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File Reference: SM019134-41

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September 16, 2025

Via Hand Delivery & Email

The Honourable Justice John Bodurtha
Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, NS B3J 1S7

Justice Bodurtha:

Re: In the Matter of a Plan of Compromise or Arrangement of Creso Canada Limited – Hfx No. 542329

Motion: Tuesday, September 23, 2025 at 9:30 a.m.

We are counsel for Grant Thornton Limited ("**GTL**"), the Court-appointed Monitor in the above noted proceeding.

Please accept the following as the submissions of the Companies in relation to the motion scheduled for September 23, 2025 at 9:30 a.m.

I. FACTS

1. The Monitor relies on the facts set out in the Fourth Report of the Monitor dated September 16, 2025 (the "**Fourth Report**"), as well as the previous reports filed in these proceedings.

2. By Order dated April 16, 2025 (the "**Initial Order**"), GTL was appointed to monitor (in such capacity, the "**Monitor**") the assets, business and affairs of Mernova Medicinal Inc. ("**Mernova**") and Creso Canada Limited ("**Creso**" and together with Mernova, the "**Companies**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").

3. Since the granting of the Initial Order, there have been three comeback motions.

4. The Initial Order was amended by an Amended and Restated Initial Order issued on April 25, 2025 (the "**ARIO**").

5. Also by Order dated April 25, 2025, the sales and investment solicitation process (the "**SISP**") for the assets of the Companies was approved by the Court.

6. By Order dated July 14, 2025, the stay of proceedings under the CCAA was extended to September 30, 2025.

7. On August 5, 2025, the Court issued an approval and reverse vesting order (the "**RVO**"), approving the share purchase agreement ("**SPA**") with the successful bidder in the SISP, Canada's Island Garden Inc. ("**CIG**"), and the purchase by CIG of all of the shares of Mernova (the "**CIG Transaction**"). Prior to closing the CIG transaction, CIG assigned its right to purchase the shares of Mernova to an affiliate, in accordance with the SPA.

8. The RVO also approved, among other things:

   (a) the transfer and vesting all of Mernova's right, title and interest in and to the Excluded Liabilities, Excluded Assets, and Excluded Contracts (each as defined in the SPA) to Creso;

   (b) the removal of Mernova as an applicant in these CCAA proceedings, leaving Creso as the only remaining applicant, and the style of cause in the proceedings was amended accordingly; and

   (c) enhanced powers of the Monitor over Creso, including the power to assign Creso into bankruptcy and act as trustee.

9. On August 8, 2025, the Court issued an order (the "**WEPP Declaration Order**") declaring that Mernova meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations,* SOR/2008-222 and Mernova's former employees are individuals who may apply for the Wage Earner Protection Program.

10. The Monitor now seeks certain relief in order to conclude matters and terminate these CCAA proceedings.

II. ISSUES

11. The issues to be determined by this Honourable Court on this motion are whether this Honourable Court should:

(a) abridge the timelines for filing and service under the Nova Scotia *Civil Procedure Rules*;

(b) approve the distribution of funds as set out in the Fourth Report;

(c) extend the stay of proceedings until the earlier of: (i) the date on which Creso is assigned into bankruptcy by the Monitor, or (ii) the CCAA proceedings are terminated upon the filing of a Monitor's termination certificate (the "**Termination Certificate**");

(d) terminate the DIP Charge, Director and Officer's Charge, and KERP Charge;

(e) terminate the CCAA Proceedings and discharging the Monitor from its duties under the Initial Order and ARIO upon the filing of the Termination Certificate, confirming that a final distribution of available funds has been completed and all remaining matters have been completed in these CCAA proceedings;

(f) terminate the Administration Charge upon filing of the Monitor's Termination Certificate;

(g) approve the activities of the Monitor as set out in the Fourth Report; and

(h) approve the fees and disbursements of the Monitor and its counsel.

III. LAW AND ARGUMENT

Issue 1 – Timelines should be abridged as necessary

12. Pursuant to section 10(1) of the CCAA (**Book of Authorities, Tab 16**), this motion is made in accordance with the Nova Scotia *Civil Procedure Rules* (the "**Rules**"). Section 10(1) states:

10(1) Form of applications

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

13. Under Rule 23.11, a motion scheduled for a half day or less in Chambers is to be filed and served 10 clear days in advance of the scheduled hearing date. However, timelines may be abridged by permission of this Court, pursuant to Rule 2.03, which provides as follows:

> *General judicial discretions*
>
> *2.03 (1) <u>A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following</u>:*
>
> *(a) <u>give directions for the conduct of a proceeding before the trial or hearing</u>;*
>
> *(b) when sitting as the presiding judge, direct the conduct of the trial or hearing;*
>
> *(c) <u>excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party</u>.*
>
> *(2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:*
>
> *(a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;*
>
> *(b) require an excused person to do anything in substitution for compliance;*
>
> *(c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.*
>
> *(3) The general discretions do not override any of the following kinds of provisions in these Rules:*
>
> *(a) a mandatory provision requiring a judge to do, or not do, something;*
>
> *(b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;*

> *(c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations.*
>
> [Emphasis added]

14. Further, at section 11 (**Book of Authorities, Tab 16**), the CCAA authorizes this Court to make "any order that it considers appropriate":

> *General power of court*
>
> *11 Despite anything in the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.*

15. In the present matter, as set out in the Fourth Report, the Monitor worked diligently with CIG to close the SPA and sale of Mernova, including post-closing adjustments to the purchase price. The Monitor has also been working diligently with the Companies' creditors and other stakeholders to bring these proceedings to a conclusion.

16. The Monitor is not aware of any opposition to the relief being sought on this motion, which is primarily administrative in nature, and as such, it is submitted that an abridged timeline for service of the motion does not prejudice any party. The Monitor submits that permitting the abridgment is for the benefit of all stakeholders, and aligns with the overall objectives of both the CCAA and the Rules.

Issue 2 – Distribution of Funds

17. Section 11 of the CCAA confers a broad discretion on the Court to make various orders to advance a restructuring. Subject to certain restrictions, the Court may make any order "that it considers appropriate in the circumstances".

18. One such order that the Court may make under section 11 is an order distributing funds to any party in the context of a CCAA proceeding. In the present matter, the Monitor is seeking the distribution of the balance of the CIG Transaction (the "**Proceeds**") to Mernova's senior secured creditor, La Plata Capital LLC ("**La Plata**"), subject to: (i) a

payment to the West Hants Regional Municipality for property tax arrears; (ii) a proposed holdback for the fees of the Monitor and its counsel (the "**Distribution Holdback**"); and (iii) the funds needed to administer the bankruptcy of Creso.

19. The SPA provided that the purchase price for the shares of Mernova (i.e. the Proceeds) were to be paid to the Monitor for the benefit of the stakeholders of Mernova. Similarly, the RVO approved the payment of such purchase price to the Monitor in accordance with the terms of the SPA for the benefit of the stakeholders of Mernova until further Order of the Court. As set out in the Fourth Report (and contemplated in the Third Report), the Monitor was permitted to make certain payments from the Proceeds pursuant to the Interim Financing Charge, KERP Charge, and Administration Charge following the closing of the sale of Mernova. The Monitor seeks the approval of this Honourable Court for the distribution of the balance of the Proceeds.

20. The Monitor seeks an initial, immediate distribution of the Proceeds (less the Distribution Holdback) to:

(a) the West Hants Regional Municipality for property tax arrears, which form a priority lien on Mernova's real property and subsequently, on the proceeds by virtue of the RVO; and

(b) La Plata, as senior secured creditor,

with the balance of the Distribution Holdback funds (if any) to be distributed to La Plata upon payment of the professional fees of the Monitor and its counsel (which are secured by the remaining Administration Charge). If other material priority claims are discovered or advanced by creditors, the Monitor will seek the direction of the Court.

21. With respect to the Distribution Holdback:

(a) The professional fees to be incurred to complete these CCAA proceedings include the fees of GTL as trustee of Creso, following its assignment in bankruptcy. Such amounts may be paid following the termination of these CCAA proceedings (in the event that the administration of the bankruptcy of Creso extends beyond the Monitor's completion of its remaining duties in the CCAA).

(b) As the Distribution Holdback funds arise from the CIG Transaction as approved by the RVO, the Distribution Holdback held by GTL or its counsel are not assets of Creso's bankruptcy estate (as they are instead held as a third party deposit in trust for beneficiaries of the Distribution Holdback, being GTL, its counsel, and La Plata). Accordingly, the Monitor seeks a declaration that the Distribution Holdback held by GTL does not form part of the assets of Creso or the bankruptcy estate of Creso.

22. It is settled law that a Court can make distributions to creditors in the course of a CCAA proceeding. The Court can make an order to provide for distributions outside of a formal CCAA plan of arrangement (see: *Re Nortel Networks Corp.*, 2014 ONSC 4777 at paras. 53 to 55 (**Book of Authorities, Tab 7**)).

23. This Court has the authority to provide for the distribution of sale proceeds and other monies to a secured creditor entitled to such funds by virtue of its security. The Monitor has previously reported on the results of its review of the loan and security documents held by La Plata and confirmed their entitlement to these funds.

24. As the outstanding debt pursuant to La Plata's security is in excess of $10 million, the Monitor submits that the balance of the Proceeds, less the payment of the property tax arrears and the Distribution Holdback, should be distributed to La Plata.

25. The Monitor further submits that the balance of the Distribution Holdback, following the payment of the professional fees, should be distributed to La Plata and that the distribution of these residual funds to La Plata can be made without need for a further Court appearance.

Issue 3 – Extension of Stay of Proceedings

26. The Monitor is seeking an extension of the stay of proceedings until the earlier of: (i) such time as Creso is assigned into bankruptcy, pursuant to paragraph 24(b) of the RVO; or (ii) the Monitor's Termination Certificate is filed to terminate these CCAA proceedings.

27. Paragraph 11.02(2) of the CCAA (**Book of Authorities, Tab 16**) sets out the jurisdiction of this Court to consider the request of the Monitor for an extension to the stay period:

Stays, etc. — other than initial application

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

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

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

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

28. The moving party bears the burden of demonstrating to the Court that it is appropriate for the Court to grant the requested extension. Paragraph 11.02(3) of the CCAA (**Book of Authorities, Tab 16**) sets out the appropriate tests to be considered by the Court as follows:

Burden of proof on application

(3) The court shall not make the order unless

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

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

29. In summary, paragraph 11.02(3) sets out the two pre-conditions which the Monitor must meet before this Court will grant the requested extension:

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

(b) that the Companies and now the Monitor have acted and continues to act in good faith and with due diligence.

<u>Factor 1 – Circumstances exist that make the order appropriate</u>

30. In considering whether "circumstances exist that make the order appropriate", courts have often considered whether the extension of the stay will further the purposes of the CCAA

(see *Worldspan Marine Inc., Re*, 2011 BCSC 1758 (**Book of Authorities, Tab 13**) at paragraph 13 and *North American Tungsten Corp., Re*, 2015 BCSC 1376 (**Book of Authorities, Tab 6**) at paragraphs 25 – 26).

31. A number of cases have provided commentary on the principles to be considered by the Court in the context of such applications. In *Simpson's Island Salmon Ltd., Re*, 2006 NBQB 6 (**Book of Authorities, Tab 11**), Glennie J. quoted with approval the following comments from Farley J. in *Lehndorff General Partner Ltd., Re* [1993] O.J. No. 14 (Ont. Gen. Div.) [Commercial List]) at para 27:

> *The CCAA is intended to facilitate compromises and arrangements between companies and their creditors as an alternative to bankruptcy and, as such, is remedial legislation entitled to a liberal interpretation. It seems to me that the purpose of the statute is to enable insolvent companies to carry on business in the ordinary course or otherwise deal with their assets so as to enable a plan of compromise or arrangement to be prepared, filed and considered by their creditors and the court. In the interim, a judge has a great discretion under the CCAA to make order so as to effectively maintain the status quo in respect of an insolvent company while it attempts to gain the approval of its creditors for the proposed compromise or arrangement which will be to the benefit of both the company and its creditors.*
>
> [Emphasis added]

32. Similarly, in *ScoZinc Ltd., Re*, 2009 NSSC 108 (**Book of Authorities, Tab 10**), Duncan J. stated that, in relation to the general approach to extensions, a court must have regard to the overall purpose of the CCAA, and quoted a portion of the foregoing comments by Farley J. in *Lehndroff Lehndroff* (at paragraph 6).

33. The decision of the Alberta Court of Queen's Bench in *San Francisco Gifts Ltd., Re,* 2005 ABQB 91 (**Book of Authorities, Tab 9**) provides some useful insight into how a court will interpret the requirements for diligence and good faith. Topolniski, J. noted as follows when considering the supervisory role of the courts on such applications:

> *[28] The court's role during the stay period has been described as a supervisory one, meant to: "…preserve the status quo and to move the process along to the point where an arrangement or compromise is approved or it is evident that the attempt is doomed to failure." That is not to say that the supervising judge is limited to a myopic view of balance sheets, scheduling of creditors' meetings*

> *and the like. On the contrary, this role requires attention to changing circumstances and vigilance in ensuring that a delicate balance of interests is maintained.*

34. The Monitor recommends that the stay of proceedings until the earlier of: (i) the date on which Creso is assigned into bankruptcy by the Monitor, or (ii) the termination of the CCAA proceedings upon the filing of the Monitor's Termination Certificate, for the following reasons, among others:

    (a) The Companies and Monitor have recently completed the sale of Mernova, and the corresponding post-closing adjustments to the purchase price in accordance with the SPA. Accordingly, the Monitor can now proceed to distribute the sale proceeds to the creditors of Mernova.

    (b) The Companies, with the assistance of the Monitor, have worked diligently during the stay period under the CCAA to complete the SISP and bring these proceedings to a conclusion. The Monitor is of the view that assigning Creso into bankruptcy is the most efficient way to wind up these proceedings.

    (c) The stay extension will allow for time the Monitor to conclude these CCAA proceedings in an orderly manner.

<u>Factor 2 – The Companies have acted and continue to act in good faith and with due diligence</u>

35. One of the leading authorities in relation to the definition of "good faith" in an insolvency context is *CWB Maxium Financial Inc.* v. *2026998 Alberta Ltd*, 2021 ABQB 137 (**Book of Authorities, Tab 4**), wherein the Court considered the statutory duty of good faith imposed under section 4.2(1) of the BIA, in the context of a receivership application. The defendants owned a pharmacy, which they operated under a court-appointed interim receiver. The plaintiffs, CWB Maximum Financial Inc. and Canadian Western Bank, sought a final order of receivership against the defendant debtors. The defendants argued that the receivership order should not be granted, as the plaintiffs had acted through "misrepresentation, mistruth or omission". The Court found that the plaintiffs had acted in good faith in their dealings with the defendants and issued the final receivership order.

36. In its decision, the Court summarized the law of good faith under section 4.2(1) of the BIA as follows at paragraph 59:

- *Interested persons in proceedings under the BIA are statutorily required to act in good faith with respect to those proceedings.*

- *A secured creditor seeking a Receivership Order is an "interested person" subject to the good faith requirement, and its conduct in events preceding the application is covered by that requirement, where that conduct is factually and temporally connected to the proceedings, i.e. such conduct is "with respect to" BIA proceedings.*

- *Based on previous caselaw, the statutory requirement of good faith in the insolvency context requires that an interested party not bring or conduct proceedings for an oblique motive or improper purpose.*

- *Further, since there is no statutory definition of "good faith", the common law relating to the organizing principle of good faith in contractual performance may be used to inform the good faith requirement in section 4.2 of the BIA in the present circumstances, that is, the relationship between lender and borrower being essentially contractual in nature and, in this case, the contract includes a right on the lender's part to appoint a receiver or to seek such appointment.*

- *The duty of good faith, in this case, requires the parties not to lie to or mislead the other with respect to the status of the loan or the state of the lender-borrower relationship. It does not impose a duty of loyalty or disclosure, or require the subordination of one's own interests to the other, and falls short of a fiduciary duty.*

- *Whether dishonesty has occurred in a given case is fact-specific and may, depending on the circumstances, include lies, half-truths, omissions and even silence.*

- *A remedy, at least in this case and given the broad discretion of the Court under s. 4.2, may include denial of the Receivership Order.*

- *The conduct of the party alleged to have breached the good faith requirement should be assessed in light of the intent and policy objectives of the BIA.*

37. While the above decision was rendered in the context of a receivership application, it is noteworthy from the perspective that it signals a positive manifestation of certain behaviours, as opposed to merely being stated as the absence of bad faith. Of further note is the final point, which refers to the requirement that the conduct of a party be assessed in light of “the intent and objectives of the BIA”.

38. Of further assistance are the remarks in *Convergix Inc., Re,* 2006 NBQB 288 (**Book of Authorities, Tab 3**), where the Court stated at para. 39:

> *[39] I am satisfied that the Insolvent Corporations' actions demonstrate good faith and diligence. These actions include the following:*
>
> > *(a) The Insolvent Corporations have retained the professional services of Grant Thornton Limited to assist them in their restructuring;*
> >
> > *(b) The Insolvent Corporations have completed a business plan;*
> >
> > *(c) The Insolvent Corporations are diligently working on the Restructuring;*
> >
> > *(d) Since the filing of the five Notices of Intention to Make a Proposal, representatives of the Insolvent Corporations and Grant Thornton Limited have met with representatives of ACOA, the principle outside creditor of the Insolvent Corporations, to advise them of these proceedings, and*
> >
> > *(e) Representatives of the Insolvent Corporations have met with outside investors.*

39. The Monitor submits that the proposed extension of the stay under the CCAA is the most efficient and cost-effective method to wind down these CCAA Proceedings and mitigates the requirement for additional Court appearances to conclude these proceedings. The Monitor is not aware of any party in these proceedings who will take a contrary position.

40. As set out in the Fourth Report, the Monitor requires additional time to conclude the remaining matters in the CCAA proceedings. As the Monitor is now seeking the extension to the stay of proceedings, the Monitor believes that it is discharging its duties and obligations under the CCAA and other Orders made in these proceedings in good faith and with due diligence.

41. It is submitted that no parties will be materially prejudiced, as it is in the interests of all stakeholders to maintain the stay of proceedings in order to resolve these proceedings.

42. Accordingly, it is respectfully submitted that the Monitor has met the test required for the granting of an extension to the stay period.

Issue 4 – Termination of the DIP Charge, Director and Officer's Charge, and KERP Charge

43. Following the closing of the transaction contemplated under the RVO, the Monitor made certain payments pursuant to the Court-ordered charges. As all balances outstanding pursuant to the DIP Charge, Director and Officer's Charge, and KERP Charge have been paid, the Monitor therefore seeks a discharge of these charges.

Issue 5 – Discharge of the Monitor and Termination of the CCAA Proceedings

44. The Companies and the Monitor, have successfully completed the SISP and are in the process of discharging all post-filing obligations. Apart from certain remaining administrative matters as described in the Fourt Report (the "**Remaining Activities**"), the CCAA Proceedings will be materially complete, after the proposed distribution of the Proceeds.

45. Section 11 of the CCAA provides this Honourable Court with broad discretion to make "any order that it considers appropriate in the circumstances" (see *9354-9186 Quebec Inc v Callidus Capital Corp*, 2020 SCC 10 at para 49 (**Book of Authorities, Tab 1**)). The discretion conferred by section 11 of the CCAA must be exercised in furtherance of the CCAA's objectives, having regard to:

(a) whether the order sought is appropriate in the circumstances;

(b) whether the debtor company is acting in good faith; and

(c) whether the debtor company is acting with due diligence.

46. An order under section 11 of the CCAA will be appropriate where it "advances the policy objectives underlying the CCAA", which objectives include maximizing recovery to creditors and providing a "timely, efficient and impartial resolution of a debtor's insolvency" (see *Callidus, supra*, at paras 40 and 46 (**Book of Authorities, Tab 1**)).

47. The proposed form of Distribution, Discharge and Termination Order (the "**Termination Order**") provides that GTL will be discharged from its duties as Monitor, upon the filing of the Monitor's Termination Certificate certifying that all Remaining Activities have been completed, and the CCAA Proceedings will then be terminated.

48. Courts have routinely granted orders akin to the proposed form of Termination Order, terminating a debtor company's proceedings under the CCAA and discharging the court-appointed monitor. The draft Termination Order provided with this motion is similar in form and content to other Termination Orders issued by this Honourable Court (see: *In the Matter of the Application by IMV Inc. et al*, Hfx No. 523334 (November 29, 2023) (**Book of Authorities, Tab 15**), and *In the Matter of the Application by 1910644 Nova Scotia Limited et al*, Hfx No. 540593 (August 6, 2025) (**Book of Authorities, Tab 14**).

49. The Monitor submits that it is appropriate for this Honourable Court to terminate the CCAA Proceedings in the manner contemplated by the draft form of Termination Order filed with these submissions, for the following reasons:

(a) the SISP has been completed;

(b) the Companies no longer have ongoing business operations as the sale of Mernova has closed;

(c) since the granting of the Initial Order, the Companies and the Monitor have acted, and continue to act, in good faith and with due diligence to conclude all matters for which they were responsible;

(d) all matters requiring resolution in the CCAA proceedings, including the Remaining Activities, will be completed by the CCAA Termination Time;

(e) the court-ordered charges have been paid or, in the case of the Administration Charge, reserved for by the Monitor, and the Monitor has reserved for payment in priority to the Companies' senior secured creditor, being La Plata; and

(f) no party other the La Plata currently has an outstanding economic interest in the CCAA proceedings given that La Plata will not be repaid in full.

Issue 6 – Termination of the Administration Charge

50. As set out in the Fourth Report, approximately $97,183 remains of the Administration Charge to wind up the CCAA Proceedings, in addition to approximately $40,000 in retainers held by the Monitor and its counsel.

51. As part of the proposed distribution, the Monitor is seeking a Distribution Holdback, in part, for the estimated remainder of professional fees to be incurred in completing the Monitor's remaining duties (as defined in the Fourth Report).

52. The Monitor seeks a termination of the Administration Charge upon the filing of the Monitor's Termination Certificate, at which point all remaining activities will have been completed by the Monitor.

Issue 7 – Approval of the Activities of the Monitor

53. As set out in the Fourth Report at para 15, since the last Court appearance, the Monitor has engaged in the following activities:

(a) attended Court for the Companies' application for the RVO and WEPP Declaration Order;

(b) corresponded with the Companies and La Plata regarding remaining matters prior to closing of the Court-approved transaction;

(c) worked with Mernova to prepare applications by its former employees for relief under the Wage Earners Protection Program, pursuant to the WEPP Declaration Order;

(d) communicated with various creditors and stakeholders regarding these proceedings; and

(e) maintained the Monitor's website and email address for these proceedings.

54. The approval of a monitor's report "is not unusual" (see *Re Target Canada Co*, 2015 ONSC 7574 at para 2 (**Book of Authorities, Tab 8**)). There are legislative and practical reasons for the Court to approve the Monitor's activities and provide a level of protection for the Monitor during CCAA proceedings, including (see *Target, supra*, at para 22):

(a) allowing the Monitor to move forward with next steps in the CCAA proceedings;

(b) bringing the Monitor's activities before the Court;

(c) allowing the opportunity for concerns of stakeholders to be addressed, and any problems to be rectified;

(d) enabling the Court to satisfy itself that the Monitor's activities have been conducted in a sensible and diligent manner;

(e) providing protection for the Monitor not otherwise provided under the CCAA; and

(f) protecting creditors from delay and distribution that could be caused by re-litigation of steps taken and potential indemnity claims by the Monitor.

55. GTL has fulfilled the role of Monitor as such role is described in the Initial Order, the ARIO and as prescribed by the CCAA.

56. As set out in the Fourth Report and previous reports filed, the Monitor has acted responsibly and carried out its activities in a manner consistent with the provisions of the CCAA and in compliance with the Initial Order and ARIO. There has been no evidence to the contrary, and the activities of the Monitor as set out in the reports previously filed have been approved by this Honourable Court. It is respectfully submitted that the Court should support the good faith decisions of the Monitor and approve the activities as described in the Fourth Report.

Issue 8 – Approval of the Fees and Disbursements of the Monitor and its Counsel

57. The Monitor and its counsel, Stewart McKelvey ("**Stewart McKelvey**"), have been paid their fees and disbursements at their standard rates and charges by the Companies from time to time, in accordance with paragraph 24 of the ARIO.

58. The Monitor submits that this Court should approve the fees and disbursements of GTL and those of its counsel, as set out in the Fourth Report, for the following reasons:

(a) In considering the "overriding principle of reasonableness" and the overall value contributed by the Monitor and Stewart McKelvey (see *Nortel Networks Inc*, 2022

ONSC 6680 at paras 10, 15 and 21 (**Book of Authorities, Tab 7**)), the fees incurred to date, and the remaining fees and disbursements to be incurred, are fair and reasonable in the circumstances;

(b) The Courts have recognized certain non-exhaustive factors that apply in this case (see *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para 33 (**Book of Authorities, Tab 2**); *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400 at para 23 (**Book of Authorities, Tab 12**)), including: (i) the complexity of the issues and the competing interests of multiple stakeholders; and (ii) the material, positive impact of GTL and Stewart McKelvey's efforts on advancing these proceedings;

(c) The Fourth Report identifies the individual professionals who have performed necessary work to advance the CCAA proceedings. The activities completed by the Monitor were delegated to the appropriate professionals based on seniority and hourly rates. The Monitor submits that the time spent, and the fees and disbursements, are appropriate for the role, responsibilities and activities undertaken;

(d) GTL and Stewart McKelvey have significant knowledge, experience and skill in restructuring matters. GTL's fees are consistent with fees charged by similar firms in Atlantic Canada with the capacity to handle a file of comparable size and complexity, and the Monitor believes that Stewart McKelvey's fees are consistent with the current market for legal services;

(e) The matters detailed in the Monitor's reports demonstrate the diligence and thoroughness displayed by GTL and Stewart McKelvey; and

(f) The efforts of GTL and its counsel were integral to a successful restructuring under the CCAA.

59. The Monitor submits that the above factors support approval of the fees and disbursements and the remaining fees and disbursements to be incurred of GTL and Stewart McKelvey.

IV. RELIEF SOUGHT

60. Based on all of the forgoing, it is respectfully submitted that the relief sought be granted in the form or substantially the same form of the orders filed with these submissions.

Yours respectfully,

Sara L. Scott

SLS/lms

c. Service List