2025 01G 1510

SUPREME COURT OF NEWFOUNDLAND & LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF *the Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

AND IN THE MATTER OF an application of Nemori Farms Ltd.

MEMORANDUM OF FACT AND LAW OF THE APPLICANTS

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2024 01G 1510
Date of Filing of Document:	September 10, 2025
Name of Filing Party or Person:	Nemori Farms Ltd.
Application to which Documents Being Filed Relates:	The Monitor's request for an Order, among other things, approving a reverse vesting transaction, granting related relief, and authorizing certain distributions pursuant to the CCAA
Statement of Purpose of Filing:	In support of an Application by the Monitor seeking Court approval for the order
Court Sub-File Number, if any:	N/A

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PART I – OVERVIEW

1. On March 6, 2025, Nemori Farms Ltd. ("**Nemori**" or the "**Company**") was granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("**CCAA**"), pursuant to the Order of the Honourable Justice A. MacDonald dated March 6, 2025 (the "**Initial Order**"). The Initial Order, among other things, granted an initial stay of proceedings up to and including March 14, 2025 (the "**Stay Period**"), appointed Grant Thornton Limited ("**GTL**") as monitor (in such capacity, the "**Monitor**") in these proceedings (the "**CCAA Proceedings**"), approved an interim financing facility provided by the Royal Bank of Canada ("**RBC**" or in this capacity, the "**DIP Lender**") and granted certain super-priority charges.

2. On March 14, 2025, the Court granted an amended and restated initial order ("**ARIO**") that among other things extended the Stay Period and approved increases to the court-ordered super-priority charges.

3. On April 24, 2025, the Court granted an order (the "**SISP Order**") that approved a sale and investment solicitation process (the "**SISP**") to be conducted by the Monitor.

4. The deadline for bidders to submit a bid in the SISP was June 16, 2025. The highest bid submitted in the SISP was a credit bid submitted by RBC, which was selected by the Monitor as the successful bid. After the bid deadline, RBC indicated that it would be willing to consider supporting the next highest going-concern bid received in the SISP subject to its review and approval.

5. On July 17, 2025, on application by RBC, the Court issued an Order (the "**SISP Directions Order**") authorizing and directing the Monitor to disclose the next two highest bids to RBC and to engage in discussions to determine if RBC would be prepared to support a going-concern transaction.

6. As a result of the disclosure pursuant to the SISP Directions Order and ensuing discussions, RBC has determined that it will support a transaction with the next highest bidder in the SISP, Coastal Agri Commodities Limited ("**Coastal**" or the "**Purchaser**"). Following a thorough evaluation and based on discussion between the Monitor, RBC, the Purchaser and the Company, Coastal's bid was selected as the Successful Bid.

7. Coastal's bid is to acquire the going-concern business through a reverse vesting transaction, which will entail the issuance of new shares of the Company to the Purchaser, the cancellation of all existing equity interests in the Company, and the vesting out from the Company of all liabilities not expressly retained by the Purchaser. The Company operates in a highly regulated industry. A reverse vesting structure is necessary to avoid the risk, uncertainty, cost and potential delays that might be caused if the Company's critical permits, licenses, and milk quotas were required to be assigned and transferred.

8. The SISP was conducted by the Monitor in a fair and transparent manner, with Court direction pursuant to the SISP Directions Order. The market was broadly canvassed, with multiple bids received by the Monitor. The Coastal bid represents the best going-concern bid under the circumstances and is the next highest bid received in the SISP after the credit bid submitted by RBC. The Monitor believes that approval of the Coastal bid is in the best interests of stakeholders including secured creditors, vendors, customers, and employees.

9. The Monitor therefore seeks approval and reverse vesting order (the "**RVO**") pursuant to the CCAA, among other things:

   (a) if necessary, abridging the notice periods pursuant to Section 11 of the CCAA and the *Rules of the Supreme Court, 1988*, Rule 3.03(1), Rule 6.04(2) and Rule 6.06;

(b) directing that the service on the service list set out in Schedule "A" hereto is sufficient for the purposes of this application, pursuant to Section 11 of the CCAA;

(c) approving of the Proposed Transaction between the Successful Bidder and the Company pursuant to the executed subscription agreement dated September 4, 2025 (the "**Subscription Agreement**") as well as the transactions contemplated by the Subscription Agreement;

(d) adding ResidualCo, as defined in the Subscription Agreement and RVO, as an Applicant to this CCAA Proceeding and granting the Monitor with enhanced powers over ResidualCo upon the filing of a Monitor's Certificate confirming that the Proposed Transaction has closed and the sole director of ResidualCo has resigned;

(e) transferring and vesting of all Nemori's right, title and interest in and to Excluded Assets and Excluded Liabilities (each as defined in the Subscription Agreement) in and to ResidualCo;

(f) approving a distribution to RBC in its capacity as senior secured creditor and DIP Lender to the Company, subject to holding back funds for potential priority payments and to wind down these CCAA Proceedings;

(g) declaring that Nemori meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Protection Program Regulations* ("**WEPP Regulations**") and Nemori's former employees are individuals who may apply for the Wage Earner Protection Program; and

(h) approving the activities of the Monitor and the Monitor's counsel since the date of the Initial Order.

10. The Monitor also seeks to amend and restate the ARIO to provide for:

(i) an extension of the Stay of Proceedings to November 15, 2025; and

(ii) an increase to the Administration Charge from $250,000 to $400,000 which incremental amount shall be for the benefit of the Monitor and its counsel.

PART II – FACTS

11. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Subscription Agreement or, if not defined therein, the ARIO and the RVO.

A. Background

12. The Company operates a dairy farming operation in Deer Lake, Newfoundland and Labrador, specializing in milk production, breeding and raising dairy cattle, and cultivating feed crops like corn silage, grass, and legumes for animal consumption (the "**Business**").[1]

13. Nemori is currently the second largest dairy farm in Newfoundland, which produces approximately 4.5 million litres of milk annually and represents between 15%-20% of the island's milk production.[2]

14. The Company was acquired by Calvin and Sheldon Cameron (the "**Cameron Brothers**") in and around July 2020, when the Cameron Brothers purchased certain corporate assets of Headline Holsteins Limited ("**Headline**") and certain personal assets of Headline's owners that were used in the dairy farm operation.[3]

15. The Company's assets include: (i) approximately 2,000 acres of land ("**Land**") primarily through crown leases; (ii) milking cows, dry cows, and replacement animals ("**Livestock**");

[1] Proposed Monitor's Pre-Filing Report dated March 5, 2025 ("**Pre-Filing Report**") at paras 18-19.
[2] Pre-Filing Report at para 19.
[3] Pre-Filing Report at para 18.

and (iii) dairy production buildings located at 191 Goose Arm Road in Deer Lake, NL ("**Buildings**"), associated farming equipment used in operations ("**Equipment**") and a personal residence ("**Residence**") located on the farm site where the Cameron Brothers and their families resides.[4]

16. The Company's financial distress and subsequent insolvency were precipitated by a combination of inaccurate financial projections and an acquisition that was 100% debt-financed, leading to insufficient operational cash flow to service the acquisition debt.[5]

17. The Company also faced operational challenges—including high cull rates, issues with animal health, and the breakdown of key equipment—which, exacerbated by limited liquidity, reduced its ability to deal with these challenges. Consequently, the Company was fundamentally undercapitalized and overleveraged.[6]

18. As a result of these significant financial and operational hurdles, the Company was granted protection under the CCAA on March 6, 2025.[7]

19. These CCAA Proceedings were initiated to preserve the Company's value, provide the Company with access to interim financing, address its liquidity constraints, and facilitate a restructuring, specifically through a reverse vesting transaction, which aims to provide the Company with operational continuity and enable it to increase its productive capacity and profitability.[8]

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[4] Pre-Filing Report at para 23.
[5] Pre-Filing Report at para 21.
[6] Pre-Filing Report at para 21.
[7] First Report of the Monitor dated March 13, 2025 ("**First Report**") at para 1.
[8] Pre-Filing report at para 37.

B. The SISP

20. On April 24, 2025, the Court granted the SISP Order.[9] The primary purpose of the SISP was to solicit offers for the sale of, or investment in, the Company's Business and Properties (the "**Opportunity**").[10] This process aimed to maximize value for the Company's stakeholders and its senior secured creditors, and to enable the business to continue as a going-concern, ultimately benefiting its customers, vendors, and suppliers.[11]

21. A comprehensive description of the SISP is set out in the Second and Third Reports of the Monitor dated April 22, 2025 and June 25, 2025, respectively.[12]

22. On May 2, 2025 the Monitor launched the SISP and circulated a teaser and form of non-disclosure agreement ("**NDA**") to parties identified by the Monitor, in consultation with the Company and the DIP Lender, as having potential interest in the Opportunity.[13]

23. Nine interested parties executed the NDA[14] and were granted access to the virtual data room ("**VDR**"), which contained a confidential information memorandum, detailed financial projections, and asset information.[15] The Monitor dedicated significant time and resources answering any due diligence questions posed to it and arranging site visits for four Potential Bidders.[16]

24. On the Bid Deadline, the Monitor received a total of five Qualified Bids for consideration.[17] During the Monitor's subsequent negotiations with the bidders, several bidders increased their bids, and certain of those bidders increased their bids multiple times.

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[9] Third Report of the Monitor dated June 25, 2025 ("**Third Report**") at para 4.
[10] Second Report of the Monitor dated April 22, 2025 ("**Second Report**") at para 21.
[11] Second Report at para 30.
[12] Second Report at paras 19-33; Third Report of the Monitor dated June 25, 2025 ("**Third Report**").
[13] Third Report at para 16.
[14] Third Report at para 24.
[15] Third Report at para 21.
[16] Third Report at paras 21-24.
[17] Fourth Report of the Monitor dated July 16, 2025 ("**Fourth Report**") at para 16.

25. Based on its assessment of all the bids received, the Monitor determined that RBC's credit bid was numerically the highest although it expressly contemplated a liquidation of the Company upon closing of the transaction.[18] As the RBC bid was the highest bid received, the Monitor selected it as the Successful Bid.

26. At the request of RBC and pursuant to the SISP Directions Order, the Monitor disclosed to the Company and RBC the details of the three highest Qualified Bids received in the SISP. Following this disclosure, the Monitor and its counsel held various follow up discussions with both the Company and RBC regarding the disclosed Qualified Bids.[19]

27. On July 24, 2025, the Monitor and RBC held a meeting with representatives of Coastal to discuss certain aspects of its bid. At the conclusion of the meeting, Coastal confirmed it would not be further revising its bid and that it was willing to move forward quickly. Pursuant to paragraph 3.2 of the SISP Directions Order, the Monitor informed the Company about its discussions.[20]

28. On July 28. 2025, counsel to RBC advised the Monitor that RBC would support Coastal's Qualified Bid being put forward for approval by the Court, rather than RBC's liquidation bid which had been previously selected by the Monitor as the Successful Bid in the SISP. The Company also indicated it was supportive of advancing the Coastal Bid for Court approval.[21] Accordingly, the Monitor selected the Coastal Bid as the successful bid, replacing RBC's credit bid.

[18] Fourth Report at para 21.
[19] Fifth Report of the Monitor dated July 29, 2025 ("**Fifth Report**") at para 10.
[20] Fifth Report at para 11.
[21] Fifth Report at para 12.

C. The Transaction

29. The proposed transaction is structured as a reverse vesting transaction, pursuant to which the Purchaser will be issued new common shares representing 100% of the Company's outstanding equity interests after the cancellation of all existing equity.[22] This Transaction is specifically designed to maintain the Company's core dairy farm operations and allow the Company to retain crucial permits, licenses, and its significant fluid milk quota allocation, which are highly regulated and difficult to transfer separately.[23]

30. Other than Retained Liabilities, all claims, debts, encumbrances and obligations of the Company will be vested in ResidualCo, a newly incorporated entity, and will no longer be liabilities of the Company post-closing.[24] The reverse vesting structure is intended to preserve the Company and allow the Business to continue as a going-concern. The Monitor understands that Coastal intends to employ the majority of employees to maintain operational continuity for customers, vendors, and suppliers.[25]

31. The principal terms of the Transaction are as follows:

    (a) **Subscription and Issuance of Shares**: Nemori shall issue to the Purchaser, and the Purchaser shall subscribe for that number and class of shares in the share capital of Nemori from treasury, to be specified by the Purchaser at least two Business Days prior to the Closing Date, which shares shall be free and clear of all Encumbrances, except for any Permitted Encumbrances ("**Purchased Shares**"). In addition to the Purchased Shares, the Retained Assets and Retained Liabilities will remain with Nemori.

[22] Sixth Report of the Monitor dated September 4, 2025 ("**Sixth Report**") at para 35.
[23] Sixth Report at para 41.
[24] Sixth Report at para 39.
[25] Sixth Report at para 53.

(b) **Purchase Price:** The total consideration in respect of the Purchased Shares shall be a cash amount plus any Cure Costs.

(c) **Employees:** The Purchaser has requested that all employees be terminated prior to closing.

(d) **Retained Liabilities:** The Retained Liabilities include, among other things: (i) Cure Costs (if any); and (ii) Tax liabilities of Nemori beginning on or after the Closing Date.

(e) **Excluded Assets:** The Excluded Assets include the Cash Consideration, accounts receivable, certain Tax records related to the Excluded Liabilities and Excluded Assets, Excluded Contracts, all leases for equipment, and certain other ancillary assets.

(f) **Excluded Liabilities**: The Excluded Liabilities are all Claims and all debts, obligations and liabilities of Nemori or any predecessors thereof except for the Retained Liabilities. For clarity this includes but is not limited to any liabilities: (i) relating to or under the Excluded Contracts and Excluded Assets, and (ii) for all Terminated Employees.

(g) **Regulatory Approvals:** Due to the structure of the Transactions, it is anticipated that all licences, certifications, and regulatory approvals will remain in place, and no additional regulatory approvals will be necessary. No *Competition Act* or other statutory approvals are needed.

(h) **Closing Conditions:** The only material condition to closing that has not yet been fulfilled is the granting of the RVO.

(i) **Closing Date:** The 30th of September, 2025 and no later than the Outside Date of October 15, 2025.[26]

32. The Monitor understands that although the transaction proposed in the Subscription Agreement is not conditional on financing, Coastal requires financing to transact and that Coastal has not received confirmation from its financial institution that financing is approved.[27] The Monitor has been advised by Coastal that it expects to have financing before the Outside Date.[28]

PART III – ISSUES

33. The issues to be determined by this Court are whether:

(a) the Subscription Agreement and the reverse vesting transaction contemplated therein should be approved;

(b) ResidualCo should be added as an Applicant to this CCAA Proceeding and the Monitor should be granted enhanced powers over ResidualCo to administer this proceeding to conclusion;

(c) the distribution to RBC in its capacity as senior secured creditor and DIP Lender should be approved;

(d) Nemori meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Protection Program Regulations* ("**WEPP Regulations**") and Nemori's former employees are individuals who may apply for the Wage Earner Protection Program;

[26] Sixth Report at para 34, Share Subscription Agreement dated September 4, 2025.
[27] Sixth Report at para 40.
[28] Sixth Report at para 41.

(e) the fees and activities of the Monitor and the Monitor's counsel since the date of the Initial Order should be approved;

(f) the Stay of Proceedings should be extended to November 15, 2025; and

(g) the Administration Charge (as defined in the ARIO) should be increased from $250,000 to $400,000 which incremental amount shall be for the benefit of the Monitor and its counsel.

PART IV – LAW & ARGUMENT

A. The Proposed Transaction Should be Approved

34. This Court has jurisdiction under Section 36 of the CCAA to approve a sale outside of the ordinary course of business. Section 36(3) of the CCAA sets out a list of factors to be considered by a Court in determining whether to approve a sale:

(a) whether the process leading to the proposed transaction is reasonable in the circumstances;

(b) whether the Monitor approved the process leading to the transaction;

(c) whether the Monitor has filed a report stating its opinion that the Transaction would be more beneficial to creditors than a sale or disposition in a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed transaction on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.[29]

35. The factors enumerated at Section 36(3) of the CCAA generally overlap with the principles articulated in the seminal case on approval of sale transactions, *Royal Bank of Canada v. Soundair Corp.*[30] (the "**Soundair Principles**"). Unless a proposed transaction clearly offends Section 36(3) of the CCAA or the Soundair Principles, Courts have generally upheld the business judgement of the parties and the court-appointed officer overseeing the sale process, in this case the Monitor.[31]

36. The Monitor submits that the proposed transaction satisfies section 36(3) of the CCAA and the Soundair Principles based on the following:

(a) **The process leading to the proposed sale was reasonable:** The SISP was designed to be broad, transparent, and flexible, with the aim of attracting bidders and to achieve the highest possible purchase price. Any variations to the SISP (including disclosure of bids to RBC and the Company) was pursuant to Orders of the Court and resulted in a going-concern transaction that benefits a broad variety of stakeholders. The competitive tension in the SISP resulted in increased bids by several bidders, resulting in material improvements for stakeholders.[32] The Monitor administered the SISP in accordance with its terms and the Sale Process Approval Order.[33]

[29] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**"), s. 36.
[30] *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA) [Tab 1].
[31] *Regal Constellation Hotel Ltd., Re* (2004), 71 O.R. (3d) 355 (CA), at para 23 [Tab 2].
[32] Sixth Report at para 28.
[33] Sixth Report at para 28.

(b) **<u>The SISP was developed with the Monitor.</u>** The SISP was developed in consultation with the Monitor, RBC and Company and was approved by the Court.[34]

(c) **<u>The Monitor has filed a report stating that the Transaction is in the best interests of stakeholders.</u>** The Transaction is the highest going-concern bid received and was negotiated with the input of the Company's key secured creditor, RBC.[35] The transaction preserves one of the significant milk producers on the island, which benefits residents, vendors, employees, and other social stakeholders. The Monitor believes the Transaction is the best going-concern offer received from the SISP and represents the market value of the Company after the conclusion of an extensive marketing process.[36] The Monitor believes a bankruptcy and corresponding liquidation would be a suboptimal outcome as compared to the Transaction because the Company's employees would be terminated, and customers and vendors may suffer losses.

(d) **<u>Stakeholders were extensively consulted</u>**, The SISP involved the disclosure of bids to RBC and the Company in an attempt to seek a going-concern outcome that would avoid liquidation.[37] The transaction is supported by both RBC and the Company.

(e) **<u>The consideration given by the Purchaser is fair and reasonable in the circumstances.</u>** The Purchase Price is fair and reasonable in the circumstances, taking into account the broad canvassing of the market during the SISP, the significant bidder activity and multiple bids received by the Monitor. The Coastal

[34] Third Report at para 13.
[35] Sixth Report at para 30.
[36] Sixth Report at para 50.
[37] Fifth Report at paras 10-12.

Bid represents the highest going-concern bid in the SISP. The Transaction is a value-maximizing transaction that monetizes the Company's available property for the benefit of creditors.

(f) **There is no viable going-concern alternative to the Transaction.** The bidder that submitted the next highest going-concern bid has indicated to the Monitor that it does not intend to proceed with its bid. As such, the alternative to the proposed transaction is a liquidation and cessation of the going-concern Business. Given the significant cash-flow pressures that the Company has experienced in the course of the CCAA Proceeding, it is likely that a failure to close the proposed transaction will result in the immediate wind-down and liquidation of the Business.

B. The Court has Jurisdiction to Grant the Reverse Vesting Order

37. Courts have held that a reverse vesting transaction is an appropriate transaction structure in restructuring proceedings where a debtor operates in a highly regulated environment in which its existing permits, licences, or other rights may be difficult or impossible to reassign to a purchaser.[38]

38. As articulated by Justice MacDonald in *PricewaterhouseCoopers Inc. v. Canada Fluorspar (NL) Inc.,*[39] "an RVO generally involves a series of steps whereby:

(a) the purchaser becomes the sole shareholder of the debtor company;

(b) the debtor company retains its assets, *including key contracts and permits*; and

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[38] *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 ("***Just Energy***") at para 34 [Tab 3].
[39] *Pricewaterhouse Coopers Inc. v. Canada Fluorspar (NL) Inc.,* ("***Canada Fluorspar***") 2023 NLSC 88, at para 25 [Tab 4].

(c) the excluded liabilities and assets not assumed by the purchaser are transferred into a newly incorporated entity or entities (referred to in RVOs as "ResidualCo"). The Monitor then addresses these assets and liabilities through a bankruptcy or similar process."[40]

39. The Ontario Superior Court of Justice (Commercial List) in *Harte Gold* set out a list of factors to be considered by a Court in determining whether to approve a reverse vesting transaction:

(a) Why is the RVO necessary?

(b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?

(c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative? and

(d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure? [41]

40. The RVO is necessary and critical to the Transaction.

Preservation of Licenses, Permits and Quotas

41. The Company operates in the highly regulated fluid milk production industry. It relies on various licenses, quotas and permits to operate and the maintenance of such licenses,

[40] *Canada Fluorspar* at para 25 [Tab 4].
[41] *Harte Gold Corp. (Re)*, 2022 ONSC 653 ("***Harte Gold***") at para 38 [Tab 5].

quotas and permits are critical to the ongoing value and going-concern nature of the Business.

42. In *Canada Fluorspar*, this Court acknowledged that the debtor had dozens of permits and licenses that it had to retain to operate the mine. The court-appointed monitor in that case noted that the licenses and permits "may be difficult to transfer" and that even if transfers were possible, the transfers would likely result in significant delays and costs.[42] The licenses and permits were critical for the purchaser's ability to restart operations and uncertainty around timing of acceptance would materially affect the restart of mining operations and therefore the economics of the transaction.[43]

43. The Company's licenses, permits and quotas for the production of milk are governed by the *Milk Scheme, 1998,* NLR 68/98 (the "**Milk Scheme**") under the *Natural Products Marketing Act,* RSNL 1990 c. N-2. Pursuant to Section 10 of the Milk Scheme, a person shall not engage in the production or processing of milk in the province of Newfoundland and Labrador unless the person holds a valid license issued by the Dairy Farmers of Newfoundland and Labrador ("**DFNL**") and pays the fee prescribed by the DFNL.

44. A "registered producer" under the Milk Scheme is defined as "a producer who holds a valid license issued by DFNL". A "producer" is defined as "a person engaged in the collection or manufacture of milk for marketing purposes…"

45. Pursuant to Section 8 of the Milk Scheme, DFNL may among other things, (i) fix, impose and collect service charges, levies or fees for the production and marketing of milk; (ii) provide for the production or marketing of milk on a quota basis with provision made for new entrants into production as the provincial quota increases; (iii) fix and allot, or refuse

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[42] *Canada Fluorspar* at para 62 [Tab 4].
[43] *Canada Fluorspar* at para 62 [Tab 4].

to fix and allot to producers, quotas for the production or marketing of milk on the basis that it considers proper; and (iv) and cancel, reduce, or refuse to increase a quota fixed and allotted to a producer for the production or marketing of milk that the DFNL considers proper.[44]

46. The licenses and quota issued to Nemori pursuant to the Milk Scheme are critical for its operations. In fact, an express purpose of the reverse vesting structure is to ensure that the licenses and quota will remain with Nemori and will not be transferred, terminated or affected in any way by the transaction.

47. Accordingly, the proposed RVO provides that any and all licenses, quotas and regulatory approvals required for Nemori's business issued under the *Milk Scheme, 1998* or other similar legislation, shall remain in full force and effect upon and following closing and no individual, firm, corporation, governmental body or agency, or any other entity may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise any right (including any right of set off, dilution or or make any demand under or in respect of any such contract, and no automatic termination will have any validity or effect, by reason of:

    (a) any event that occurred on or prior to closing and is not continuing that would have entitled such person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of Nemori);

    (b) the insolvency of Nemori or the fact that Nemori obtained relief under the CCAA;

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[44] *Milk Scheme, 1998,* NLR 68/98, s. 8.

(c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the Subscription Agreement, the transactions, the provisions of the RVO , or any other Order of this Court in this CCAA proceeding; or

(d) any transfer or assignment, or any change of control of Nemori, arising from the implementation of the Subscription Agreement, the transactions, or the provisions of the RVO.[45]

48. Similar language has been incorporated into reverse vesting orders sought by CCAA debtors involved in heavily regulated industries such as cannabis production and retail, power generation, and other permit-reliant enterprises. For example, in *Validus Power Corp,* Justice Osborne of the Ontario Superior Court of Justice (Commercial List) granted a reverse vesting order that provided that all continuing contracts, permits and licenses to which any of the purchased entities are a party shall remain in full force and effect post-closing.[46]

49. The granting of an RVO in this case would advance the policy and remedial objectives of the CCAA[47]. The Monitor is of the view that there are social and public policy considerations that support the continued operation of the farm as a going-concern, and that the transaction is consistent with the remedial purpose of the CCAA, which seeks to mitigate, where possible, the social and economic consequences of bankruptcy.[48]

[45] Draft Reverse Vesting Order of Grant Thornton Limited, in its capacity as Monitor, at para 14.
[46] *In the Matter of Validus Power Corp. et al,* Approval and Vesting Order at para. 14 [Tab 6]. See also *In the Matter of Athabasca Minerals Inc. et al.,* ABKB (19-Apr-2024) at para 14 [Tab 7].
[47] *Canada v. Canada North Group Inc*., 2021 SCC 30 at para 21 [Tab 8], quoting *Century Services Inc. v. Canada (Attorney General),* 2010 SCC 60 at para 70 [Tab 9].
[48] Sixth report at para 53.

No Prejudice to Stakeholders from RVO Structure

50. No stakeholder is materially worse off by the proposed transaction being structured as a reverse vesting transaction than if the transaction had been structured as an asset purchase. Namely, the cash purchase price will be applied to pay Nemori's obligations in priority and any cure costs (if any) will be paid by the Purchaser. Any claim that is expected to be vested out to ResidualCo would similarly have received no recovery under an asset purchase transaction.

C. Other Relief Sought by the Monitor

Cancellation of Shares

51. The proposed RVO cancels all shares in Nemori without consideration. The cancellation of shares is necessary to give effect to the reverse vesting transaction. The Court's jurisdiction to cancel shares is derived from the broad statutory jurisdiction afforded by Section 11 of the CCAA[49], and the ranking of priorities in the CCAA, which establishes equity interests as ranking behind all creditor claims.[50] Further, the CCAA expressly provides that a Court may approve a transaction outside the ordinary course without requirement for shareholder approval.[51]

Addition of ResidualCo to the CCAA Proceedings

52. The Monitor seeks to add ResidualCo as an applicant in the CCAA Proceedings. ResidualCo will be federally incorporated and will have the same principals and directors

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[49] CCAA s. 11.
[50] CCAA s. 6(8).
[51] CCAA s. 36(1).

as Nemori prior to closing. ResidualCo is therefore an affiliated debtor company pursuant to Sections 3(2) and 3(3) of the CCAA[52].

Enhanced Powers for the Monitor

53. Pursuant to Section 11 of the CCAA, the Monitor seeks enhanced powers to administer ResidualCo post-closing. At the time of closing, ResidualCo will have no employees or directors and enhanced powers are required to allow the Monitor to act on behalf of ResidualCo including with respect to, among other things, applying to this Court for a final order to distribute the remaining net proceeds of sale. The Monitor would also be empowered to take the appropriate actions required, or that it deems necessary with regard to the ongoing administration of these CCAA Proceedings, including assigning ResidualCo into bankruptcy if required or desirable to wind up the estate.[53]

Distribution to RBC

54. Post-closing the Monitor intends to make a distribution to RBC. The Monitor has obtained an independent security opinion confirming that RBC holds enforceable first ranking security over the Company (subject to court-ordered priority charges).[54] The Monitor intends to hold back a portion of the sale proceeds to account for priority payables (including professional fees), priority amounts owed to CRA and amounts that may be payable pursuant to WEPP, and post-filing amounts.[55]

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[52] CCAA s. 3.
[53] Sixth report at para 74.
[54] Sixth Report at para 74.
[55] Sixth Report at para 76.

Approval of Monitor's Fees and Activities

55. The Monitor seeks approval of its fees and activities and those of its counsel. In considering whether to approve the fees of a monitor and its counsel, the Court evaluates the accounts based on the "overriding principle of reasonableness". The Court is not required to undertake a line-by-line reconciliation of invoices, rather the focus is on assessing the reasonableness of the accounts and the overall value contributed by the Monitor and its counsel.[56]

56. When reviewing the fairness and reasonableness of the fees of the Monitor and its counsel, courts have considered the following non-exhaustive factors:[57]

(a) the nature, extent and value of the assets being handled;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the company, its officers, or its employees;

(d) the time spent;

(e) the Monitor's knowledge, experience, and skill;

(f) the diligence and thoroughness displayed;

(g) the responsibilities assumed;

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[56] *Bank of Nova Scotia v Diemer,* 2014 ONCA 851 at para 45 ("***Diemer***") [Tab 10]; *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at para 13 ("***Nortel***") [Tab 11].

[57] *Nortel* at para 14 [Tab 11]; *Diemer* at para 9 [Tab 10]; *Laurentian University of Sudbury*, 2022 ONSC 5850 at para 12 [Tab 12]. See for example the Distribution and Termination Order dated December 19, 2024, In the Matter of Harbor Grace Ocean Enterprises and Laurenceton Holdings, at paras 12-14 ("***Harbor Grace***") [Tab 13]; Distribution and Termination Order dated January 28, 2025, In the Matter of Big Erics and Terra Nova Old Port Foods, at para 5 ("***Big Erics***") [Tab 14].

(h) the results achieved; and

(i) the cost of comparable services when performed in a prudent and economical manner.

57. Based on the materials filed in support of the Monitor's request to pass its accounts, and the degree of Court oversight and involvement throughout this CCAA Proceeding, the Monitor submits that the accounts of the Monitor and its counsel are fair and reasonable and should be approved. In particular, the fees and disbursements of the Monitor and its counsel have been validly incurred. The CCAA Proceeding required extensive involvement of the Monitor and its counsel, in particular in conducting the SISP and the extensive negotiations that ensued relating to the disclosure of bids, selection of a going-concern bid, efforts to negotiate a transition services agreement, steps taken to deal with the Company's cash flow issues, and to advance and pursue the proposed transaction.

58. The Monitor and Monitor's counsel are experienced restructuring professionals who have been integral in this CCAA Proceeding and have at all times demonstrated diligence and thoroughness throughout. The hourly rates for the Monitor and its counsel are comparable to the rates charged by other professional firms in Atlantic Canada for the provision of similar services.[58]

Sealing of Confidential Appendices

59. The Monitor seeks to temporarily seal the unredacted copy of the Subscription Agreement appended as a Confidential Appendix to the Monitor's Sixth Report. The Court has the

[58] Sixth Report at Appendix F.

jurisdiction to grant a sealing order, and may do so when the test set out in *Sherman Estate* is met:[59]

(a) there is a serious risk to an important public interest;

(b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

60. The disclosure of the Purchase Price of the Subscription Agreement would be prejudicial to, among other things, the integrity of any additional marketing efforts that may be needed if the Transaction fails to close for any reason. The sealing order sought is limited in time and will automatically expire at the earlier of the closing of the Transactions or further order of the Court to ensure that the Purchase Price remains confidential until all sale efforts are concluded. The sealing provisions, limited in this manner, are sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.

D. The Stay Period should be Extended

61. The Stay Period under the ARIO expires on September 11, 2025. The Monitor proposes that the Stay Period be extended to November 15, 2025 to allow the transaction to close and the Monitor to seek such other relief as necessary to wind down the proceedings. The Company's cash flows demonstrate sufficient liquidity up to and including the Outside Date, noting however that significant professional fees that were deferred (as described in the Sixth Report) remain outstanding and will not be paid down by the Outside Date.

[59] *Sherman Estate v Donovan*, 2021 SCC 25 at paras 38, 41 ("***Sherman Estate***") [Tab 15]. See also *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53 [Tab 16].

E. The Court Should Approve the Increased Administration Charge

62. The Applicants seek to increase the Administration Charge from $250,000 to $400,000, which incremental amount shall be for the benefit of the Monitor and its counsel. As described in the Sixth Report, because the Company has not obtained any further funding, the Monitor and its counsel have deferred their fees to allow the Company to make certain capital expenditures necessary to preserve the business and ensure animal welfare. Accordingly, the current Administration Charge may be insufficient to secure the full amounts outstanding.

63. Section 11.52 of the CCAA authorizes this Court to grant a priority charge in respect of professional fees and disbursements on notice to affected secured creditors. The Monitor anticipates that further fees will be incurred, largely by the Monitor and its counsel, to advance the transaction to closing. Accordingly, the Monitor seeks approval of the expanded Administration Charge to allow ongoing work to continue.

PART IV – NATURE OF THE ORDER SOUGHT

64. For all of the reasons submitted above, the Company submits that this Court should grant the relief sought.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of September, 2025.

SCHEDULE "A" – LIST OF AUTHORITIES

Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (CA)
Regal Constellation Hotel Ltd., Re (2004), 71 O.R. (3d) 355
Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al, 2022 ONSC 6354
Pricewaterhouse Coopers Inc. v. Canada Fluorspar (NL) Inc., 2023 NLSC 88
Harte Gold Corp. (Re), 2022 ONSC 653
In the Matter of Validus Power Corp. et al, Approval and Vesting Order
Canada v. Canada North Group Inc., 2021 SCC 30
Century Services Inc. v. Canada (Attorney General), 2010 SCC 60, [2010] 3 S.C.R. 379
Bank of Nova Scotia v Diemer, 2014 ONCA 851
Re Nortel Networks Corporation et al, 2017 ONSC 673
Laurentian University of Sudbury, 2022 ONSC 2927
Distribution and Termination Order dated December 19, 2024, *In the Matter of Harbor Grace Ocean Enterprises and Laurenceton Holdings*
Distribution and Termination Order dated January 28, 2025, *In the Matter of Big Erics and Terra Nova Old Port Foods*
Sherman Estate v Donovan, 2021 SCC 25
Sierra Club of Canada v Canada (Minister of Finance), [2002] 2 SCR 522

SCHEDULE "B" TEXT OF STATUTES, REGULATIONS & BY-LAWS

***Companies' Creditors Arrangement Act*, RSC, 1985, c C-36**

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.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

- **(a)** securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and
- **(b)** the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

- **(a)** it is controlled by

- **(i)** that other company,
- **(ii)** that other company and one or more companies each of which is controlled by that other company, or
- **(iii)** two or more companies each of which is controlled by that other company; or

  - **(b)** it is a subsidiary of a company that is a subsidiary of that other company.

[…]

Payment — equity claims

6 (8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

[…]

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.

[…]

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act 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.

Notice to creditors

(2) A company that applies to the court for an authorization is to 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

(3) 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 monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor 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.

Additional factors — related persons

36 (4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.