

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD
GP INC., CORPORATIONS INCORPORATED UNDER THE
ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD
LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP
FORMED UNDER THE ONTARIO *LIMITED
PARTNERSHIPS ACT***

**FACTUM OF 33 LAIRD INC., 33 LAIRD GP INC.,
AND 33 LAIRD LIMITED PARTNERSHIP**
(extension of time to file a proposal, authorization to enter into a listing agreement,
approval of trustee's fees and activities, sealing)
(motion returnable February 10, 2021)

February 9, 2021

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

R. Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: turgeon@gsnh.com

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and
33 Laird Limited Partnership

I. NATURE OF THIS MOTION

1. This is a motion by 33 Laird Inc., 33 Laird GP Inc., and 33 Laird Limited Partnership Inc. (together, the “**Laird Entities**”) for orders in suggested accordance with the draft order filed at tab 3 of the motion record¹ of which a revised version, adding the Sale Process (defined below) and attendant changes, will be provided to the court before the hearing:
 - a. extending the time for MNP Ltd., in its capacity as trustee to the notice of intention to make a proposal (“**NOI**”) proceedings of the Laird Entities (in such capacity, the “**Proposal Trustee**”) under the *Bankruptcy and Insolvency Act* (the “**BIA**”), to file, on behalf of the Laird Entities or any of them, a proposal to creditors,
 - b. authorizing the Laird Entities (or any of them) to execute and perform a listing agreement with Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) of which a redacted copy is attached as Exhibit “C”, and an unredacted copy is attached as Confidential Exhibit “3”, to the affidavit of Jason L.S. Birnboim sworn February 6, 2021 (the “**Birnboim February Affidavit**”), filed,² with such variations as the Proposal Trustee may approve (the “**Listing Agreement**”), and to do all things necessary or attendant to the same,
 - c. ordering the sale process set out in schedule “A” to the draft order (the “**Sale Process**”),
 - d. sealing Confidential Exhibits “1”, “2”, and “3” to the Birnboim February Affidavit pending the conclusion of a transaction with respect of the Laird Entities’ assets, as the case may be, or further court order, and
 - e. approving the Proposal Trustee’s activities and fees.

II. OVERVIEW

2. This is the second motion in the proceeding. The Trustee recommends the relief sought.

¹ Laird Entities’ motion record returnable February 10, 2021 (the “**MR**”), page 49.

² Tab 2 (page 8) of the MR.

3. The terms of the Listing Agreement and Sale Process are fair and commercially reasonable. The running and conclusion of parallel processes, being the Listing Agreement and Sale Process on one hand and negotiations as to the Possible Transaction (defined below) on the other hand, is intended to allow, in either case, confirmation and realization on the value of the Project and a viable proposal to creditors. The pretorian criteria for approval of a sale process are satisfied.
4. An extension is required to perform the Sale Process. The Laird Entities have acted and are acting in good faith and in the best interest of stakeholders. The test for extension is met.
5. The sealing orders sought are required to protect the integrity of the Sale Process. Those orders are appropriate in the circumstances.
6. The Proposal Trustee's activities were fully reported to the court and stakeholders. The reasonableness of the Fees (defined below) is supported by the evidence the jurisprudence requires. Their approval would have the constructive effects noted in *Target*, benefiting the Laird Entities and streamlining the administration of the NOI proceedings generally.

III. FACTS

A. Background

7. The Laird Entities were set up into a conventional limited partnership and nominee structure to pursue a real estate development project at 33 Laird Drive in Toronto (the "**Project**").³
8. The Project remains at an early stage and is insolvent for reasons including the non-extension of secured loans facilities with DUCA Financial Services Credit Union Ltd. ("**DUCA**") and Centurion Asset Management Inc. notably premised on cost overruns and the impact of COVID-19 on costs, timelines and viability of proposed tenants.⁴
9. Given the limited partnership and nominee structure, the debts of the Laird Entities are essentially the same. Each of the Laird Entities filed an NOI under the BIA on

³ Birnboim February Affidavit, tab 2 (page 8) of the MR, para. 4.

⁴ Affidavit of Jason L. S. Birnboim sworn December 10, 2020, tab 2A (page 15) of the MR, paras. 17-19.

November 28, 2020. The Proposal Trustee is the proposal trustee in each NOI proceeding, which were administratively consolidated in this court file by order of this court dated December 16, 2020.⁵

10. The main asset of the Project is the real property and unfinished project at 33 Laird Drive. The planned development and existing approvals also represent possible value to third parties, as do leases with proposed commercial tenants.⁶

B. Restructuring approach and state of file

11. Among other activities,⁷ the Laird Entities' work towards a viable proposal since the last extension includes:
 - a. discussions with lenders to explore financing options allowing repayment of DUCA/Centurion and completion of the Project. No suitable arrangement was located.⁸
 - b. the settlement of related party claims against the Laird Entities totalling approximately \$700,000.⁹
 - c. discussions with a party (the "**Possible Purchaser**") potentially interested in purchasing the Project (the "**Possible Transaction**"). Discussions are ongoing. Initial talks suggest the Possible Transaction, in combination with the abovementioned settlement, could yield net proceeds exceeding all known and possible creditor claims.¹⁰
 - d. seeking competing listing proposals and obtaining formal proposals from JLL and Cushman & Wakefield ("**C&W**"). The JLL proposal was preferable including in

⁵ Birboim February Affidavit, tab 2 (page 8) of the MR, paras. 4, 5; order of Conway J. dated December 16, 2020, tab 2B (page 25) of the MR; Second Report, paras. 1-5.

⁶ Birboim February Affidavit, tab 2 (page 8) of the MR, para. 7; Second Report, para. 11.

⁷ Birboim February Affidavit, tab 2 (page 8) of the MR, para. 8.

⁸ Birboim February Affidavit, tab 2 (page 8) of the MR, para. 8.b.; see the Second Report, para. 17.g.

⁹ Birboim February Affidavit, tab 2 (page 8) of the MR, para. 8.i.

¹⁰ Birboim February Affidavit, tab 2 (page 8) of the MR, para. 8.d.; see the Second Report, paras. 17.h., 18.

terms of price, proposal document quality, proposed monetization options (e.g., sale and lease), and leasing experience.¹¹

12. The Laird Entities, in consultation with the Proposal Trustee, counsel and key stakeholders, conclude that going forward with the Listing Agreement and the Sale Process while furthering discussions with the Possible Purchaser is the most effective restructuring approach in the circumstances. The running and conclusion of those parallel processes is intended to allow, in either case, confirmation and realization on the value of the Project and a viable proposal to creditors.¹²
13. It is unclear as of the time of this factum whether DUCA opposes this motion on the basis that a sale could be effected by a receiver. The Laird Entities are discussing with DUCA about arrangements that may alleviate such opposition. If no acceptable arrangements can be made then the Laird Entities oppose any receivership efforts by DUCA as being less provident than a debtor-driven process, more expensive, and longer in terms of realization steps, which is worse for all stakeholders, and in particular the subordinate and unsecured creditors and the equity holders (which may possibly stand to recover if net proceeds of the Possible Transaction suffice to satisfy all prior claims).

C. Listing Agreement

14. The Listing Agreement uses the Ontario Real Estate Association's Form 520, entitled "Listing Agreement – Commercial", with modifications. Its salient terms include:¹³
 - a. Real property: the real property underlying the Project municipally known as 33 Laird Drive in Toronto, PIN # 103690360 (the "**Property**").
 - b. Listing period: from February 1, 2021 until August 1, 2021 inclusively.

¹¹ Birnboim February Affidavit, tab 2 (page 8) of the MR, paras. 8.e., 10.; see the Second Report, paras. 17.i., 19.

¹² Birnboim February Affidavit, tab 2 (page 8) of the MR, para. 9; Second Report, para. 20.

¹³ Birnboim February Affidavit, tab 2 (page 8) of the MR, paras. 13-15; Listing Agreement, tab 2C (page 35) of the MR.

- c. Price: JLL is authorized to list the Property with a notional minimum price of \$1 so as to allow all offers to reach the Laird Entities and the Proposal Trustee for consideration.
- d. Commission: the exact figure is subject to the sealing orders sought. It may be addressed *in camera* at the hearing if necessary. The terms provide that no commission is payable if the Possible Transaction is executed within a specified period, with a reduced commission being payable if the Possible Transaction is concluded thereafter.
- e. Marketing: JLL is exclusively authorized and directed to use the marketing avenues that are, in its discretion, the best to solicit interest in the Property.
- f. No authorization to sell: Listing Agreement includes no authority to effect any sale.
- g. Condition: the only material condition is the court approval sought with this motion.

D. Sale Process

15. The proposed Sale Process, which is set out in schedule “A” to the revised draft order that will be provided to the court prior to the hearing, is summarized below:
- a. Within 3 weeks of court approval of Listing Agreement – Pre-marketing and listing.
 - b. For 6 weeks thereafter – Marketing and due diligence period. Laird Entities and Proposal Trustee to populate a data room available to interested parties having executed confidentiality agreements.
 - c. 6 weeks after commencement of marketing and due diligence period – First bid deadline. Laird Entities, Proposal Trustee and JLL to then review first bids in consultation with DUCA. Laird Entities to provide draft agreements of purchase and sale to selected bidders (if any) and request a second round of bids.
 - d. Within 5 days of review of first bids – second bid deadline. Proposal Trustee and JLL to then review second bids in consultation with DUCA, finalize the process including a final bid deadline and final negotiations, and select a successful bidder, as the case may be.

16. Additional details are provided in the Second Report.¹⁴ The rationale is to formalize the process' structure, providing clarity for stakeholders and all parties involved.

IV. ISSUES AND LAW

17. The issues are whether the court should (A) authorize the Laird Entities to enter into and perform the Listing Agreement and the Sale Process, (B) extend the time to file a proposal, (C) make the sealing orders sought, and (D) approve the Proposal Trustee's activities and fees.

A. Listing Agreement and Sale Process

18. This court has jurisdiction to authorize the Laird Entities to enter into and perform the Listing Agreement and the Sale Process, including under BIA s. 65.13. Sale processes are not a rare occurrence in restructurings, whether NOIs or proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA").¹⁵
19. In *Nortel*,¹⁶ the court set out the following non-exhaustive list of guiding factors: whether a sale is warranted at this time, whether the sale is to benefit the whole "economic community", whether any of the debtors' creditors have a *bona fide* reason to object to the sale of the business, and whether there is a better viable alternative.¹⁷
20. These factors have been used in NOI proceedings as well. A notable precedent is *Mustang*.¹⁸ There the court referenced *CCM*¹⁹ (a receivership) and the *Soundair*²⁰ principles to propose the following additional factors: the fairness, transparency and integrity of the proposed process, the commercial efficacy of the proposed process in light of the specific circumstances of the case, and whether the sales process will optimize the

¹⁴ See the Second Report, para. 21.

¹⁵ Notable precedents include *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)] ("*Nortel*"), para. 49, *Colossus Minerals Inc. (Re)*, [2014 ONSC 514](#), paras. 22-25, *Mustang GP Ltd. (Re)*, [2015 ONSC 6562](#) ("*Mustang*"), paras. 36-40, *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) ("*Danier Leather*"), paras. 20-35; and *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) ("*CCM*").

¹⁶ *Nortel*.

¹⁷ *Nortel*, para. 49.

¹⁸ *Mustang*.

¹⁹ *CCM*, paras. 6, 7; *Danier Leather*, paras. 23-25.

²⁰ *Royal Bank of Canada v Soundair Corp.*, [1991] O.J. No. 1137 (ON CA) [[1991 CanLII 2727](#)].

chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²¹

21. The court may approve the Laird Entities' entering into the Listing Agreement and the Sale Process, including for the following reasons:
- a. a competing proposal was obtained, and the JLL proposal was superior, confirming that the Listing Agreement's price and terms are commercially fair and reasonable in the circumstances.
 - b. the Sale Process follows the typical sequence developed by the insolvency practice and real estate professionals to maximize market exposition as well as fairness, transparency and integrity, while allowing desirable competition.
 - c. the Sale Process provides for a sufficient amount of time for JLL and brokers to canvass the market, and for prospective purchaser to complete due diligence and submit offers.
 - d. the Proposal Trustee supports the relief sought for the above and additional reasons set out in the Second Report.²²

B. Extension of time

22. BIA s. 50.4(9) sets out mandatory criteria for an extension of the time to file a proposal, reproduced below with comments as to their satisfaction.
- a. That the insolvent person has acted, and is acting, in good faith and with due diligence – the above demonstrates the Laird Entities' proactiveness and consideration for the interests of all stakeholders. Multiple restructuring avenues were actively explored (refinancing, Possible Transaction, proposals for listing, and Listing Agreement/Sale Process). The best approach available in the circumstances (performance of the Listing Agreement in parallel with efforts towards the Possible Transaction) was discussed and defined with the Proposal Trustee and key stakeholders. Around \$700,000 of related-party claims was settled.

²¹ *Mustang*, para. 39.

²² See the Second Report, paras. 22.

- b. That the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted – as recounted above, the parallel processes of the Listing Agreement, Sale Process and Possible Transaction are both intended to allow confirmation and realization on the value of the Project and greater recovery for the constituency of stakeholders as a whole – including suppliers, creditors and possibly equity holders – than a forced liquidation scenario.
- c. That no creditor would be materially prejudiced if the extension being applied for were granted – the primary purpose of financial restructurings is “to permit the debtor to carry on business, and, where possible, avoid the social and economic costs of liquidating its assets.”²³ The word “materially” matters and to the extent a creditor suffers any prejudice from the extension, then this would be, on a balance, outweighed by the benefits of allowing the Laird Entities an opportunity to attempt the proposed restructuring path in good faith.²⁴
23. Also, the Proposal Trustee recommends the extension for the above reasons and the additional ones noted in the Second Report.²⁵ The court may order the extension.

C. Sealing

24. The Laird Entities seek an order that Confidential Exhibits “1”, “2” and “3” to the Birnboim February Affidavit, being respectively copies of the JLL proposal, the C&W proposal, and the unredacted Listing Agreement, be sealed from the public record pending the conclusion of a transaction, as the case may be, or further court order. A copy of the Listing Agreement is otherwise publicly filed with redactions pertaining only to the commission percentages and the identity of the Possible Purchaser.
25. This court has jurisdiction to make the sealing orders sought, including under s. 137(2) of the *Courts of Justice Act*.²⁶ The Proposal Trustee recommends the sealing orders be made.²⁷ It is a typical attendant relief in sale processes. “There is a public interest in maximizing

²³ See *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#), para. 15, and *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#), para. 41.

²⁴ See *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#).

²⁵ Second Report, para. 51.

²⁶ See *Danier Leather*, paras. 79-86, and *Nortel*, paras. 3, 57.

²⁷ See the Second Report, para. 28.

recovery in an insolvency that goes beyond each individual case.”²⁸ The rationale here includes, *inter alia*, consideration of the following:

- a. disclosing the proposals and the commission rate would affect the Laird Entities’ negotiating power in case the Listing Agreement is not approved by this court or fails for any reason and the Laird Entities had to secure another listing contract.
- b. disclosing the commission rate before confidentiality agreements are in place could affect JLL and the Laird Entities’ negotiation ability in attracting brokers to participate in the listing process.
- c. the Possible Purchaser had to be identified in the Listing Agreement to define certain commission conditions but disclosure of its identity risks affecting the integrity of the process; for example, some interested offerors may believe they cannot or should not compete with the Potential Purchaser, preventing an offer from reaching the Laird Entities and potentially benefiting the estate.

26. Therefore, the sealing orders sought are appropriate in the circumstances.

D. Approval of Proposal Trustee’s fees and activities

27. As mentioned by Morawetz J. in *Target*,²⁹ a CCAA case, approval of a court officer’s activities and reports is a relief “routinely granted.” This is because court approval allows the Proposal Trustee to move forward with the next steps in the proceeding, brings the Proposal Trustee’s activities before the court, allows an opportunity for the concerns of the stakeholders to be addressed and any problems to be rectified, enables the court to satisfy itself that the Proposal Trustee’s activities have been conducted in a prudent and diligent manner, provides protection for the Proposal Trustee not otherwise provided in the BIA, and protects the creditors from the delay in distribution that would be caused by re-litigation of steps taken and potential indemnity claims by the Proposal Trustee.³⁰

²⁸ *Danier Leather*, para. 84.

²⁹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) (“*Target*”).

³⁰ *Target*, paras. 2 and 23.

28. The activities of the Proposal Trustee since the beginning of the NOI proceedings were reported to the court and stakeholders in the first report of the Proposal Trustee dated December 11, 2020 and the Second Report.³¹ Approval of those reports and activities would have the constructive effects noted in *Target*, which also benefits the Laird Entities and the administration of the NOI proceedings generally.
29. As to the approval of the Proposal Trustee's and its independent counsel's fees (the "Fees"), the issue is whether they are fair and reasonable. Caselaw-developed criteria guiding this analysis include (i) the nature and extent of the proceeding, (ii) the complications and difficulties encountered, (iii) the time spent by the court officer and its counsel, (iv) the professionals' knowledge, experience and skill, (v) the results achieved, and (vi) the costs of comparable services. Further, the caselaw requires that the Fees be verified by affidavits of the main professionals involved and disclose sufficient details including the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged and the total charges for each of the categories of services rendered.³²
30. Filed with the Second Report are affidavits of Mr. Title for the Proposal Trustee and Ms. Deng for its independent counsel, Weisz Fell Kour LLP, which are supported by true copies of detailed bills and confirm that the Fees are comparable to those charged by other accounting and law firms in Toronto for similar services.³³
31. The Fees are payable in priority both in a proposal³⁴ and in bankruptcy.³⁵ Their approval and payment would, among other things, streamline the administration of the estates.
32. This court may therefore make the approval orders sought.

³¹ See the Second Report, para. 17.

³² See *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#), paras. 42-54, and the cases cited there.

³³ See the Second Report, paras. 42-46 and appendices "E" and "F".

³⁴ BIA, s. 60.

³⁵ BIA, s. 136.

V. NATURE OF THE ORDER SOUGHT

33. The Laird Entities therefore seek orders in suggested accordance with draft order filed at tab 3 of their motion record, of which the revised version will be provided to the court before the hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of February, 2020.

Goldman Sloan Nash & Haber LLP

Brendan Bissell (LSO# 40354V)

Tel: 416-597-6489

Email: bissell@gsnh.com

Joël Turgeon (LSO #80984R)

Tel: (416) 597-6486

Email: turgeon@gsnh.com

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and
33 Laird Limited Partnership

SCHEDULE A – LIST OF AUTHORITIES

1. *Nortel Networks Corporation (Re)*, [2009] O.J. No. 3169 (ON SC) [[2009 CanLII 39492](#)]
2. *Colossus Minerals Inc. (Re)*, [2014 ONSC 514](#)
3. *Mustang GP Ltd. (Re)*, [2015 ONSC 6562](#)
4. *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
5. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
6. *Royal Bank of Canada v Soundair Corp.*, [1991] O.J. No. 1137 (ON CA) [[1991 CanLII 2727](#)]
7. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
8. *9354-9186 Québec inc. v Callidus Capital Corp.*, [2020 SCC 10](#)
9. *In the Matter of the Proposal of Cantrail Coach Lines Ltd.*, [2005 BCSC 351](#)
10. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
11. *Confectionately Yours Inc. (Re)*, [2002 CanLII 45059 \(ON CA\)](#)

SCHEDULE B – RELEVANT STATUTES

Bankruptcy and Insolvency Act, [R.S.C., 1985, c. B-3](#)

Notice of intention

50.4 (8) Where an insolvent person fails to comply with subsection (2), or where the trustee fails to file a proposal with the official receiver under subsection 62(1) within a period of thirty days after the day the notice of intention was filed under subsection (1), or within any extension of that period granted under subsection (9),

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have thereupon made an assignment;

(b) the trustee shall, without delay, file with the official receiver, in the prescribed form, a report of the deemed assignment;

(b.1) the official receiver shall issue a certificate of assignment, in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed under section 49; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b.1) is issued, send notice of the meeting of creditors under section 102, at which meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Extension of time for filing proposal

(9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and

(c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may not extend time

(10) Subsection 187(11) does not apply in respect of time limitations imposed by subsection (9).

Priority of claims

60 (1) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (4)** In deciding whether to grant the authorization, the court is to consider, among other things,
- (a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b)** whether the trustee approved the process leading to the proposed sale or disposition;
 - (c)** whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d)** the extent to which the creditors were consulted;
 - (e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

Payment as funds available

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1) shall be made as soon as funds are available for the purpose.

Courts of Justice Act, [R.S.O. 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.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF 33 LAIRD INC. AND 33 LAIRD GP INC., CORPORATIONS INCORPORATED UNDER THE ONTARIO *BUSINESS CORPORATIONS ACT*, AND 33 LAIRD LIMITED PARTNERSHIP, A LIMITED PARTNERSHIP FORMED UNDER THE ONTARIO *LIMITED PARTNERSHIPS ACT*

Estate No. 31-2693094

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced in TORONTO**

**FACTUM OF 33 LAIRD INC., 33 LAIRD GP INC.,
AND 33 LAIRD LIMITED PARTNERSHIP**
**(extension of time to file a proposal, authorization to enter
into a listing agreement, approval of trustee's fees and
activities, sealing)**
(motion returnable February 10, 2021)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto (ON) M5G 1V2

Brendan Bissell (LSO# 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Joël Turgeon (LSO #80984R)
Tel: (416) 597-6486
Email: turgeon@gsnh.com

Lawyers for 33 Laird Inc., 33 Laird GP Inc. and
33 Laird Limited Partnership