relief pursuant to an order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**” or the “**Act**”), substantially in the form of the draft order attached to the Application Record at Tab 3.
3. As set out in detail below, prior to the onset of the COVID-19 pandemic (the “**COVID-19 Pandemic**”), the KSF Group employed over 500 employees and operated eight (8) restaurants and one (1) chocolate retail store in the Greater Toronto Area and had entered into leases in anticipation of opening a further eight (8) restaurant concepts (inclusive of a commissary and event space) over the next three (3) years.

4. The COVID-19 Pandemic has resulted in unprecedented liquidity issues for the KSF Group.

5. The KSF Group's senior secured lenders, led by Third Eye Capital Corporation (“**TECC**”), in its capacity as the administrative agent for and on behalf of certain lenders under the KSF Group’s senior secured credit facilities (collectively, the “**Lenders**”) have facilitated the Applicants' growth objectives and brand development efforts since 2015. Recently, throughout the COVID-19 Pandemic, the Lenders have supported the KSF Group’s attempts to manage the devastating impacts of the pandemic on its business.

6. However, given the extraordinary challenges and pressure facing the KSF Group at this time, the KSF Group, supported by the Lenders, has determined that the KSF Group's operations need to be restructured through an orderly process under the CCAA. A Court-supervised process will allow the KSF Group to develop and oversee an orderly restructuring of its business that will allow its brands to continue to thrive when more favourable conditions return by way of a right-sizing of its balance sheet and the implementation of a sales and investment solicitation process (“**SISP**”).

PART II – THE FACTS

7. The facts with respect to this application are briefly recited herein and are more fully set out in the Affidavit of Peter Tsebelis sworn November 6, 2020 (the “**Tsebelis Affidavit**”).

8. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Tsebelis Affidavit.

A. DESCRIPTION OF THE KSF GROUP

9. Each of the members of the KSF Group is incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B. 16 (Ontario).¹

10. The members of the KSF Group can be grouped into the following categories: (i) companies that were established to operate restaurants and a chocolate retail store in the Greater Toronto Area; (ii) companies that were established in respect of future restaurants that are currently in various stages of development and construction; (iii) companies that provide general services to other members of the KSF Group; and (iv) holding companies that hold shares and licenses relevant to the remainder of the KSF Group.²

¹ Tsebelis Affidavit, para 19, Application Record, Tab 2.

² Tsebelis Affidavit, para 21, Application Record, Tab 2.

B. BUSINESS OF THE KSF GROUP

Pre COVID Restaurants and Retail

11. Prior to the COVID-19 Pandemic, the KSF Group had eight (8) operating restaurants and one (1) retail store in the Greater Toronto Area. At a high level these locations are as follows:³

Restaurant Name:	Description
<u>Jacobs & Co Steakhouse.</u>	Jacobs & Co Steakhouse is an approximately ten thousand (10,000) square foot and one hundred eighty (180) seat capacity steakhouse.
<u>Buca King.</u>	Buca King is an approximately five thousand and seven hundred (5,700) square foot and one hundred twenty (120) seat capacity Italian restaurant.
<u>Bar Buca Portland.</u>	Bar Buca Portland is an approximately one thousand and four hundred and fifty (1,450) square foot and forty (40) seat capacity casual café and restaurant.
<u>Buca Yorkville.</u>	Buca Yorkville is an approximately three thousand and five hundred (3,500) square foot and eighty eight (88) seat capacity restaurant located at the base of a condominium tower attached to the Four Seasons hotel.
<u>La Banane.</u>	La Banane is an approximately two thousand and seven hundred (2,700) square foot and eighty (80) seat capacity modern French restaurant.
<u>CXBO.</u>	CXBO is an approximately two thousand and four hundred (2,400) square foot retail boutique that sells artisanal chocolates manufactured under the CXBO brand. CXBO-branded chocolates, which are manufactured in-house, are also sold through third party channels and at the KSF Group's restaurants.
<u>JI Yorkdale.</u>	JI Yorkdale was an approximately eight thousand and six hundred (8,600) square foot and two hundred twenty five (225) seat capacity Italian restaurant operated under the <i>Jamie's Italian</i> brand and located in the Yorkdale Mall. The lease for this restaurant has recently been terminated by the landlord.
<u>JI Square One.</u>	JI Square One was an approximately six thousand and six hundred (6,600) square foot and one hundred forty five (145) seat capacity outpost of the <i>Jamie's Italian</i> brand

³ Tsebelis Affidavit, para 23, Application Record, Tab 2.

	located in the Square One shopping mall. The lease for this restaurant has recently been terminated by the landlord.
<u>Bar Buca Eglinton</u>	Bar Buca Eglinton is an approximately two thousand and nine hundred square (2,900) foot and eighty (80) seat capacity Italian-inspired neighbourhood café and restaurant located in the Yonge and Eglinton neighborhood. The lease for this restaurant has recently been terminated by the landlord.

Planned Restaurants

12. As part of its general expansion and growth plans, prior to the COVID-19 Pandemic, the KSF Group entered into leases to open an additional eight (8) restaurants throughout the Greater Toronto Area. These restaurants, which are in various stages of development and construction, are as follows:⁴

Restaurant Name:	Description
<u>Buca St Clair.</u>	Buca St Clair is an approximately six thousand and one hundred (6,100) square foot and one hundred twenty (120) seat capacity Italian family style restaurant. Construction of this restaurant was substantially completed in March of 2020. Although it has not formally opened, this restaurant is currently being used to run part of the KSF Group’s takeout business.
<u>Buca Vaughan.</u>	Buca Vaughan is an approximately five thousand and six hundred (5,600) square foot <i>Buca</i> restaurant and <i>Bar Buca</i> planned to be opened in Vaughan as part of a broader mixed use planned community. Partial construction has advanced on this project to date.
<u>Man Ray Bar a Vin.</u>	Man Ray Bar a Vin is an approximately two thousand and seven hundred (2,700) square foot private dining, event space and cocktail bar, originally planned to be opened above La Banane. This project is substantially complete and was weeks away from opening when the COVID-19 Pandemic hit, and has not opened to the public to date as a result.
<u>KSF Commissary.</u>	KSF Commissary is an approximately ten thousand and four hundred (10,400) square foot commissary and restaurant planned to be opened in the Globe and Mail Centre in

⁴ Tsebelis Affidavit, para 24, Application Record, Tab 2.

Restaurant Name:	Description
	Toronto's King Street East neighborhood. Construction on this project has only recently commenced.
<u>KSF at the CIBC Square.</u>	KSF at the CIBC Square is an approximately thirteen thousand (13,000) square foot restaurant planned to be opened in a commercial office tower being constructed in the southern core of Toronto's Financial District. This project has not commenced construction in any material fashion.
<u>KSF at the PH.</u>	KSF at the PH is an approximately twelve thousand (12,000) square foot Japanese restaurant planned to be opened in the Park Hyatt hotel. This project has not commenced construction in any material fashion.
<u>KSF at The One.</u>	KSF at The One is an approximately forty thousand and three hundred (40,300) square foot restaurant, café and event space planned to be opened as part of the One Bloor West condominium and hotel development. This project has not commenced construction in any material fashion.
<u>Buca Bay.</u>	Buca Bay is an approximately six thousand and seven hundred (6,700) square foot restaurant originally planned to be opened under the <i>Buca</i> brand in Brookfield Place. The lease for restaurant has been terminated by the Landlord.

C. THE COVID-19 PANDEMIC

13. Prior to the COVID-19 Pandemic, the KSF Group's expansion and build-out costs, as well as unexpected operating losses at JI Yorkdale and JI Square One, placed a significant strain on the KSF Group's working capital and liquidity.⁵

14. The COVID-19 Pandemic has exacerbated the KSF Group's liquidity situation and made it all but impossible for the KSF Group to survive with its existing capital structure and obligations.⁶

15. During the COVID-19 Pandemic, the KSF Group's operations have been restricted to a limited takeout and delivery business operated out of three (3), currently now down to two (2), of its restaurants.

⁵ Tsebelis Affidavit, para 34, Application Record, Tab 2.

⁶ Tsebelis Affidavit, para 35, Application Record, Tab 2.

This takeout and delivery business does not generate sufficient revenue to meet the KSF Group's cash flow needs.⁷

16. On March 18, 2020, by order of the Government of Ontario all restaurants were ordered to close for indoor and outdoor dining for an undisclosed period.

17. On or around June 24, 2020, the Government of Ontario implemented stage two (2) of phase two (2) of the government's reopening plan ("**Stage Two**") under which restaurants in the Greater Toronto Area were allowed to open for outdoor dining, subject to significant operating restrictions, including in particular with respect to capacity. On July 31, 2020, the Government of Ontario moved the Greater Toronto Area into stage three (3) of phase two (2) of the government's reopening plan ("**Stage Three**") pursuant to which restaurants were permitted to open for indoor dining, subject to strict public safety restrictions, including with respect to capacity.⁸

18. When Stage Two and Stage Three were announced, the KSF Group decided to not immediately reopen any of its restaurants for indoor or outdoor dining, on the basis, among other things, that:⁹

- (a) the KSF Group's restaurants have either no or very limited outdoor space, which raised concerns from management that these locations could not be operated in a manner that was safe for the KSF Group's employees and customers;
- (b) as a result of the significant capacity restrictions on indoor and outdoor dining imposed by the Government of Ontario, locations would be operating at a loss; and
- (c) the KSF Group believed that the capital required to re-open its restaurants would be at risk if a "second wave" of the COVID-19 Pandemic occurred within months of reopening and restrictions were re-instituted.

19. On October 10, 2020, due to a surge in COVID-19 cases, the Government of Ontario re-implemented a general ban on indoor dining in the Greater Toronto Area. It appears that this prohibition on indoor dining will last until at least November 14, 2020.¹⁰

20. The KSF Group's restaurants remain closed for indoor and outdoor dining as of the date hereof.¹¹

⁷ Tsebelis Affidavit, paras 39-40, Application Record, Tab 2.

⁸ Tsebelis Affidavit, paras 43-44, Application Record, Tab 2.

⁹ Tsebelis Affidavit, paras 45-47, Application Record, Tab 2.

¹⁰ Tsebelis Affidavit, para 49, Application Record, Tab 2.

¹¹ Tsebelis Affidavit, paras 39, 49, Application Record, Tab 2.

21. Since restrictions on indoor and outdoor dining in the Greater Toronto Area were first implemented, the KSF Group, with the support of the Lenders, has undertaken a number of cash conservation measures, including developing a takeout and delivery model, furloughing approximately four hundred and sixty two (462) employees, applying for and receiving government wage support, rent relief, and other subsidies where possible, obtaining emergency loans from the Lenders, and negotiating where possible rental deferrals and other accommodations to existing lease arrangements.¹²

22. Despite these efforts, the COVID-19 Pandemic has had an irreversible negative impact on the KSF Group's ability to operate its business as it existed prior to the pandemic.

D. FINANCIAL POSITION

23. As a direct consequence of the COVID-19 Pandemic, from the period between March to October 2020, the KSF Group's projected revenues were approximately ninety five percent (95%) below projected revenues for that period and down ninety eight percent (98%) year-over-year for the same period.¹³

24. As at September 13, 2020 the KSF Group had total consolidated assets with a net book value of approximately \$24,353,968 (including consolidated current assets of \$4,894,243, consolidated capital assets of \$9,683,783 and other assets of \$9,775,942).¹⁴

25. In turn, as at that date, the KSF Group had total consolidated liabilities with a net book value of approximately \$45,130,125. This includes consolidated current liabilities of \$8,613,533 and consolidated non-current liabilities of \$36,516,592.¹⁵

26. The KSF Group's EBITDA (earnings before interest, taxes, depreciation & amortization) for the eight (8) month period ending September 13, 2020, is negative one million dollars (\$1,000,000).¹⁶

¹² Tsebelis Affidavit, paras 50-52, Application Record, Tab 2.

¹³ Tsebelis Affidavit, para 9, Application Record, Tab 2.

¹⁴ Tsebelis Affidavit, para 58, Application Record, Tab 2.

¹⁵ Tsebelis Affidavit, para 60, Application Record, Tab 2.

¹⁶ Tsebelis Affidavit, para 55, Application Record, Tab 2.

E. CREDITORS

Senior Secured Credit Facilities

General Credit Agreement

27. On November 30, 2015, certain Lenders (the “**General Lenders**”) entered into a non-revolving term loan facility (the “**General Term Facility**”) with King Street Company Inc. (“**KSCI**”) in the original principal amount of \$14,200,000 pursuant to a credit agreement dated as of November 30, 2015 (the “**Original General Credit Agreement**”, as amended, the “**General Credit Agreement**”).¹⁷

28. Over time, in order to support the KSF Group's growth objectives, through twelve (12) written amendments to the Original General Credit Agreement the total obligations under the General Term Facility have increased to \$33,384,667.11.¹⁸

LB Credit Agreement

29. In order to fund the development of La Banane and CXBO, in 2017, certain Lenders (the “**LB Lenders**”) agreed to entered into a separate non-revolving term loan facility (the “**LB Facility**”) with KSCI in the original principal amount of \$1,100,000 pursuant to a credit agreement dated as of January 23, 2017 (the “**Original LB Credit Agreement**” as amended the “**LB Credit Agreement**”).¹⁹

30. The Original LB Credit Agreement was subsequently amended pursuant to five (5) separate written amending agreements under which the total obligations under the LB Facility were increased to \$1,559,011.45 (the “**LB Amendments**” together with the Original LB Credit Agreement, the “**LB Credit Agreement**”).²⁰

Status of Credit Facilities under the Credit Agreements

31. At the date hereof, the KSF Group is in default under the General Credit Agreement and the LB Credit Agreement (collectively, the “**Credit Agreements**”). Each of the Credit Agreements has a maturity date of November 30, 2020 (the “**Maturity Date**”). The KSF Group does not currently have the means to repay all amounts owing under the Credit Agreements by the Maturity Date.²¹

¹⁷ Tsebelis Affidavit, para 62, Application Record, Tab 2.

¹⁸ Tsebelis Affidavit, para 64, Application Record, Tab 2.

¹⁹ Tsebelis Affidavit, para 69, Application Record, Tab 2.

²⁰ Tsebelis Affidavit, para 70, Application Record, Tab 2.

²¹ Tsebelis Affidavit, paras 66-67, 71-72, Application Record, Tab 2.

32. The Lenders hold unlimited guarantees from all entities within the KSF Group guaranteeing either amounts due and owing under the General Credit Agreement or the LB Credit Agreement (other than KSCI, which is directly liable as borrower under both of the Credit Agreements).²²

33. The Lenders have additionally been granted various security pursuant to the Credit Agreements including general security agreements from each entity within the KSF Group.²³

Other Secured Creditors

34. The KSF Group has a limited number of other creditors with registered financing statements under the PPSA that appear to relate to the leasing or financing of motor vehicles and other equipment. Royal Bank of Canada (“**RBC**”) has also registered a financing statement against Bonta Trading Co. Inc. (“**Bonta Trading**”) in connection with certain credit cards provided to Bonta Trading by RBC.²⁴

Canada Revenue Agency

35. In the aggregate, and on a consolidated basis, the KSF Group owes the Canada Revenue Agency (“**CRA**”) over one million eight hundred thousand dollars (\$1,800,000) in respect of HST, and over eight hundred thousand dollars (\$800,000) in respect of other source deductions. Although certain entities within the KSF Group have entered into payment plans with the CRA, they are currently behind on their scheduled payments. The CRA has registered PPSA financing statements for amounts totaling forty six thousand nine hundred fifty six dollars (\$46,956.00) against specific entities within the KSF Group.²⁵

Landlords

36. The KSF Group does not own any real property, and all of its locations (including its existing and planned restaurants, retail, and event space as well its head office and two (2) storage spaces) are leased from third parties.²⁶

37. The KSF Group has not been in a position to pay rent on any of its leases, where applicable, since March of 2020 other than for its head office and CXBO. Certain Landlords are additionally owed arrears for February of 2020.²⁷

²² Tsebelis Affidavit, para 74, Application Record, Tab 2.

²³ Tsebelis Affidavit, para 75, Application Record, Tab 2.

²⁴ Tsebelis Affidavit, paras 76-77, Application Record, Tab 2.

²⁵ Tsebelis Affidavit, paras 79-81, Application Record, Tab 2.

²⁶ Tsebelis Affidavit, paras 84, Application Record, Tab 2.

²⁷ Tsebelis Affidavit, paras 86, Application Record, Tab 2.

38. The KSF Group has also struggled to stay current on construction milestone and related payments that it is required to pay under leases for certain restaurants that are in development, and has ceased most construction related activities during the pandemic.²⁸

39. The KSF Group has received notices of default in respect of a number of its leases.²⁹

40. As of the date hereof, and as set out above, the Landlords for each of JI Yorkdale, JI Square One, Buca Bay, and Bar Buca Eglinton have each formally terminated the leases for these restaurants.³⁰

41. The KSF Group is concerned that, absent a stay of proceedings being issued, other Landlords may seek to distrain and terminate leases in the immediate future, which could result in (i) the KSF Group losing access to valuable assets (including kitchen equipment and supplies); and (ii) the permanent closure of certain locations.³¹

Other Notable Creditors

42. The KSF Group's other creditors and stakeholders include:

- (a) Gift Card Beneficiaries: As of the date hereof, an excess of nine hundred thousand (\$900,000) in gift cards and certificates have been issued by members of the KSF Group and are outstanding;³²
- (b) EHT / WSIB: In the aggregate, the KSF Group owes approximately four hundred and twenty five thousand and four hundred fifty four dollars (\$425,454) in respect of employer health tax and Workplace Safety and Insurance Board remittances;³³
- (c) Litigation Claimants: Certain parties have commenced litigation against certain entities within the KSF Group, including former Landlords;³⁴ and

²⁸ Tsebelis Affidavit, paras 86, Application Record, Tab 2.

²⁹ Tsebelis Affidavit, para 87, Application Record, Tab 2.

³⁰ Tsebelis Affidavit, paras 90, 93, Application Record, Tab 2.

³¹ Tsebelis Affidavit, paras 94-95, Application Record, Tab 2.

³² Tsebelis Affidavit, para 83, Application Record, Tab 2.

³³ Tsebelis Affidavit, para 82, Application Record, Tab 2.

³⁴ Tsebelis Affidavit, para 96, Application Record, Tab 2.

- (d) Trade Suppliers: As of the date hereof, the KSF Group has approximately \$7,492,469 outstanding in respect of various trade payables owing to its general suppliers, including its food and beverage providers.³⁵ The KSF Group's takeout and delivery business is currently being supplied on a cash on delivery and cash within one (1) week of delivery basis.

F. NEED FOR CCAA PROCEEDINGS

43. At this time, the KSF Group requires a broad stay of proceedings to provide it with the "breathing room" necessary to continue its limited current operations, preserve brand equity during the remainder of the COVID-19 Pandemic, create a plan for the re-opening of its locations when government restrictions are lifted, and develop and oversee an orderly restructuring of its business, whether by way of a right-sizing of its balance sheet or a sale *en bloc* of all or part of its business through the SISP.³⁶

44. Absent the granting of an immediate stay of proceedings, the KSF Group faces the possibility of additional lease terminations, rights of distraint being exercised against its assets, and potential lawsuits and enforcement actions being commenced by its trade creditors.³⁷

45. Any such actions, both on their own and collectively, have the potential to irreparably damage the KSF Group's brands and reputation, which would likely limit the ability of the KSF Group to emerge from, and survive, the COVID-19 Pandemic.³⁸

46. The KSF Group is additionally in default under the Credit Agreements and will not have access to liquidity unless a formal restructuring process is commenced.

G. INTERIM FINANCING

47. In light of the KSF Group's liquidity issues, the KSF Group requires interim financing to sustain its operations, including the payment of professional fees, during these CCAA proceedings.

48. Under a DIP term sheet dated November 6, 2020 (the "**DIP Term Sheet**"), TECC and certain funds managed or advised by TECC or affiliates of TECC (collectively, the "**DIP Lenders**") have agreed to

³⁵ Tsebelis Affidavit, para 61, Application Record, Tab 2.

³⁶ Tsebelis Affidavit, para 98, Application Record, Tab 2.

³⁷ Tsebelis Affidavit, para 99, Application Record, Tab 2.

³⁸ Tsebelis Affidavit, para 100, Application Record, Tab 2.

establish an interim financing facility (the “**DIP Facility**”) in the maximum principal amount of one million two hundred thousand dollars (\$1,200,000) for use during these CCAA proceedings.³⁹

49. During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of one hundred thousand dollars (\$100,000).⁴⁰

PART III– ISSUES

50. The issues to be determined by the Court with respect to this Application, are whether:

- (a) the KSG Group meet the criteria for, and should be granted, protection under the CCAA;
- (b) MNP Ltd. (“**MNP**”) should be appointed as the monitor in these proceedings (in such capacity, the “**Proposed Monitor**”);
- (c) the DIP Term Sheet should be approved by this Court;
- (d) this Court should grant the Administration Charge, the Directors’ Charge and the DIP Lenders’ Charge; and
- (e) this Court should allow the KSF Group to make certain pre-filing payments to suppliers currently servicing the KSF Group’s takeout and delivery business who will be owed amounts as of the date of the Initial Order, if granted on November 6, 2020 (the “**Stub Period TD Suppliers**”).

PART IV – THE LAW

A. THIS COURT SHOULD GRANT PROTECTION TO THE APPLICANTS UNDER THE CCAA

The Applicants are either “Debtor Companies” or “Affiliated Debtor Companies”

51. The CCAA applies to a “debtor company” or “affiliated debtor companies” whose liabilities are in excess of five (5) million dollars.⁴¹

52. The term “company” is defined in section 2 of the CCAA as follows:

³⁹ Tsebelis Affidavit, para 114, Application Record, Tab 2.

⁴⁰ Tsebelis Affidavit, para 115, Application Record, Tab 2.

⁴¹ CCAA s. 2(1) and s. 3(1).

“company” means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province and 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*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies.⁴²

53. Each member of the KSF Group is incorporated under the laws of the Province of Ontario and accordingly, each is a “company” under the CCAA.⁴³

54. The CCAA defines a “debtor company” as, *inter alia*, a company that is “insolvent”.⁴⁴

55. The term “insolvent” is not defined in the CCAA. In CCAA applications, courts have interpreted insolvency with reference to, and by examining, the definition of an “insolvent person” in sub-section 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c B-3 (the “BIA”).⁴⁵ Under the BIA an “insolvent person” is a person who:

[...] is not bankrupt and who resides, carries on business or has property in Canada, and whose liability to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.⁴⁶

56. Companies are defined as being affiliated for the purpose of the CCAA (and therefore an “affiliated debtor company”) when one of them is the subsidiary of the other, or both are subsidiaries of the same

⁴² CCAA s. 2.

⁴³ Tsebelis Affidavit, para 19, Application Record, Tab 2.

⁴⁴ CCAA s. 2(1) and s. 3(1).

⁴⁵ **Stelco Inc. Re.**, 2004 CanLII 24933 (Sup Ct [Comm List]) paras 21-22.

⁴⁶ BIA s. 2(1).

company.⁴⁷ Two (2) companies that are affiliated with the same company are also deemed to be affiliated under the CCAA.⁴⁸

57. Each entity within the KSF Group is either a “debtor company” or an “affiliated debtor company”. In the aggregate, the KSF Group has claims against them well in excess of the five million dollar (\$5,000,000) threshold provided for in the CCAA. Each company within the KSF Group is a guarantor or direct obligor under the General Credit Agreement or the LB Credit Agreement.

58. The KSF Group is “insolvent” on a balance sheet basis. As outlined in the 2020 Interim Financial Statements, the KSF Group currently has assets valued at \$24,353,968 to satisfy liabilities in the amount of \$ 45,130,125.⁴⁹

59. The KSF Group is also “insolvent” on a cash flow basis. Absent the commencement of CCAA proceedings, the KSF Group will not have sufficient means to meet its obligations as they generally become due, including repayment of all amounts owing under the Credit Agreements that are due on November 30, 2020, and ordinary course payments to suppliers and the Landlords.⁵⁰

60. Furthermore, since the onset of the COVID-19 Pandemic, The KSF Group has ceased making payment for obligations owed in the ordinary course as they generally become due. The KSF Group has not been in a position to pay rent on any of its leases, where applicable, since March of 2020, other than the leases for the Head Office and CXBO.⁵¹ Certain Landlords are additionally owed arrears for rent since February of 2020.⁵² The KSG Group is also in arrears with respect to various trade payable owing to its general suppliers,⁵³ and is not current on both employer health tax and Workplace Safety Insurance Board remittances.⁵⁴

61. For all of the foregoing reasons, each of the entities within the KSF Group are “debtor companies” or “affiliated debtor companies” to which the CCAA applies and are eligible for protection under the Act.

⁴⁷ CCAA s. 3(2).

⁴⁸ CCAA s. 3(2).

⁴⁹ Tsebelis Affidavit, paras 58, 60, Application Record, Tab 2.

⁵⁰ Tsebelis Affidavit, paras 67, 72, Application Record, Tab 2.

⁵¹ Tsebelis Affidavit, para 86, Application Record, Tab 2.

⁵² Tsebelis Affidavit, para 86, Application Record, Tab 2.

⁵³ Tsebelis Affidavit, para 97, Application Record, Tab 2.

⁵⁴ Tsebelis Affidavit, para 82, Application Record, Tab 2.

An Order Granting a Stay of Proceedings is Appropriate

62. Under sub-section 11.02(1) of the CCAA, a Court may grant an initial stay of proceedings under the CCAA for a period not to exceed ten (10) days.⁵⁵

63. The CCAA is intended to be highly flexible and should be given a broad and liberal interpretation. In determining whether to grant a stay of proceedings, the Court should consider the purpose of the CCAA, which includes maintaining the *status quo* and providing a debtor with “breathing room” necessary to restructure its affairs, including by way of a sale that preserves all or a material part of its business as a going concern, to the benefit of both the debtor and its various stakeholders.⁵⁶

64. In this case, it is just and appropriate for this Court to grant a stay of proceedings. The KSF Group requires a stay of proceedings to provide it with “breathing room” to pursue and implement a going concern restructuring of its business or a sale *en bloc* of all or part of its brands through the SISF. In the absence of an immediate stay of proceedings and the opportunity to effect a restructuring, the KSF Group faces an irreparable deterioration of its brands and assets and an eventual complete shutdown of its remaining operations. This would result in the permanent loss of employment for its employees (including both its active employees and those that are currently on furlough).⁵⁷

B. MNP SHOULD BE APPOINTED AS MONITOR

65. Upon the granting of an Initial Order, sub-section 11.7(1) of the CCAA requires that the Court appoint a person to monitor the business and financial affairs of the company.⁵⁸

66. The KSF Group is seeking the appointment of MNP to serve as the CCAA Monitor in these proceedings.

67. MNP is a trustee within the meaning of sub-section 2(1) of the BIA and is not subject to any of the restrictions set out in sub-section 11.7(2) of the CCAA.⁵⁹

68. It is the KSF Group’s view, as supported by the Lenders, that it is particularly appropriate that MNP be appointed as CCAA Monitor. MNP has familiarity with, and knowledge of, the KSF Group’s financial records and general business model through certain prior mandates as described in the proposed Monitor’s

⁵⁵ CCAA s. 11.02(1).

⁵⁶ **Ted Lerov Trucking [Century Services] Ltd. Re**, 2010 SCC 60 at para 60; **Nortel Networks Corp. (Re)**, 2009 CanLII 39492 (Ont. S.C.J.) [Comm. List] at para 47; **Target Canada Co (Re)**, 2015 ONSC 303 at para 8

⁵⁷ Tsebelis Affidavit, para 140, Application Record, Tab 2.

⁵⁸ CCAA s. 11.7(1)

⁵⁹ BIA s. 2(1); CCAA s 11.7(2).

pre-filing report.⁶⁰ This familiarity and knowledge will create cost efficiencies during the course of the proposed CCAA proceedings, should MNP be appointed as Monitor.⁶¹

69. The KSF Group accordingly submits that it is reasonable and appropriate for the Court to appoint MNP as Monitor of the KSF Group in these proceedings.

C. THE COURT SHOULD APPROVE THE DIP LOAN AGREEMENT AND THE DIP LENDERS' CHARGE

70. The KSF Group requires urgent DIP financing during the initial ten (10) day stay period to cover operating expenses and professional costs during that period.

71. The DIP Lenders have agreed to provide the KSF Group with interim financing during the CCAA proceedings pursuant to the terms of the DIP Term Sheet.

72. The DIP Term sheet provides for a DIP Facility in the maximum principal amount of one million two hundred thousand dollars (\$1,200,000). During the initial ten (10) day stay period, availability under the DIP Facility will be limited to the principal amount of one hundred thousand dollars (\$100,000).⁶²

73. It is proposed that the DIP Lenders' Charge, will rank subordinate to the Administration Charge, but in priority to all other interests against the assets, property and undertakings of the KSF Group (collectively, the "**Property**").

74. Section 11.2 of the CCAA gives the Court the explicit authority to grant the DIP Lenders' Charge. In turn, sub-section 11.2(4) of the CCAA provides that in determining whether to grant the DIP Lenders' Charge, the Court should consider, among other things, the following factors:

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

⁶⁰ Pre Filing Report of the Monitor MNP Ltd. dated November 6, 2020.

⁶¹ Tsebelis Affidavit, para 111, Application Record, Tab 2.

⁶² Tsebelis Affidavit, paras 114-115, Application Record, Tab 2.

- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's pre-filing report, if any.⁶³

75. Pursuant to sub-section 11.2(5) of the CCAA, in order for the Court to approve any advances under the DIP Term Sheet during the initial ten (10) day stay period and to grant the DIP Lenders' Charge, the Court must be satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the KSF Group in the ordinary course of business during that period.⁶⁴

76. In this case, the KSF Group submits that the Court should approve the DIP Term Sheet (subject to limiting the initial borrowing to one hundred thousand dollars (\$100,000)) and grant the DIP Lenders' Charge, on the basis, among other things, that:

- (a) the cash flow forecast prepared by the KSF Group in consultation with the Proposed Monitor demonstrates that advances of up to one hundred thousand dollars (\$100,000) during the initial ten (10) day stay period, are necessary to continue operating in the ordinary course of business and to service associated professional fees during this period;
- (b) the ability to draw on the DIP Facility (both during the initial ten (10) day stay period, and after the comeback hearing, if approved), will allow the KSF Group to fund its operations and focus on restructuring its business for the benefit of its various stakeholders during the course of these CCAA proceedings;
- (c) the DIP Lenders' Charge will not secure any obligations that existed before the granting of the Initial Order and owing to the Lenders;
- (d) the DIP Facility is supported by the KSF Group's existing senior secured lenders;
- (e) the DIP Facility will preserve the value and going concern operations of the KSF Group and enhance the probability of a successful restructuring of the KSF Group including by way of the SISF; and

⁶³ CCAA s. 11.2.

⁶⁴ CCAA s. 11.2(5).

- (f) as set out in its pre-filing report, to be filed in connection with these proceedings, the Proposed Monitor is of the view that the DIP Term Sheet and DIP Lenders' Charge are appropriate and limited to what is reasonably necessary in the circumstances.⁶⁵

D. THE ADMINISTRATION CHARGE AND DIRECTORS' CHARGE SHOULD BE GRANTED

The Administration Charge Should be Approved

77. The KSF Group is requesting that a charge be granted against the Property in the initial maximum amount of \$100,000 to secure the fees and disbursements of the Monitor, counsel to the Monitor, and counsel to the KSF Group (the "**Administration Charge**") during the initial ten (10) day stay period incurred at their standard rates and charges.⁶⁶

78. Sub-section 11.52(1) of the CCAA explicitly provides the Court with the jurisdiction to grant an administration charge in the form being sought by the KSF Group:

11.52(1) Court may order security or charge to cover certain costs – On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge – in an amount that the court considers appropriate – in respect of the fees and expenses of

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

(b) any financial, legal or other experts engaged by the company for the purpose of 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.⁶⁷

⁶⁵ Tsebelis Affidavit, paras 126-128, Application Record, Tab 2; Pre Filing Report of the Monitor MNP Ltd. dated November 6, 2020.

⁶⁶ Tsebelis Affidavit, para 121, Application Record, Tab 2.

⁶⁷ CCAA s. 11.52.

79. In determining whether to grant an administrative charge, a Court may consider, among other things, the following non exhaustive factors:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and
- (f) the position of the monitor.⁶⁸

80. The KSF Group submits that in this case, the granting of the Administration Charge, and the quantum of the Administration Charge are reasonable and appropriate in the circumstances, on the basis, among other things, that:

- (a) a restructuring of the KSF Group will have certain complexities given the inherent uncertainty caused by the COVID-19 Pandemic;
- (b) the CCAA proceedings will require significant participation from the proposed beneficiaries of the Administration Charge;
- (c) there is no unwarranted duplication of roles between the proposed beneficiaries of the Administration Charge;
- (d) MNP, in its capacity as the Proposed Monitor, and the Lenders, in their capacity as the senior secured lenders of the KSF Group, are supportive of the granting of the Administration Charge; and
- (e) the quantum of the Administration Charge being sought in the Initial Order is limited to what is reasonably necessary to cover the fees and disbursements of its beneficiaries for the initial ten (10) day stay period.⁶⁹

⁶⁸ **Canwest Publishing Inc. Re.**, 2010 ONSC 222 at para 54 [“**Canwest Publishing**”]

⁶⁹ Tsebelis Affidavit, paras 122-125, Application Record, Tab 2.

The Directors' Charge Should be Approved

81. The KSG Group is seeking a charge over the Property in favour of their former and current directors and officers in the initial maximum amount of \$70,000 to indemnify such directors and officers for liabilities that they may incur in their capacity as directors and officers after the commencement of these CCAA proceedings (the “**Directors’ Charge**”). The Directors’ Charge is to rank subordinate to the Administration Charge and the DIP Lenders’ Charge.⁷⁰

82. Section 11.51 of the CCAA explicitly provides the Court with the jurisdiction to grant a charge in favour of any director or officer against obligations and liabilities that they may incur after the commencement of CCAA Proceedings:

11.51(1) Security or charge relating to director’s indemnification – On application by a debtor company and 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 the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

11.51(2) Priority – The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

11.51(3) Restriction – indemnification insurance – The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

11.51(4) Negligence, misconduct or fault – The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director’s or officer’s gross negligence or wilful misconduct or, in Quebec, the director’s or officer’s gross or intentional fault.⁷¹

83. It is well established that the purpose of a directors and officers charge is to allow a debtor company to keep its directors and officers in place during CCAA proceedings, to the benefit of the debtor company’s stakeholders, by providing the directors and officers with protections against liabilities they might otherwise incur during the proceedings.⁷²

⁷⁰ Tsebelis Affidavit, paras 135, 137, Application Record, Tab 2.

⁷¹ CCAA, s. 11.51.

⁷² **Canwest Publishing** at paras 56-57.

84. The KSF Group submits that the Directors' Charge being sought is reasonable and appropriate in the circumstances because:

- (a) the amount of the Directors' Charge is reasonable and limited to the possible exposure the KSF Group's directors and officers may face during the initial ten (10) day stay period;
- (b) the KSF Group does not currently maintain any directors and officers' insurance;
- (c) it is expected that the KSF Group's current directors and officers will be actively involved in operating the KSF Group and developing a path forward during the CCAA proceedings;
- (d) MNP, in its capacity as the Proposed Monitor, and the Lenders, in their capacity as the senior secured lenders of the KSF Group, are supportive of the granting of the Directors' Charge; and
- (e) the Directors' Charge does not secure obligations incurred by a director or officer as a result of their gross negligence or wilful misconduct.⁷³

E. THIS COURT SHOULD ALLOW THE KSF GROUP TO MAKE PRE-FILING PAYMENTS TO THE STUB PERIOD TD SUPPLIERS

85. To ensure the continued operation of the KSF Group's takeout and delivery business, and ensure optionality in the event that expanded in-person dining becomes possible during these CCAA Proceedings, the KSF Group is requesting that the Court provide it with the authority to pay the Stub Period TD Suppliers pre-filing amounts for services and goods provided in connection with the KSF Group's takeout and delivery business with the consent of the Monitor in the approximate amount of \$10,425.

86. This Court has on numerous occasions authorized CCAA debtors to pay pre-filing amounts owing to suppliers where such suppliers are integral to the business of such debtors.⁷⁴ In granting this relief, the Courts have considered, among other things, the following factors:

- (a) whether the goods and services are integral to the business of the applicants;
- (b) the applicable debtor company's dependency on the uninterrupted supply of the goods or services;

⁷³ Tsebelis Affidavit, paras 130-136, Application Record, Tab 2.

⁷⁴ **Index Energy Mills Road Corporation (Re)**, 2017 ONSC 4944, paras 26-32; **Cinram International Inc. (Re)**, 2012 ONSC 3767, para 68.

- (c) the fact that no payments would be made without the consent of the monitor;
- (d) the monitor's support and willingness to work with the debtor company to ensure that payments to suppliers in respect of pre-filing liabilities are minimized;
- (e) whether the debtor company has sufficient inventory of the goods on hand to meet its needs; and
- (f) the effect on the debtor company's ongoing operations and ability to restructure if it were unable to make pre-filing payments to their critical suppliers.

87. The KSF Group's takeout and delivery business, as well as the potential for in-person dining, should this become possible during these CCAA Proceedings, will be central to maintaining the KSF Group's brands during these proceedings and implementing a successful restructuring and SISP. Payment of pre-filing amounts owing to the Stub Period TD Suppliers is crucial to ensuring an uninterrupted supply of goods and services. No payments to the Stub Period TD Suppliers will be made without the consent of the Monitor.⁷⁵

88. The KSF Group accordingly submits that it is reasonable and appropriate for the Court to authorize the KSF Group to pay the Stub Period TD Suppliers pre-filing amounts.

PART II- ORDER SOUGHT

89. For the foregoing reasons, the KSF Group respectfully requests that this Court grant an Order substantially in the form of the draft Initial Order attached at Tab 3 to the Applicants' Application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of November, 2020.



Virginie Gauthier / Thomas Gertner

⁷⁵ Tsebelis Affidavit, paras 102-107, Application Record, Tab 2.

**SCHEDULE “A”
LIST OF AUTHORITIES**

1. [Stelco Inc., Re](#), 2004 CanLII 24933 (ON SC [Comm List])
2. [Ted Leroy Trucking \[Century Services\] Ltd., Re](#), 2010 SCC 60
3. [Nortel Networks Corp. \(Re\)](#), 2009 CanLII 39492 (ON SC [Comm. List])
4. [Target Canada Co. \(Re\)](#), 2015 ONSC 303
5. [Canwest Publishing Inc.](#), 2010 ONSC 222 (Commercial List)
6. [Index Energy Mills Road Corporation \(Re\)](#), 2017 ONSC 4944
7. [Cinram International Inc. \(Re\)](#), 2012 ONSC 3767

**SCHEDULE “B”
RELEVANT STATUTES**

Companies’ Creditors Arrangement Act, R.S.C. 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*)

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the Bankruptcy and Insolvency Act or is deemed insolvent within the meaning of the Winding-up and Restructuring Act, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the Bankruptcy and Insolvency Act, or

(d) is in the course of being wound up under the Winding-up and Restructuring Act because the company is insolvent; (*compagnie débitrice*)

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.

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.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

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

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Additional factor — initial application

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of 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.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

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, R.S.C., 1985, c B-3

Definitions

2 In this Act,

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

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 KING STREET COMPANY
INC., ET AL.

Court File No:

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at: TORONTO

FACTUM OF THE APPLICANTS
(Application for an Initial Order)

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