

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Estate/Court File No.: 31-2481648

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS, A GENERAL PARTNERSHIP
ESTABLISHED IN THE PROVINCE OF ONTARIO**

Applicant

Estate/Court File No.: 31-2481649

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH STORES LTD., A CORPORATION INCORPORATED IN THE
PROVINCE OF ONTARIO**

Applicant

**FACTUM OF THE APPLICANTS
(returnable March 7, 2019)**

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TO: THE SERVICE LIST

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PART I - INTRODUCTION

1. On March 4, 2019, the Applicants, Green Earth Environmental Products (“**GEEP**”) and Green Earth Stores Ltd. (“**GESL**”) (collectively, the “**Applicants**”) each commenced proposal proceedings (the “**Proposal Proceedings**”) under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended (the “**BIA**”) by each filing a Notice of Intention to File a Proposal (“**NOI**”). Crowe Soberman Inc. was appointed Proposal Trustee of each of the Applicants (in such capacity, the “**Proposal Trustee**”).

Affidavit of Matthew McBride sworn March 4 2019, Tab 3 of the Motion Record of the Applicants (the “McBride Affidavit”) at paras. 2, 56 and 57. Exhibits “P” and “Q” to the McBride Affidavit.

2. The Applicants operate a retail business known as the “Green Earth” stores across Ontario (“**Green Earth**”). There are 29 store locations in shopping malls across Ontario.

McBride Affidavit, at para. 4; Exhibit “A” to McBride Affidavit.

3. As further described below, the Applicants’ business has experienced declining financial and retail performance due to unfavourable retail market trends. Despite its own efforts to revitalize its business and overcome the financial decline, the Applicants believe that

the best way to maximize recoveries for their stakeholders is through a court supervised and orderly liquidation process and wind-down of their retail operations.

McBride Affidavit, at para. 7.

4. Accordingly, the Applicants seek the following relief from the Court:
- (a) an Order (the “**Administration Order**”), substantially in the form located at Tab 4 of the Applicants’ Motion Record:
 - (i) approving the administrative consolidation of the Applicants’ Proposal Proceedings and authorizing the Proposal Trustee to administer the Proposal Proceedings as if the Proposal Proceedings were a single proceeding for the purposes of carrying out its duties and responsibilities as a proposal trustee under the BIA;
 - (ii) approving the appointment of FAAN Advisors Group Inc. (“**FAAN**”) as Chief Restructuring Advisors (in such capacity, the “**CRA**”) to the Applicants in these Proposal Proceedings, and approving the Engagement Letter (the “**CRA Engagement Letter**”) between FAAN and the Applicants dated February 25, 2019;
 - (iii) authorizing the Applicants to continue using the Cash Management System (as hereinafter defined) currently in place;
 - (iv) approving the Administration Charge (as hereinafter defined) in the amount of \$400,000 against all of the Applicants’ property, assets and undertakings (the “**Property**”);
 - (v) approving the D&O Charge (as hereinafter defined) in the amount of \$500,000 against the Property;
 - (vi) approving a key employee retention terms and agreement (the “**KERA**”), and approving the KERA Charge (as hereinafter defined) in the amount of \$100,000 against the Property;
 - (vii) extending the time for filing a proposal (the “**Stay Period**”) pursuant to section 50.4(9) of the BIA for 30 days to May 3, 2019; and
 - (viii) sealing the unredacted CRA Engagement Letter and the unredacted Consulting Agreement (as defined below) filed separately with the Court,

and the Comparative Analysis (as defined in the First Report of the Proposal Trustee (the “**First Report**”)) and the KERA filed as confidential appendices “1” and “2” to the First Report pending further order of the Court;

(b) an Order (the “**Liquidation Process Order**”) substantially in the form located at Tab 5 of the Applicants’ Motion Record:

- (i) approving the consulting agreement (the “**Consulting Agreement**”) between the Applicants and Shawn Parkin (the “**Consultant**”) dated February 25, 2019 and the transactions contemplated thereunder;
- (ii) approving the sale guidelines (the “**Sale Guidelines**”) in the form attached as Schedule A to the Liquidation Process Order;
- (iii) authorizing the Applicants, with the assistance of the CRA and the Consultant, to conduct a sale in accordance with the Liquidation Process Order, the Sale Guidelines and the Consulting Agreement; and
- (iv) authorizing and directing the Applicants to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and the transactions contemplated therein; and

(c) such further and other relief as the Court may deem just.

PART II - THE FACTS

5. The facts with respect to this motion are fully set out in the McBride Affidavit. All capitalized terms not otherwise defined herein have the same meaning ascribed to them in the McBride Affidavit.

A. Overview of Applicants’ Business Operations and Assets

6. GEEP is a general partnership registered pursuant to the *Partnerships Act* (Ontario) with a registered business address in Toronto, Ontario. It is comprised of two partners, being McBride Holdings Inc. (“**McBride Holdings**”) and Beckstette Holdings Inc.

(“**Beckstette Holdings**”). A summary of GEEP’s role in the Green Earth business is as follows:

- (a) GEEP operates the Green Earth retail stores across Ontario;
- (b) GEEP sells the Inventory (as defined below) in the Green Earth Stores; and
- (c) GEEP employs approximately 202 employees across its retail store locations, all of whom are non-unionized.

McBride Affidavit, at paras. 8 and 13.

-
7. GEEP’s partner, McBride Holdings, is the wholly owned subsidiary of Matthew McBride Enterprises Corp. (“**McBride Enterprises**”) and its other partner, Beckstette Holdings, is the wholly owned subsidiary of Beckstette Enterprises Corp. (“**Beckstette Enterprises**”, and together with McBride Enterprises, the “**Enterprises**”).

McBride Affidavit, at para. 11.

8. GESL is a private company incorporated pursuant to the *Business Corporations Act* (Ontario), with a registered business address in Toronto, Ontario. A summary of GESL’s role in the Green Earth business is as follows:
- (a) GESL owns the inventory sold in the Green Earth stores (the “**Inventory**”), which it purchased from third party suppliers, as further described below;
 - (b) GESL operates the e-commerce website for online sales of the Inventory;
 - (c) GESL owns real property that houses Green Earth’s warehouse and distribution centre, which is located at 19-23 Buchanan Court, London, Ontario N5Z 4P9 (the “**Real Property**”); and
 - (d) GESL employs 13 full-time head office and warehouse employees that work out of the Real Property location, all of whom are non-unionized.

McBride Affidavit, at paras. 9, 14 and 19.

9. Pursuant to an Agreement between GESL and GEEP dated October 1, 2004, GESL invoices GEEP monthly for the payment of the Inventory after the Inventory is sold in the retail stores by GEEP. In particular, GESL renders an account to GEEP for the Inventory sold on a monthly basis based upon a reasonable estimate of the costs of the goods sold,

which since October 1, 2013 has been estimated at 35.5% of the sale price of the Inventory in the stores, plus a 15% administration fee.

McBride Affidavit, at para. 20.

10. During these Proposal Proceedings, GEEP intends to pay GESL for the Inventory based on the current fee structure and these payments are forecasted to be made weekly in arrears to ensure that the proceeds from the sale of the Inventory are accounted for between GESL and GEEP.

McBride Affidavit, at para. 22.

11. The Applicants use a centralized cash management system (the “**Cash Management System**”) to, among other things, collect funds and pay expenses associated with their operations. As further described in the McBride Affidavit, GEEP maintains bank accounts in Ontario with 6 financial institutions and GESL maintains bank accounts in Ontario with 2 financial institutions. With the exception of GEEP’s operating accounts at the Royal Bank of Canada (“**RBC**”), all GEEP’s other accounts are deposit only accounts to facilitate the deposit of cash from the various retail locations.

McBride Affidavit, at paras. 23 to 26.

12. The Applicants will continue to operate the existing cash management systems with the oversight of the CRA and the Proposal Trustee in these Proposal Proceedings. The CRA will be added to a signatory to the GESL and GEEP bank accounts and be required to authorize any transaction over \$5,000.

McBride Affidavit, at paras. 27 to 28.

B. Liabilities

13. As at February 26, 2019, GESL was indebted to RBC in the amount of \$3,254,740.85 (the “**RBC Indebtedness**”). Prior to commencing the Proposal Proceedings, and pursuant to a Without Recourse Assignment of Debt and Security dated February 26, 2019, McBride Enterprises and Beckstette Enterprises took an assignment of the RBC

Indebtedness, and the security granted by GESL and by GEEP (as guarantor of the RBC Indebtedness) to RBC. The assigned security includes general security agreement granted by GESL, a collateral mortgage granted by GESL and registered on title to the Real Property in the amount of \$3,425,000.00, two guarantees granted by GEEP and a general security agreement granted by GEEP.

McBride Affidavit, at paras. 29 to 34, and Exhibits "C" to "E".

14. As further particularized in the McBride Affidavit, in order to finance the business operations and in addition to the RBC facilities, the Enterprises would make advances from time to time to GEEP and GESL. To secure the advances made by each of the Enterprises, in June 2009, GEEP and GESL each granted a general security agreement to each of the Enterprises.

McBride Affidavit, at paras. 35 to 39, and Exhibits "F" to "I".

15. On December 11, 2018, each of the Enterprises issued demands to each of GESL and GEEP in respect of outstanding indebtedness. Thereafter, both GESL and GEEP repaid certain amounts to the Enterprises.
16. GEEP currently owes McBride Enterprises \$734,798.00 and GEEP owes Beckstette Enterprises \$734,866.50. GESL currently owes McBride Enterprises \$2,424,777.02 and GESL owes Beckstette Enterprises \$2,411,076.52.

McBride Affidavit, at paras. 40 to 43, and Exhibits "J" and "K".

17. In addition to the liabilities described above, GESL owes approximately \$1,587,617.69 to inventory suppliers and other service providers and GEEP owes approximately \$19,464.72 to service providers.

McBride Affidavit, at para. 49.

C. Financial Difficulties

18. Over the last year, the Applicants have experienced declining financial performance due to unfavourable retail market trends, such as a change in consumer preferences away from the Green Earth product line and decreased foot traffic in the retail stores due to a rising preference for online shopping. Over the last 60 days, the Applicants attempted to offer sales in the stores to address the negative financial situation, but these efforts have proven challenging and the business operations have continued to suffer.

McBride Affidavit at para. 51.

19. The draft financial statements for the year ending September 30, 2018 for GEEP indicate that GEEP operated at a net loss of \$787,229 and that its liabilities exceeded its assets by \$978,371. The draft financial statements for the year ending September 30, 2018 for GESL indicate that GESL operated at a net loss of \$2,018,418 and that its liabilities exceeded its assets by \$2,018,318.

McBride Affidavit at paras. 52 to 53 and Exhibits “N” and “O”.

D. Proposal Proceedings – Liquidation Sale Strategy

20. The Applicants retained Crowe Soberman as its financial advisor on January 15, 2019 and have elected commenced these Proposal Proceedings. The Applicants intend to liquidate the Inventory and close the stores through an orderly and court supervised process with the assistance of the CRA and the Consultant.

McBride Affidavit at paras. 54 and 55.

21. The Applicants considered three proposals in respect of an orderly liquidation of the Inventory through the conduct of a “going-out-of-business” or similar themed sale (the “**Liquidation Sale**”). After evaluating the three proposals, the Applicants, with the assistance of Crowe Soberman, have elected to retain FAAN as CRA and Shawn Parkin as the Consultant to assist the Applicants undertake the Liquidation Sale.

McBride Affidavit at para. 61.

22. This selection was made on the basis that the CRA will assist the Applicants with developing a strategy to maximize recoveries from their retail assets, and the Consultant will assist with effecting the Liquidation Sale and the disposition of Inventory. The CRA and the Consultant will complement each other throughout the Proposal Proceedings. There will not be any duplication of efforts as each have distinct and separate roles, as described below.

McBride Affidavit at para. 62.

23. The CRA Engagement Letter provides, *inter alia*, that the CRA will act as an independent contractor of the Applicants for the purposes of the identifying and implementing sales strategies and cost reduction opportunities, including closing stores and dealing with employee matters, will assist with financial strategies and cash flows, will oversee the activities of the Consultant to assist in the closing of the stores, and will be paid by the Applicants for its services on a weekly basis with an additional fee payable at the end of the mandate.

McBride Affidavit at para. 64 and Exhibit "R".

24. The Consulting Agreement provides, *inter alia*, that the Consultant will act as an independent contractor of the Applicants, will assist in developing a budget for the Liquidation Sale and will coordinate and determine the manner in which the Liquidation Sale is conducted (including advertising, points of purchase, pricing of Inventory and staffing, among other things), will assist the Applicants in developing sale incentives and employee retention plan to be utilized during the Liquidation Sale for store employees, and will be paid a base fee on a weekly basis, with the entitlement to a bonus at the conclusion of the Liquidation Sale and 20% commission of net proceeds from the sale of furniture, fixtures and equipment.

McBride Affidavit at para. 65 and Exhibit "S".

25. The Applicants will carry out the orderly wind-down of their business with the CRA and Consultant, and under the oversight of the Court and the Proposal Trustee in accordance

with the Sale Guidelines. It is currently expected that the Liquidation Sale will take approximately 3 months.

McBride Affidavit at paras. 63 and 66.

PART III - ISSUES

26. On this Motion, the issues to be considered are whether the Court should:
- (a) administratively consolidate the proceedings of GEEP and GESL;
 - (b) approve the appointment of the CRA and the transactions contemplated under the CRA Engagement Letter;
 - (c) approve the Consulting Agreement and the Liquidation Sale to be carried out pursuant to the Sale Guidelines;
 - (d) approve the Administration Charge;
 - (e) approve the D&O Charge;
 - (f) approve the KERA and the KERA Charge;
 - (g) extend the Stay Period by 30 days to May 3, 2019; and
 - (h) grant the requested Sealing Order.

PART IV - LAW AND ARGUMENT

A. Administrative Consolidation should be Granted

27. The Applicants seek to administratively consolidate the Proposal Proceedings, thereby authorizing the Proposal Trustee to administer the Proposal Proceedings as if the Proposal Proceedings were a single proceeding for the purposes of carrying out its duties and responsibilities under the BIA.
28. In *Electronic Sonic Inc (Re)*, Justice Brown made the following observations in respect of an administrative consolidation of two proposal proceedings:

Bankruptcy proceedings in this Court operate subject to the general principle that litigation process should secure the just, most expeditious and least expensive determination of every proceeding on its merits: Bankruptcy and Insolvency General Rules, s. 3; Ontario Rules of Civil Procedure, Rule 1.04(1). One practical application of that general principle occurs when courts join together two closely-related bankruptcy

proceedings so that they can proceed and be managed together. This procedural or administrative consolidation does not involve the substantive merger or consolidation of the bankruptcy estates, merely their procedural treatment together by the court. Administrative consolidation of two bankruptcy proceedings would be analogous to bringing two separate civil actions under common case management.

Electro Sonic Inc. (Re), 2014 ONSC 942 at para. 4 [*Electro Sonic*]. **Book of Authorities of the Applicants (“BOA”), Tab 1.**

29. The Court in *Electro Sonic* granted an administrative consolidation where the operations of the applicants were highly integrated and the applicants share a common managing director as well as human resource functions. The Court recognized that where there is a possibility that the applicants will apply together at future dates for relief such as stay extensions and sale approvals, and where the applicants share the same lender, “it made sense to order that both bankruptcy proceedings be consolidated the purposes of future steps in this order.”

Electro Sonic, at paras. 5 to 6. BOA, at Tab 1.

30. In this case, the relationship between the Applicants is closely intertwined. Together the Applicants operate various aspects of the Green Earth business, they share common management and administrative support, occupy common office space, and are indebted to the same related entities. In the circumstances, the administrative consolidation of the Proposal Proceedings would prevent the duplication of efforts to file and maintain two separate sets of motion materials over the course of the Proposal Proceedings and it would allow the Proposal Trustee to avoid issuing separate reports for each of the Applicants. This would result in a more efficient and cost effective process.

B. The Appointment of the CRA and the CRA Engagement Letter should be Approved

31. The Applicants seek the appointment of FAAN as CRA to assist with these Proposal Proceedings.
32. This Court has recognized that the proposal provisions under the BIA are analogous to the *Companies’ Creditors Arrangement Act* (“CCAA”) and therefore cases applicable to one restructuring statute have application to the other.

Danier Leather Inc. (Re), 2016 ONSC 1044 at para. 24 [*Danier*]. BOA, Tab 2.

33. The Court has approved the appointment of a chief restructuring officer/advisor in restructuring proceedings where the Court officer's knowledge and experience is critical to assisting the debtor with a successful restructuring and specifically, in retail insolvency cases, where the appointment of the chief restructuring officer/advisor is necessary to assist the debtor with a liquidation sale.

Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re) 2019 ONSC 1215, at paras. 30 to 32 [*Payless CRO Appointment*]; *Victoria Order of Nurses for Canada (Re)*, 2015 ONSC 3731 at para. 27 [*VON*]. BOA, Tabs 3 and 4, respectively.

34. The Applicants in this case will benefit from a CRA. The proposed CRA has the relevant knowledge in recent national retailer liquidations and will assist the Applicants with developing strategies to maximize recoveries from their retail assets through the Liquidation Sale. The Proposal Trustee is of the view that the CRA is cost effective. The CRA will also complement the Consultant's role in effecting the disposition of said assets, as further described below.

McBride Affidavit, at paras. 61 and 64.

First Report, at para. 34 to 37.

VON, at para 28. BOA, Tab 4.

C. The proposed Liquidation Sale, Consulting Agreement and Sale Guidelines should be Approved

i. Proposed Liquidation Sale should be Approved

35. The Applicants submit that engaging the CRA and the Consultant, an individual with significant liquidation experience, to undertake a sale of the Inventory and the FF&E in the Closing Stores will produce better results than the Applicants' own attempts to offer sales in the retail stores without professional assistance, which attempts have been unsuccessful to date.
36. As debtors in possession, the Applicants will carry out the orderly wind-down of their business with the assistance of the CRA and Consultant, and under the oversight of the Court and the Proposal Trustee. The Sale Guidelines contemplate a relatively short liquidation period in order to maximize stakeholder recovery and minimize cost and impact on landlords.

37. As recognized by this Court, liquidation processes carried out by debtors in the context of insolvency proceedings work to the benefit of all stakeholders by permitting the controlled, fair and orderly wind-down of operations. In the *Target Canada Co. (Re)*, this Court approved a debtor-controlled liquidation process of the retail business, noting that the use of a restructuring process to downsize or wind-down a debtor company's business is entirely appropriate.

Target Canada Co. (Re), 2015 ONSC 303 at paras. 24 and 31 [*Target*]. BOA, Tab 5.

38. The Court is authorized to approve a sale of assets in a proposal proceeding under section 65.13 of the BIA, which sets out a list of non-exhaustive factors for the Court to consider in determining whether to approve a sale of the debtor's assets outside the ordinary course of business:

(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.

BIA, s. 65.13(4).

39. The Applicants submit that the Liquidation Sale satisfies the factors set out in section 65.13(4) of the BIA and is supported by the Proposal Trustee. In particular, it is submitted that the proposed Liquidation Sale should be approved based on the following: (a) it will maximize recoveries for the benefit of all stakeholders; (b) the process to determine the Consultant was reasonable having regard to the size of the Applicants and the amount of the Inventory as further set out below; (c) the Enterprises, the secured creditors of the Applicants, support the Liquidations Sale being undertaken by the

Consultant in accordance with the Sale Guidelines; and (d) the Sale Guidelines are consistent with recent Canadian retail liquidations, such as *Danier* and *Payless ShoeSource Canada*.

McBride Affidavit at paras. 51, 59 and 60.

First Report at para. 48.

***Danier; Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)*, 2019 ONSC 1305 [*Payless Liquidation Approval*] BOA, Tabs 2 and 6, respectively.**

ii. The Proposed Consulting Agreement and Sale Guidelines should be Approved

40. It is submitted that the Consulting Agreement should be approved as it is integral to the Liquidation Sale process being proposed. Orders approving agreements with consultants and advisors are frequently made in insolvency proceedings, including under the BIA. In *Danier*, the Court considered the following factors in determining whether to approve an agreement with a financial advisor and the fees payable thereunder, which factors are applicable to this case: (a) whether the debtor and the court officer overseeing the proceedings believe that the quantum and nature of the remuneration are fair and reasonable; (b) whether the consultant has industry experience and/or familiarity with the business of the debtor; and (c) whether the fee arrangement is necessary to incentivize the consultant.

***Danier* at para. 47, BOA, Tab 2.**

41. In approving a consulting agreement in a liquidation sale, the Court has considered the selection process undertaken by the debtor, and whether other liquidation proposals were received and evaluated by the Applicants before entering into a consultant agreement with a particular consultant. In this case, a reasonable selection process was undertaken and the Proposal Trustee participated in the selection process that resulted in the engagement of the Consultant.

***Payless Liquidation Approval*, at paras. 6 and 7. BOA, Tab 6.**

First Report, at paras. 39 to 41.

42. In the case at bar, the following factors militate in favour of the approval of the Consulting Agreement: (a) the Consultant's services are integral to the effective and efficient sale of the Applicants' Inventory and FF&E and the maximization of value for all of the Applicants' stakeholders; (b) the Consultant has extensive experience conducting retail liquidations, including inventory dispositions for a wide variety of former retailers, and is experienced in dealing with the type of landlord and customer concerns that may arise in the type of process contemplated in the Liquidation Sale; (c) the Consultant was selected after the Applicants, with the assistance of the Proposal Trustee, solicited and evaluated liquidation proposals from two other liquidators, having regard to the cost and efficacy of each; (d) the fee payable under the Consulting Agreement is reasonable in the circumstances and such a fee arrangement properly incentivizes the Consultant and aligns the interest of the Consultant with that of the Applicants; and, (e) the Consultant's role is separate and distinct from the role of the CRA.

McBride Affidavit, at paras. 61, 62, 65.

***Danier* at paras. 50 and 52. BOA, Tab 2.**

43. The Applicants are also seeking approval of the Sale Guidelines with respect to manner in which they conduct the Liquidation Sale, which is estimated to take approximately three months. The Sale Guidelines were drafted with the assistance of the Proposal Trustee, the CRA and the Consultant. In establishing the Sale Guidelines, the Applicants made reference to sale guidelines approved by this Court in other Canadian retail insolvencies including *Payless*, *Gymboree, Inc.*, and *Jones Canada, Inc./Nine West Canada LP*.

McBride Affidavit, at para. 66.

***In the matter of a Plan of Compromise or Arrangement of Payless ShoeSource Canada Inc. and Payless Shoesource Canada GP Inc.*, Court File No. CV-19-00614629-00CL, Order of Regional Senior Justice Morawetz dated February 21st, 2019. BOA, Tab 7.**

***In the Matter of the Notice of Intention to Make a Proposal of Gymboree, Inc.*, Court File No. CV-31-2464088, Order of Justice Hainey dated January 24th, 2019. BOA, Tab 8.**

***In the Matter of the Notice of Intention to Make a Proposal of Jones Canada, Inc. and Nine West Canada LP*, Court File No. 31-2363758 and 31-2363759, Order of Justice Hainey dated April 11th, 2018. BOA, Tab 9.**

D. Administration Charge should be Granted

44. The Applicants seek the Administrative Charge in the maximum amount of \$400,000 against the Property, to secure the fees and disbursements of counsel to the Applicants, the Proposal Trustee and its counsel, the CRA and the Consultant (the “**Administration Charge**”). Pursuant to section 64.2 of the BIA, the Court is authorized to grant a priority charge on property of a debtor in proposal proceedings to secure professional fees.

BIA, s. 64.2

McBride Affidavit, at paras. 68 to 70.

45. Administrative charges are routinely granted in proposal proceedings. In this case, the granting of the Administration Charge is necessary in order to complete the liquidation and successful wind-down of the Applicants’ operations. The Proposal Trustee supports the granting of the Administration Charge and is of the view that the quantum of same is reasonable.

Colossus Minerals Inc. (Re), 2014 ONSC 514 paras. 11 to 15 [*Colossus*]; *Danier* at para. 47. BOA, Tabs 10 and 2, respectively.

Fist Report, at para. 67.

E. D&O Charge should be Granted

46. The Applicants seek approval of a D&O Charge in the maximum amount of in the amount of \$500,000, in order to indemnify them against post-filing liabilities in their personal capacities that they may incur after the filing of the NOI (the “**D&O Charge**”), in priority to all other charges except the Administration Charge.
47. The Court’s authority to grant a D&O Charge on a priority basis is codified in section 64.1 of the BIA. This Court has approved the request for a directors’ and officers’ charge in proposal proceedings, noting that the continued involvement of remaining directors and officers is critical to the operations of an applicant during its BIA proposal and the successful sale process initiated by the applicant.

BIA, s. 64.1.

Colossus, paras. 16 to 21; *Danier*, at paras. 65 to 71. BOA, Tabs 10 and 2, respectively.

48. In the present case, the Applicants do not have directors' and officers' liability insurance. In order to continue to successfully carry out the liquidation and complete the wind-down of operations, the Applicants require the committed involvement and continued participation of their directors and officers, who have relationships with employees and landlords that cannot be replicated or replaced. The directors and officers will play an integral part of these Proposal Proceedings and the Liquidation Sale, and therefore the Applicants request the D&O Charge in order to protect them from any potential post-filing liabilities in their personal capacities that may arise from their continued participation.

McBride Affidavit, at paras. 71 to 76.

49. The Proposal Trustee worked with the CRA to size the D&O Charge considering the potential director liabilities and is of the view that the D&O Charge (both the amount and the priority ranking) is required and reasonable in the circumstances.

First Report, at paras. 68 to 69.

F. The KERA and KERA Charge should be Approved

50. The Court has regularly recognized the importance of retaining employees in the context of insolvency proceedings under the BIA and CCAA. In *Grant Forest*, the Court outlined the factors to be considered in approved retention plans as follows:
- (a) whether the Monitor supported the key employee retention agreement and charge;
 - (b) whether the beneficiaries of the key employee retention agreement were likely to consider other employment opportunities if the key employee retention agreement were not approved;
 - (c) whether the employees subject to the key employee retention agreement were considered important to the management and operations of the debtor company and whether replacements could be found in a timely manner should they choose to terminate their employment; and,
 - (d) the business judgment of the debtor's board of directors.

This Court has applied similar factors when approving employee retention plans in BIA proposal proceedings.

Re Grant Forest Products Inc., [2009] OJ No 3344 at paras. 8 to 22; *Danier* at paras. 72 to 78. BOA, Tabs 11 and 2, respectively.

51. With input from the Proposal Trustee, CRA and Consultant, the Applicants have elected to offer a KERA to certain key office employees and are seeking a charge in the amount of \$100,000 to secure the amounts to be paid to the key employees under the KERA (the “**KERA Charge**”), in priority to all other charges except the Administration Charge and D&O Charge. The Applicants also intend to structure a stay bonus incentive plan to certain staff at the retail stores.
52. The factors set out in *Grant Forest* are met in the circumstances of this case for the following reasons: (a) given the relatively short timeframe of the Liquidation Sale, certain employees and retail sales staff are critical to the successful and orderly wind down of the operations and the liquidation of the Inventory at the 29 stores; (b) it would be difficult to replace employees during the Proposal Proceedings and the Liquidation Sale; (c) the Proposal Trustee and the CRA have assisted the Applicants with identifying the key employees and the amounts offered to each under the KERA; and, (d) the Proposal Trustee is of the view that the KERA Charge is appropriate and reasonable.

McBride Affidavit, at paras. 77 to 81.

First Report, at para. 72.

G. Extension of Stay Period should be Granted

53. The initial Stay Period expires on April 3, 2019. The liquidation process is scheduled to commence immediately after obtaining the Liquidation Process Order, and is expected to last for approximately 12 weeks. Accordingly, the Applicants seek this opportunity to extend the Stay Period by 30 days to May 3, 2019, in order to permit them to move forward with the liquidation.

McBride Affidavit, at paras. 87 to 89.

54. This Court has authority to grant the requested extension under section 50.4(9) of the BIA, which states that such an extension may be granted where the Court is satisfied that the insolvent person has acted, and is acting, in good faith and with due diligence, the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted, and no creditor would be materially prejudiced if the extension were granted.

BIA, s. 50.4(9).

***Colossus* at paras. 38 to 43. BOA, Tab 10.**

55. In this instance, each of these factors has been met the Applicants have acted, and continue to act in good faith in pursuing the liquidation and wind-down of operations, the extension will permit the Applicants to make progress towards completing the liquidation, and no creditors will be prejudiced by extending the Stay Period to May 3, 2019. The Proposal Trustee supports the request for a stay extension to May 3, 2019.

McBride Affidavit, at para. 90.

First Report, at para. 79.

H. A Sealing Order should be Granted

56. The Applicants are seeking a sealing order in respect of the unredacted copy of the CRA Engagement Letter, the unredacted copy of the Consulting Agreement, filed separately with the Court; and the KERA and the Comparative Analysis filed as confidential appendices “1” and “2” to the First Report, pending further order of the Court.
57. Pursuant to the Ontario *Courts of Justice Act*, this Court has the discretion to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.

Courts of Justice Act, R.S.O. 1990, Chapter C. 43, s. 137(2).

58. In *Sierra Club of Canada v. Canada (Minister of Finance)*, the Supreme Court set out the test for when a sealing order is appropriate: (i) when the order is necessary in order to prevent serious risk to an important interest, including a commercial interest in the

context of litigation because alternative measures will not prevent the risk, and (ii) where the salutary effects of the order outweigh the deleterious effects.

***Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522 at para. 53. Commercial List Authorities Book.**

59. In the insolvency context, the Courts have applied this test and authorized sealing orders over confidential and commercially sensitive documents to protect the interests of debtors and other stakeholders.

***Danier*, at para. 82. BOA, Tab 2.**

60. The requested sealing order in respect of the CRA Engagement Letter and Consulting Agreement meets the test under *Sierra Club* and ought to be sealed on the basis that it contains commercially sensitive information, in particular the remuneration of the CRA and the Consultant. The disclosure of such information could impair the ability of both the CRA and Consultant to obtain market rates in other engagements, and accordingly, such information ought to be sealed.

***VON*, at para. 28. BOA, Tab 4.**

61. The Comparative Analysis prepared by the Proposal Trustee details the Proposal Trustee's assessment of the strengths and weaknesses of the liquidations proposals received by the Applicants. The Comparative Analysis contains sensitive commercial information, which, if disclosed prior to the completion of the Liquidation Sale, could pose a serious risk to the liquidation process in the event that the liquidation is not completed. A sealing order in respect of the Comparative Analysis will ensure that competitors or potential future proposals do not obtain an unfair advantage. In addition, the Proposal Trustee is not aware of any material prejudice that would be suffered by third parties as a result of the sealing of the Comparative Analysis.

***McBride Affidavit*, at para. 92.**

***First Report*, at para. 40.**

62. The KERA contains sensitive personal information regarding key employees. The Court has granted sealing orders in respect of such plans, recognizing that it contains sensitive

personal and private information of employees, *i.e.*, their identity and compensation, and that the disclosure of such information could be detrimental to the operations of a company throughout the a proposal proceeding. In particular, disclosing the identity of the individuals receiving the KERA may result in other employees requesting such payments or feeling under appreciated.

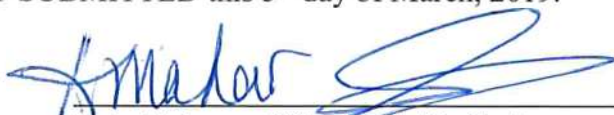
Danier at paras. 83 and 84. BOA, Tab 2.

63. The Applicants submit that the salutary effects of granting the sealing order outweigh any deleterious effect of restricting the accessibility of court proceedings. The Applicants are only seeking to seal those materials that are necessary to be sealed and only to the extent necessary.

PART V - RELIEF SOUGHT

64. In light of the foregoing, the Applicants request that the Court approve the relief sought as detailed in the Administration Order and the Liquidation Process Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March, 2019.



Kyla Mahar and Stephanie De Caria
MILLER THOMSON LLP

Lawyer for the Applicants

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Electro Sonic Inc. (Re)*, 2014 ONSC 942.
2. *Danier Leather Inc. (Re)*, 2016 ONSC 1044.
3. *Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)* 2019 ONSC 1215.
4. *Victoria Order of Nurses for Canada (Re)*, 2015 ONSC 3731.
5. *Target Canada Co. (Re)*, 2015 ONSC 303.

6. *Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)*, 2019 ONSC 1305.
7. *In the Matter of the Notice of Intention to Make a Proposal of Gymboree, Inc.*, Court File No. CV-31-2464088, Order of Justice Hainey dated January 24th, 2019.
8. *In the matter of a Plan of Compromise or Arrangement of Payless ShoeSource Canada Inc. and Payless Shoesource Canada GP Inc.*, Court File No. CV-19-00614629-00CL, Order of Regional Senior Justice Morawetz dated February 21st, 2019.
9. *In the Matter of the Notice of Intention to Make a Proposal of Jones Canada, Inc. and Nine West Canada LP*, Court File No. 31-2363758 and 31-2363759, Order of Justice Hainey dated April 11th, 2018.
10. *Re Grant Forest Products Inc.*, [2009] O.J. No. 3344.
11. *Colossus Minerals Inc. (Re)*, 2014 ONSC 514.
12. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522.

SCHEDULE "B"
RELEVANT STATUTES

65. Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Notice of intention

50.4 (1) Before filing a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the official receiver in the insolvent person's locality, stating

- (a) the insolvent person's intention to make a proposal,
- (b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal, and
- (c) the names of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the debtor's books,

and attaching thereto a copy of the consent referred to in paragraph (b).

Certain things to be filed

(2) Within ten days after filing a notice of intention under subsection (1), the insolvent person shall file with the official receiver

- (a) a statement (in this section referred to as a "cash-flow statement") indicating the projected cash-flow of the insolvent person on at least a monthly basis, prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention and signed by the trustee and the insolvent person;
- (b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and
- (c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the insolvent person.

Creditors may obtain statement

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

Exception

(4) The court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3) where it is satisfied that

- (a) such release would unduly prejudice the insolvent person; and
- (b) non-release would not unduly prejudice the creditor or creditors in question.

Trustee protected

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

Trustee to notify creditors

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice including all of the information referred to in paragraphs (1)(a) to (c).

Trustee to monitor and report

(7) Subject to any direction of the court under paragraph 47.1(2)(a), the trustee under a notice of intention in respect of an insolvent person

(a) shall, for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt;

(b) shall file a report on the state of the insolvent person's business and financial affairs — containing the prescribed information, if any —

(i) with the official receiver without delay after ascertaining a material adverse change in the insolvent person's projected cash-flow or financial circumstances, and

(ii) with the court at or before the hearing by the court of any application under subsection (9) and at any other time that the court may order; and

(c) shall send a report about the material adverse change to the creditors without delay after ascertaining the change.

Where assignment deemed to have been made

(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).

Court may terminate period for making proposal

(11) The court may, on application by the trustee, the interim receiver, if any, appointed under section 47.1, or a creditor, declare terminated, before its actual expiration, the thirty day period mentioned in subsection (8) or any extension thereof granted under subsection (9) if the court is satisfied that

- (a) the insolvent person has not acted, or is not acting, in good faith and with due diligence,
- (b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question,
- (c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or
- (d) the creditors as a whole would be materially prejudiced were the application under this subsection rejected,

and where the court declares the period in question terminated, paragraphs (8)(a) to (c) thereupon apply as if that period had expired.

Security or charge relating to director's indemnification

64.1 (1) On application by a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) and on notice to the secured creditors

who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the property of the person is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the person to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer after the filing of the notice of intention or the proposal, as the case may be.

Priority

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

Restriction — indemnification insurance

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

Negligence, misconduct or fault

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

Court may order security or charge to cover certain costs

64.2 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) is subject to a security or charge, in an amount that the court considers appropriate, in respect of the fees and expenses of

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

(b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for the effective participation of that person in proceedings under this Division.

Priority

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

Individual

(3) In the case of an individual,

(a) the court may not make the order unless the individual is carrying on a business; and

(b) only property acquired for or used in relation to the business may be subject to a security or charge.

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.

Additional factors — related persons

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), 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 insolvent person; 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

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

(a) a director or officer of the insolvent person;

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

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

Assets may be disposed of free and clear

(7) 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 insolvent person 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

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

Stay of proceedings — notice of intention

69 (1) Subject to subsections (2) and (3) and sections 69.4, 69.5 and 69.6, on the filing of a notice of intention under section 50.4 by an insolvent person,

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy,

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on

(i) the insolvent person's insolvency,

(ii) the default by the insolvent person of an obligation under the security agreement, or

(iii) the filing by the insolvent person of a notice of intention under section 50.4,

the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as he would otherwise have, has any force or effect,

(c) Her Majesty in right of Canada may not exercise Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*, or

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that

(A) refers to subsection 224(1.2) of the *Income Tax Act*, and

(B) provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts,

in respect of the insolvent person where the insolvent person is a tax debtor under that subsection or provision, and

(d) Her Majesty in right of a province may not exercise her rights under any provision of provincial legislation in respect of the insolvent person where the insolvent person is a debtor under the provincial legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

until the filing of a proposal under subsection 62(1) in respect of the insolvent person or the bankruptcy of the insolvent person.

Limitation

(2) The stays provided by subsection (1) do not apply

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention under section 50.4 was filed from dealing with those assets;

(b) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security against the insolvent person more than ten days before the notice of intention under section 50.4 was filed, from enforcing that security, unless the secured creditor consents to the stay;

(c) to prevent a secured creditor who gave notice of intention under subsection 244(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under subsection 244(2), consented to the enforcement action; or

(d) [Repealed, 2012, c. 31, s. 416]

Limitation

(3) A stay provided by paragraph (1)(c) or (d) does not apply, or terminates, in respect of Her Majesty in right of Canada and every province if

(a) the insolvent person defaults on payment of any amount that becomes due to Her Majesty after the filing of the notice of intention and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising Her rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada*

Pension Plan and the provincial legislation establishes a *provincial pension plan* as defined in that subsection

66. Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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.

67. 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. R.S.O. 1990, c. C.43, s. 137.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
GREEN EARTH ENVIRONMENTAL PRODUCTS AND GREEN EARTH STORES LTD.**

Estate/Court File No.: 31-2481648
Estate/Court File No.: 31-2481649

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FACTUM OF THE APPLICANTS
(returnable March 7, 2019)**

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