

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
(the "CCAA")

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS
LIMITED AND 1138969 ONTARIO INC. (the "Applicants")

FACTUM OF THE APPLICANTS
(CCAA Initial Order Application)
(returnable November 23,2022)

November 22, 2022

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I. OVERVIEW

1. This is an Application for relief under the *Companies' Creditors Arrangement Act*, [R.S.C., 1985, c. C-36](#) (the "CCAA") made by 1138969 Ontario Inc. (o/a Springer Aerospace) ("**Springer**") and its sole shareholder Springer Aerospace Holdings Limited ("**Holdco**").

2. Capitalized terms not otherwise defined in this factum have the meaning given to them in the affidavit of Christopher Grant sworn November 22, 2022 filed in support of this application (the "**Grant Affidavit**").

3. Springer operates one of the largest aircraft maintenance, repair and overhaul businesses in Canada, dating back to 1972.¹ Springer is one of the only "one-stop-shops" for aircraft maintenance in Canada.²

4. Springer experienced major disruptions to its business as a result of the COVID-19 shutdown and its impact on the travel and aviation industry. The pandemic exacerbated existing operational inefficiencies following rapid expansion by the company and growth initiatives designed to increase top line revenue.³

5. The Applicants' primary secured creditor, Desjardins, has delivered demands and notices under Section 244 of the BIA for amounts advanced by Desjardins under a line of credit and two term loans.⁴ In total, \$5,747,228.31 was outstanding to Desjardins as of July 2022.⁵ Springer is

¹ Affidavit of Christopher Grant sworn November 22, 2022, Application Record, at **Tab 2** (the "**Grant Affidavit**"), at Affidavit para. 4.

² Grant Affidavit, *supra*, at Affidavit para. 19.

³ Grant Affidavit, *supra*, at Affidavit paras. 5, 104-108.

⁴ Grant Affidavit, *supra*, at Affidavit paras. 6, 113-114; copies of the Desjardins loan agreements are Exhibits "G" and "H" to the Grant Affidavit (pages 94 and 115 of the application record, respectively); copies of the Desjardins demand letter dated June 30, 2022 and s. 244 notices are respectively Exhibit "Q" and "R" to the Grant Affidavit (pages 289 and 294 of the application record, respectively).

⁵ Grant Affidavit, *supra*, at Affidavit para. 77.

unable to pay the amounts outstanding to Desjardins.⁶ In addition, it has accrued payables in the ordinary course of its business, including unsecured trade payables in excess of \$1.6 million and property taxes of \$186,000.⁷

6. The Applicants require interim financing to meet their ordinary course obligations.⁸ As of November 22, 2022, the company's cash position has deteriorated leaving a cash balance of only \$1,400 due to delays in receipt of wires and timing of accounts receivable. Absent an immediate cash infusion, the company will not be able to make payroll this week.⁹

7. An estimated 10 to 15 percent of the Echo Bay population are of indigenous background. Springer is the second largest employer in the region and the loss of employment and income for 100 households in a town of 1,600 residents would devastate the local region.¹⁰ Springer has in the past received loans and grants specifically to maintain employment and spur job creation in Northern Ontario.¹¹ It is the only aerospace business in Northern Ontario and the company's employees would be disproportionately impacted by a business shutdown, with most having to relocate to seek similar employment.¹²

8. Springer services nearly all of the airlines servicing the Northern Ontario region and the fly-in and Indigenous communities located there. Air transport is critical for the delivery of food, fuel and medical supplies and for the provision of air ambulance services to the most remote areas

⁶ Grant Affidavit, *supra*, at Affidavit para. 104.

⁷ Grant Affidavit, *supra*, at Affidavit paras. 98-102.

⁸ Grant Affidavit, *supra*, at Affidavit paras. 9, 11, 104, 126, 136, 141, 144, 160-162.

⁹ Grant Affidavit, *supra*, at Affidavit paras. 9, 126.

¹⁰ Grant Affidavit, *supra*, at Affidavit paras. 9-10, 27-30, 35-42.

¹¹ Grant Affidavit, *supra*, at Affidavit paras. 78-90.

¹² Grant Affidavit, *supra*, at Affidavit paras. 27-30, 42, 136.

of Northern Ontario. These operators will have their services disrupted by a business shutdown, compromising the delivery of basic necessities and medical assistance to the region.¹³

9. Given the specialized nature of the Applicants' business, the airport and runway structures on the land, as well as the relatively remote location of the land, it is unlikely that a forced liquidation will maximize value for stakeholders.¹⁴

10. The Applicants aim to implement an operational restructuring with the assistance of the Monitor, and to execute a sale and investment solicitation process ("SISP") to market the business on a going concern basis.¹⁵ Springer has already taken steps toward an operational turnaround and needs the breathing room necessary to complete it and the SISP.¹⁶ The Applicants seek to avoid a liquidation that would satisfy only one secured creditor at the expense of the Applicants' secured and unsecured creditors, and stakeholders as a whole. Vulnerable stakeholders such as employees, contractors and local businesses will bear a heavy financial and social burden in a liquidation scenario.¹⁷

II. FACTS

A. The Applicants' Business

11. Springer's business is the maintenance, repair and overhaul ("MRO") of aircraft. Springer's facilities are located in Echo Bay, Ontario. The company's state-of-the-art facilities

¹³ Grant Affidavit, *supra*, at Affidavit paras. 35, 37, 136.

¹⁴ Grant Affidavit, *supra*, at Affidavit paras. 9, 14-19, 20-23, 136, 150.

¹⁵ Grant Affidavit, *supra*, at Affidavit paras. 136-137, 149-151.

¹⁶ Grant Affidavit, *supra*, at Affidavit paras. 8, 46, 64, 109, 136-137, 149-151.

¹⁷ Grant Affidavit, *supra*, at Affidavit paras. 9-10, 14-19, 27-30, 35-42, 136, 150.

include an airport, runways and three hangars.¹⁸ In addition to its MRO and salvage and rebuild business lines, Springer also offers specialized aircraft painting services, and aircraft storage.¹⁹

12. Springer holds licenses and certifications with various international aviation regulators, including in Canada, the European Union, the United States, South Africa, and Guernsey. With these licenses and certifications Springer is able to service and deliver aircraft internationally.²⁰

B. Key Assets

13. The Applicants' assets have a book value of approximately \$17 million.²¹ Their key assets are three parcels of land: (i) 377 Lakeview on which the airport and hangars are built;²² (ii) 201 Riverside on which there is a single-family residence;²³ and (iii) 421 Lakeview on which there is a single-family residence.²⁴

14. In 2019, the Applicants obtained appraisals of 377 Lakeview and 201 Riverside as part of their financing activities. In 2020, Desjardins also obtained an appraisal for 377 Lakeview. Copies of the appraisals are appended as Confidential Exhibits "A", "B" and "C" to the Confidential Affidavit of Christopher Grant sworn November 22, 2022 (the "**Confidential Affidavit**").²⁵ The valuation of the Applicants' real property holdings is discussed in greater detail in the Confidential Affidavit.

¹⁸ Grant Affidavit, *supra*, at Affidavit paras. 20-24.

¹⁹ Grant Affidavit, *supra*, at Affidavit paras. 4, 14-19.

²⁰ Grant Affidavit, *supra*, at Affidavit paras. 31-34.

²¹ Grant Affidavit, *supra*, at Affidavit para. 57; a copy of the Applicants' consolidated financial statements for the year ended August 31, 2021 is Exhibit "F" to the Grant Affidavit (page 89 of the application record).

²² Grant Affidavit, *supra*, at Affidavit paras. 21-24, 60; a copy of the parcel register for 377 Lakeview is Exhibit "C" to the Grant Affidavit (page 75 of the application record).

²³ Grant Affidavit, *supra*, at Affidavit paras. 25-26, 60; a copy of the parcel register for 201 Riverside is Exhibit "D" to the Grant Affidavit (page 81 of the application record).

²⁴ Grant Affidavit, *supra*, at Affidavit paras. 25-26, 60.

²⁵ Confidential Affidavit of Christopher Grant sworn November 22, 2022, omitted from the public record (subject of sealing order sought).

C. Key Liabilities

15. On or around June 30, 2022, the Applicants' primary secured creditor, Desjardins, delivered demands and notices under Section 244 of the BIA in respect of a line of credit and two term loans advanced by Desjardins.²⁶ The 10-day period provided in the Section 244 notices has lapsed.

16. Desjardins has registered charges against 377 Lakeview and 201 Riverside. It has not registered a charge over 421 Lakeview.²⁷ The total amount outstanding to Desjardins is approximately \$5,747,230, not taking into account guarantees from Export Development Canada ("EDC") in the aggregate amount of approximately \$1.4 million.²⁸

17. 377 Lakeview is also subject to a second priority charge in favour of the Northern Ontario Heritage Fund Corporation.²⁹ All three parcels are subject to charges in favour of the Development Corporations.³⁰ The total amount outstanding to NOHFC is approximately \$450,000³¹ and the total amount outstanding to the Development Corporations is approximately \$797,000.³² Both NOHFC

²⁶ Grant Affidavit, *supra*, at Affidavit paras. 6, 113-114; copies of the Desjardins loan agreements are Exhibits "G" and "H" to the Grant Affidavit (pages 94 and 115 of the application record, respectively).

²⁷ Grant Affidavit, *supra*, at Affidavit para. 65; copies of parcel registers for 377 Lakeview, 201 Riverside and 421 Lakeview are respectively Exhibits "C", "D" and "E" to the Grant Affidavit (pages 75, 81 and 85 of the application record, respectively).

²⁸ Grant Affidavit, *supra*, at Affidavit para. 77.

²⁹ Grant Affidavit, *supra*, at Affidavit para. 66; a copy of the parcel register for 377 Lakeview is Exhibit "C" to the Grant Affidavit (page 75 of the application record).

³⁰ Grant Affidavit, *supra*, at Affidavit para. 67.

³¹ Grant Affidavit, *supra*, at Affidavit para. 84; copies of the NOHFC loan agreements are Exhibits "I" and "J" to the Grant Affidavit (pages 137 and 173 of the application record, respectively).

³² Grant Affidavit, *supra*, at Affidavit para. 90; a copy of the promissory note to the Development Corporations dated September 4, 2020 is Exhibit "L" to the Grant Affidavit (page 235 of the application record).

and the Development Corporations have mandates to foster the economic development of Northern Ontario.³³

18. The Applicants have accrued property taxes in the amount of approximately \$186,000.³⁴ Springer has accrued CBSA obligations of approximately \$530,723.13 in respect of imports of parts and supplies. Springer's unsecured liabilities mainly include trade payables incurred in the normal course in the approximate amount of \$1.6 million.³⁵ The Applicants are also debtors in respect of shareholder loans totalling approximately \$1,978,000.³⁶

D. Interim Financing

19. Pursuant to the cash flow projections, Springer expects to be in a negative cash position this week without interim financing.³⁷

20. Prior to commencing these CCAA proceedings, the company advised Desjardins of its intention to commence proceedings under the CCAA to deal with liquidity issues and to effect an operational and balance sheet restructuring.³⁸ Desjardins is not prepared to extend DIP financing to the company.³⁹

³³ Grant Affidavit, *supra*, at Affidavit paras. 78, 85.

³⁴ Grant Affidavit, *supra*, at Affidavit para. 96.

³⁵ Grant Affidavit, *supra*, at Affidavit paras. 98-102.

³⁶ Grant Affidavit, *supra*, at Affidavit para. 103.

³⁷ Grant Affidavit, *supra*, at Affidavit paras. 9, 11, 104, 126, 136, 141, 144, 160-162.

³⁸ Grant Affidavit, *supra*, at Affidavit para. 127.

³⁹ Grant Affidavit, *supra*, at Affidavit paras. 127-129, 140; a copy of an email from Desjardins' counsel dated November 21, 2022 is Exhibit "U" to the Grant Affidavit (page 315 of the application record).

21. Springer has obtained a DIP financing commitment from Hillmount Capital Inc. (the “**DIP Lender**”) to fund Springer during the restructuring period subject to various terms and conditions as described in the DIP Term Sheet.⁴⁰

22. The key terms and conditions of the DIP Term Sheet are as set out in the Grant Affidavit and include a maximum principal loan amount of \$1,500,000 with an initial advance of \$600,000, and a super priority court-ordered charge in favour of the DIP Lender ranking behind the Administration Charge only.⁴¹

E. Proposed Restructuring

23. Springer intends to implement both a financial and operational restructuring.⁴² The company has done a review of its operations to assess the operational restructuring steps necessary to increase efficiency.⁴³ Further, there is significant interest in Springer as a going-concern aerospace business. An appropriately timed SISP will maximize market exposure, taking into account the upcoming holiday season and the specialized nature of the Springer business.⁴⁴

24. If relief is granted under the CCAA, the Applicants will take the following steps to execute their restructuring plan, including the development and implementation of a SISP and the execution of an operational restructuring plan with appropriate milestones.⁴⁵

⁴⁰ Grant Affidavit, *supra*, at Affidavit para. 142; a copy of the DIP Term Sheet is Exhibit “V” to the Grant Affidavit (page 318 of the application record).

⁴¹ Grant Affidavit, *supra*, at Affidavit para. 143

⁴² Grant Affidavit, *supra*, at Affidavit paras. 136-137, 149-151.

⁴³ Grant Affidavit, *supra*, at Affidavit paras. 8, 46, 64, 109, 136-137, 149-151.

⁴⁴ Grant Affidavit, *supra*, at Affidavit paras. 9, 14-19, 20-23, 136, 150.

⁴⁵ Grant Affidavit, *supra*, at Affidavit para. 137.

III. ISSUES AND THE LAW

25. The issues on this application are:

- a. Does this Court have jurisdiction to grant the relief requested under the CCAA and should a stay of proceedings be granted?
- b. Should the Court approve the DIP Term Sheet and grant the Charges sought?
- c. Should the Court permit payment of pre-filing amounts on the terms requested?
- d. Should the Court seal the Confidential Affidavit?

A. The Applicants are Debtors under the CCAA

26. The Applicants are insolvent. Under the CCAA, a debtor is insolvent if it meets the definition of “insolvent person” under the BIA, which states that a person is insolvent if: (i) they are unable to meet their obligations as they become due; (ii) they have ceased paying their current obligations in the ordinary course of business; or (iii) the aggregate of their property is not sufficient to enable payment of all obligations due and accruing due.⁴⁶

27. Companies that are part of an affiliated group do not need to individually satisfy the definition of insolvency if the group, taken as a whole, is insolvent in accordance with one of the definitions set out above, and if it is appropriate that all the companies in the group be included as part of the CCAA orders and restructuring proceeding.⁴⁷

⁴⁶ *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.

⁴⁷ *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#) (“*First Leaside*”), paras. 25-30; *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#) (“*Canwest 2009*”), paras. 25-27; *Canwest Publishing Inc., 2010 ONSC 222* (“*Canwest 2010*”), paras. 33-34; *Prizm Income Fund (Re)*, [2011 ONSC 2061](#), para. 27; and *Re: Mobilicity Group*, [2013 ONSC 6167](#) (“*Mobilicity*”), para. 21; see also *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#) (“*Jaguar*”), paras. 39-40; *Target Canada Co. (Re)*, [2015 ONSC 303](#), para. 42; *JTI-Macdonald Corp., Re, 2019 ONSC 1625* (“*JTI*”), para. 15; *Laurentian University of Sudbury*, [2021 ONSC 659](#) (“*Laurentian*”), paras. 39-41; and *Pacific Shores Resort & Spa Ltd. (Re)*, [2011 BCSC 1775](#) (“*Pacific Shores*”), paras. 52-56.

28. The Applicants are unable to meet their obligations as they become due. They have accrued payables in the ordinary course of business and are unable to pay amounts owed to secured parties.⁴⁸

29. It is appropriate for both Applicants to be included as applicants in these proceedings as “affiliated companies” under the CCAA.⁴⁹ Among other things, the Applicants’ business is fully integrated. Holdco owns the premises and the facilities where the business is operated. The Applicants have jointly and severally cross-guaranteed and cross-collateralized their obligations to Desjardins, NOHFC, and the Development Corporations. No effective restructuring could be achieved if creditors were permitted to enforce against either of the Applicants.⁵⁰

30. The Applicants are corporations collectively owing over \$5 million in outstanding liabilities. They have delivered the documents and financial statements required under s. 10(2) of the CCAA.⁵¹

B. A Stay of Proceedings Should be Granted Under the CCAA

31. Section 11.02(1) of the CCAA provides that the court may order a stay of proceedings on an initial CCAA application for a period of not more than 10 days. Section 11.001 of the CCAA provides that relief granted on an initial CCAA application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that initial 10-day period.

⁴⁸ See the Grant Affidavit, *supra*, at Affidavit paras. 9, 11, 104, 126, 141, 144, 160-162.

⁴⁹ CCAA, s. 3(2).

⁵⁰ See the Grant Affidavit, *supra*, at Affidavit paras. 21-24, 60, 68-90, 136.

⁵¹ The projected cash flow (CCAA s. 10(2)(a)) is Schedule “A” (page 20) to the pre-filing report of the proposed monitor dated November 22, 2022, served separately (the “**Pre-Filing Report**”); the representations of the debtor companies regarding the preparation of the cash-flow statement (CCAA s. 10(2)(b)) is Schedule “B” (page 24) to the Pre-Filing Report; and a copy of the most recent financial statements of the Applicants is Exhibit “F” of the Grant Affidavit (page 89 of the Application Record).

32. While s. 11.001 is intended to prevent initial orders from taking on unnecessary breadth and scope, it does not prevent the court from granting the relief necessary to preserve the *status quo*. Since the enactment of s. 11.001, courts have regularly granted, as part of “first day motions”, stays of proceedings, limited interim financing charges, administration charges, and directors and officers’ charges, as well as orders relative to the payment of critical pre-filing obligations,⁵² all of which is necessary to protect the Applicants’ business as a going concern.

33. In these circumstances, a CCAA proceeding benefits secured and unsecured creditors who stand to recover if value is maximized on a going concern basis. Springer’s employees, the remote Northern Ontario community, and the Canadian aerospace sector benefit from the preservation of a rare and unique aerospace business.⁵³

34. The cessation of the Springer business or major disruption would be irreparable. Springer has built its business up since 1972. It has made enormous efforts to retain its skilled workforce through the COVID-19 pandemic.⁵⁴ The company has developed reputation and expertise in this specialized industry and its customers are blue-chip corporations and governments who rely on Springer’s stable, reliable service.⁵⁵ While this CCAA filing may cause some disruption to the business, a shut down or liquidation would effectively terminate operations with no chance of recovery.

35. The informal survey of the market suggests that there is likely interest from Springer’s customers and other international corporations in the aerospace sector looking to vertically

⁵² See *Miniso International Hong Kong Limited v Migu Investments Inc.*, [2019 BCSC 1234](#) (“*Miniso*”); *Clover Leaf Holdings Company, Re.*, [2019 ONSC 6966](#) (“*Clover Leaf*”); *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#) (“*Mountain Equipment*”); *JTI*; and *Laurentian*. On the objective to create a *statu quo*, see also *Target*, para. 81.

⁵³ See the Grant Affidavit, *supra*, at Affidavit paras. 4, 9-10, 14-19, 27-30, 35-42, 136, 149-150.

⁵⁴ See the Grant Affidavit, *supra*, at Affidavit para. 106, 107.

⁵⁵ See the Grant Affidavit, *supra*, at Affidavit paras. 35-38, 136.

integrate. Also, it appears that employees or communities in Northern Ontario may wish to invest in the company to preserve employment and the airline services that are vital to the fly-in and Indigenous communities in the region.⁵⁶

36. The value of the Applicants' key assets is not diminished by the CCAA proceeding. An increase in accounts receivable will increase the borrowing base. The land value on a liquidation basis is likely to increase over time as is the trend in Ontario. There is no evidence of declining land or other fixed asset value, and in fact value is immediately and irreparably diminished if operations are terminated.

i. No Prejudice Arises from the CCAA Proceeding

37. The aggregate value of the Applicant's land, at the lowest available valuation, exceeds the debt owing to Desjardins.⁵⁷ The calculation of Desjardins' debt does not include the amounts guaranteed by EDC, which reduce Desjardins' exposure even further.⁵⁸

38. The value of the land is in addition to the equipment and other assets of the Applicants that have not been appraised or valued.

39. Even considering the value of the DIP Loan proposed, the assets of the Applicants are likely to exceed liabilities owing to Desjardins,⁵⁹ particularly if the business is formally marketed on a going-concern basis and exposed to market for an appropriate period.

⁵⁶ See the Grant Affidavit, *supra*, at Affidavit paras. 8, 46, 64, 109, 136-137, 149-151.

⁵⁷ Confidential Affidavit and Exhibits "A", "B" and "C" thereto.

⁵⁸ See the Grant Affidavit, *supra*, at Affidavit paras. 70, 75, 77.

⁵⁹ Confidential Affidavit and Exhibits "A", "B" and "C" thereto.

40. Approximately \$186,000 of the DIP Loan advances will be applied to pay down property tax arrears, which are priority payables.⁶⁰

41. The only other priming charge sought is a \$250,000 Administration Charge, which charge is only applied to amounts of professional fees that are not paid from working capital. The Cash Flow contemplates professional fees being paid from available cash.⁶¹

42. The proposed Directors' Charge does not prime Desjardins.⁶²

ii. The Applicants Have Put Forth a Restructuring Plan

43. CCAA relief is routinely granted to debtors who can show that there is a reasonable possibility of restructuring in furtherance of the CCAA's fundamental purpose.⁶³ A debtor need not advance a fully formed plan in seeking first day relief, all that is needed is a germ of a plan.

44. This is not a liquidating CCAA. The Applicants have worked with MNP LLP's performance improvement team to assess and determine appropriate operational restructuring steps to execute during the stay period. Springer has a healthy pipeline of customer contracts and, with interim financing and operational restructuring, it is likely that the business will experience increased profit margins going forward.⁶⁴

⁶⁰ See the Grant Affidavit, *supra*, at Affidavit para. 96.

⁶¹ The projected cash flow is Schedule "A" (page 20) to the Pre-Filing Report.

⁶² See the Grant Affidavit, *supra*, at Affidavit para. 153; see also the draft CCAA initial order, Tab 3 (page 332) of the application record, para. 41, which provides that the Directors' Charge "shall rank in priority to all other Encumbrances in favour of any Person save and except any Encumbrance in favour of Caisse Desjardins Ontario Credit Union Inc. ("Desjardins") and any Encumbrance ranking in priority to any such Desjardins Encumbrance".

⁶³ *Douglas Channel LNG Assets Partnership v DCEP Gas Management Ltd.*, [2013 BCSC 2358](#), paras. 25-27.

⁶⁴ See the Grant Affidavit, *supra*, at Affidavit paras. 8, 38, 46, 64, 109, 136-137, 149-151.

45. In addition to an operational restructuring, the Applicants intend on implementing the SISP. The business needs time to properly expose the assets to market on a going concern basis.⁶⁵

Public policy weighs in favour of a going-concern restructuring

46. Springer is an operating company in a critical sector that is vital to the fly-in and Indigenous communities in Northern Ontario. Various services, including transportation, food and medicine delivery, and air ambulance services are reliant on Springer's operations. Considering only the liquidation value of Springer's assets ignores that social impact of its business.⁶⁶

47. Springer has benefitted from loans and grants from organizations seeking to build and preserve the Northern Ontario economy. Springer has in good faith worked toward employment benchmarks by hiring skilled labour from the region and encouraging skilled labour to relocate to Northern Ontario.⁶⁷

48. It would be unfair and prejudicial to have the community absorb the social cost of Springer's insolvency if the business is to be liquidated. It would be challenging to re-start a similar business in the region within any reasonable timeframe.⁶⁸

C. The Requested Charges are Necessary and Appropriate

49. The Applicants are proposing that the court grant each of the following Charges:

- a. FIRST – the Administration Charge to a maximum of \$65,000, which is proposed to increase to \$250,000 from and after the Comeback Hearing.

⁶⁵ *Id.*

⁶⁶ See the Grant Affidavit, *supra*, at Affidavit paras. 35, 37, 136.

⁶⁷ See the Grant Affidavit, *supra*, at Affidavit paras. 78-90.

⁶⁸ See the Grant Affidavit, *supra*, at Affidavit para. 150.

- b. SECOND – the DIP Lender’s Charge to a maximum of \$600,000, which is proposed to increase to \$1,500,000 from and after the Comeback Hearing; and
- c. THIRD – the Directors’ Charge to a maximum of \$165,000, securing two weeks of payroll, representing liabilities incurred by directors and officers.

50. The Applicants propose that the Administration Charge and the DIP Lender’s Charge rank in priority to all other encumbrances, including Desjardins’ security interests. The Directors’ Charge is intended to rank immediately below Desjardins’ security. For clarity, the Directors’ Charge is not intended to prime Desjardins’ security.⁶⁹

i. Administration Charge

51. The Court has jurisdiction to grant the Administration Charge under s. 11.52 of the CCAA. The following factors have been developed at common law to determine if such a charge is appropriate: the size and complexity of the business being restructured, the proposed role of the beneficiaries of the charge, whether there is an unwarranted duplication of roles, whether the quantum of the proposed charge appears to be fair and reasonable, the position of the secured creditors likely to be affected by the charge, and the position of the Monitor.⁷⁰

52. The success of the Applicants’ restructuring is dependent on the involvement of the Monitor and legal counsel. Those roles are not duplicative. While estimating the quantum of an

⁶⁹ See the Grant Affidavit, *supra*, at Affidavit para. 153; see also the draft CCAA initial order, Tab 3 (page 332) of the application record, para. 41, which provides that the Directors’ Charge “shall rank in priority to all other Encumbrances in favour of any Person save and except any Encumbrance in favour of Caisse Desjardins Ontario Credit Union Inc. (“Desjardins”) and any Encumbrance ranking in priority to any such Desjardins Encumbrance”.

⁷⁰ *Canwest 2009*, para. 54, cited and applied *inter alia* in *Target*, at para. 74, *Miniso*, at para. 95, *JTI*, at para. 20, *Clover Leaf*, at para. 32, and *Laurentian*, at para. 49.

administration charge is “an inexact exercise”,⁷¹ the quantum of the Administration Charge sought is commensurate with the complexity of the Applicants’ business and anticipated restructuring.⁷²

53. The Applicants have incurred fees leading to this Application and are forecast to incur further fees in connection with the restructuring, including to prepare for the Comeback Hearing, communicating with employees and stakeholders following the initial filing, and complying with statutory notices, mailings and communications. It is appropriate for the Court to grant the Administration Charge sought.⁷³

ii. Approval of DIP Facility and DIP Lender’s Charge

54. The Court has statutory authority to approve the DIP Term Sheet and DIP Lender’s Charge.⁷⁴ The Court may grant the DIP Lender’s Charge in priority over the claim of any other creditor.⁷⁵

55. Section 11.2(4) of the CCAA establishes the following non-exhaustive criteria that the court is to consider in deciding whether to grant the DIP Lender’s Charge: the period during which the Applicants are expected to be subject to CCAA proceedings, how the Applicants’ business and financial affairs are to be managed during the proceedings, whether the Applicants’ management has the confidence of its major creditors, whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the Applicants, the nature and value of the

⁷¹ *Canwest 2009*, para. 40.

⁷² See the Grant Affidavit, *supra*, at Affidavit paras. 156-159.

⁷³ Grant Affidavit, *supra*, at Affidavit paras. 156-159. See *Canwest 2009*, paras. 37-40; *Canwest 2010*, paras. 52-55; *Timminco Limited (Re)*, [2012 ONSC 506](#), paras. 44, 46, 66; *First Leaside*, para. 57; *JTI*, paras. 19-21; *Laurentian*, paras. 48-53; and *Miniso*, paras. 91-101.

⁷⁴ CCAA, s. 11.2.

⁷⁵ CCAA, s. 11.2(1) and (2).

Applicants' property, whether any creditor would be materially prejudiced as a result of the security or charge, and whether the Monitor supports the charge.

56. DIP financing may be approved even if it potentially prejudices some creditors, as long as the prejudice is outweighed by the benefit to all stakeholders.⁷⁶ Where the funding is sought on an interim basis, the Court must consider if the terms of the loan are limited to what is reasonably necessary for the continued operations of the company.⁷⁷

57. The Applicants need liquidity to continue their operations during the restructuring period.⁷⁸ According to the Cash Flows, the Applicants need to draw on the DIP Facility to meet their payroll obligations this week.⁷⁹ The terms of the DIP Facility term sheet are typical compared to other such facilities approved in matters before the Commercial List. The DIP Lender's Charge will not secure any obligations existing before the Initial Order is made, satisfying the terms set out in s. 11.2(1) of the CCAA.⁸⁰

58. The Applicants, with the assistance of the Monitor have identified the key factors leading to their insolvency and have put forward a plan of action, including looking to engage a chief restructuring officer. Interim financing will provide stability and confidence for creditors, employees, suppliers and customers, and enable them to continue in the normal course of business

⁷⁶ *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6453](#), para. 16.

⁷⁷ CCAA, s. 11.2(5).

⁷⁸ See the Grant Affidavit, *supra*, at Affidavit paras. 9, 11, 104, 126, 136, 141, 144, 160-162.

⁷⁹ See the Grant Affidavit, *supra*, at Affidavit paras. 9, 126.

⁸⁰ Grant Affidavit, *supra*, at Affidavit paras. 142-145, 160-162; a copy of the DIP Term Sheet is Exhibit "V" to the Grant Affidavit (page 318 of the application record). See *inter alia Miniso*, para. 74.

with the Applicants without disruption while a viable restructuring plan is devised and implemented.⁸¹

59. No creditor would be materially prejudiced by the charge. A portion of the advance will be used to satisfy outstanding municipal property taxes⁸² and the rest will cover the working capital shortfall. Interim financing is the only way in which Springer can continue operating during the restructuring period, which is for the benefit of its general body of creditors and other stakeholders.⁸³

60. The Monitor supports the Applicants' request for approval of the DIP Facility and the DIP Lender's Charge. It is appropriate for this Court to approve the DIP Facility and associated charge to protect the going-concern business.⁸⁴

iii. Directors' Charge

61. To ensure the stability of the business during the restructuring period, the Applicants need the ongoing assistance of their directors and officers, who have considerable institutional knowledge and specialized expertise. The proposed Directors' Charge is for the maximum amount of \$165,000, which is equivalent to approximately two weeks of the Applicants' payroll, including source deductions. That is the only reasonably anticipated potential exposure of directors and officers for the initial 10-day period of these CCAA proceedings.⁸⁵

⁸¹ Grant Affidavit, *supra*, at Affidavit paras. 5, 8, 46, 64, 104-109, 136-137, 149-151. See *Canwest 2009*, para. 33, and *Mobilicity*, para. 31.

⁸² Grant Affidavit, *supra*, at Affidavit para. 96.

⁸³ Grant Affidavit, *supra*, at Affidavit paras. 9, 11, 96, 104, 126, 136, 141, 144, 160-162. See *Miniso*, paras. 88-90.

⁸⁴ See *Canwest 2009*, paras. 31-36; *Canwest 2010*, paras. 41-46; *Mobilicity*, paras. 24-41; *Miniso*, paras. 73-90; *Clover Leaf*, paras. 20-23; *Mountain Equipment*, paras. 44-61; and *Pacific Shores*, para. 49.

⁸⁵ Grant Affidavit, *supra*, at Affidavit paras. 163-166.

62. The proposed Directors' Charge provides assurance to employees that directors' liability for unpaid wages and vacation pay will be satisfied.⁸⁶ The Directors' Charge is not intended to prime Desjardins' security and Desjardins suffers no prejudice.⁸⁷

63. The proposed Directors' Charge secures only obligations and liabilities incurred after the commencement of the proceedings and does not apply to liability incurred as a result of gross negligence or wilful misconduct, which satisfies the requirements of s. 11.51(1) and 11.51(4) of the CCAA.⁸⁸

64. The Applicants currently have no director and officer liability insurance. Obtaining director and officer insurance after an insolvency filing would likely be prohibitively difficult and expensive.⁸⁹

65. The Monitor supports the Applicants' request for the Directors' Charge. The creditors likely to be affected will have been given notice, the amount is appropriate, and the charge does not apply to any obligation incurred as a result of gross negligence or wilful misconduct by the director.⁹⁰

D. Authorization to Pay Pre-Filing Amounts

66. The Applicants request language in the Initial Order stating that they are entitled but not required to pay, with the consent of the Monitor, amounts owing for goods or services actually

⁸⁶ See *Canwest 2010*, para. 57.

⁸⁷ See the Grant Affidavit, *supra*, at Affidavit para. 153; see also the draft CCAA initial order, Tab 3 (page 332) of the application record, para. 41, which provides that the Directors' Charge "shall rank in priority to all other Encumbrances in favour of any Person save and except any Encumbrance in favour of Caisse Desjardins Ontario Credit Union Inc. ("Desjardins") and any Encumbrance ranking in priority to any such Desjardins Encumbrance".

⁸⁸ See the draft CCAA initial order, Tab 3 (page 332) of the application record, para. 20

⁸⁹ CCAA, s. 11.51(3). See *Cinram International Inc. (Re)*, [2012 ONSC 3767](#) ("*Cinram*"), para. 26, and *Canwest 2009*, para. 46.

⁹⁰ Grant Affidavit, *supra*, at Affidavit paras. 163-166; *Jaguar*, at para. 45.

supplied to the Applicants prior to the date of the Initial Order, if such payment is necessary or desirable to avoid disruption to the operations of the Applicants' business during these proceedings.⁹¹ The Court is empowered to grant such relief pursuant to the Court's general jurisdiction under s. 11 of the CCAA.

67. For clarity, the Applicants are not seeking orders compelling critical suppliers to supply the Applicants, nor are the Applicants requesting a critical suppliers' charge under the CCAA.⁹²

68. Courts have routinely granted orders allowing CCAA applicants to pay pre-filing amounts to critical suppliers with the consent of the Monitor.⁹³ In doing so, Courts have considered the following criteria: whether the goods and services concerned are integral to the business, the applicants' need for the uninterrupted supply of the goods or services, the Monitor's support and willingness to work with the applicants to ensure that payments to suppliers in respect of pre-filing liabilities are appropriate, and the effect on the applicants' ongoing operations and ability to restructure if they were unable to make pre-filing payments to their critical suppliers.⁹⁴

69. Given Springer's location in Northern Ontario and the specialized nature of the aerospace business, Springer has limited vendors who are able to supply the specific products and services that Springer requires. Any interruption of supply would have a material adverse effect on the business. Springer is particularly vulnerable to interruptions as it does not stockpile significant inventory of parts and supplies in the ordinary course.⁹⁵

⁹¹ See the draft CCAA initial order, Tab 3 (page 332) of the application record, para. 6.c.

⁹² On the distinction with s. 11.4 (critical suppliers and related charge), which is not applicable in this case, see *Canwest 2009*, para. 43, and *Canwest 2010*, para. 50.

⁹³ See *Cinram*, para. 23; *JTI*, paras. 24-25; *Clover Leaf*, paras. 24-27; *Laurentian*, paras. 44-47; *Canwest 2009*, paras. 41-43; *Canwest 2010*, paras. 47-51; *Jaguar*, paras. 38, 47; and *Target*, paras. 62-65.

⁹⁴ See *JTI*, para. 24, and *Clover Leaf*, para. 25, citing *Cinram*, para. 68.

⁹⁵ See the Grant Affidavit, *supra*, at Affidavit paras. 39-41.

E. Appointment of MNP as Monitor

70. The Applicants propose to have MNP appointed as the Monitor. MNP is a “trustee” within the meaning of subsection 2(1) of the BIA, is established and qualified, and has consented to act as Monitor. The involvement of MNP as the court-appointed Monitor will lend stability and assurance to Springer’s stakeholders.⁹⁶ MNP is not subject to any of the restrictions set out in s. 11.7(2) of the CCAA.

F. Sealing of the Confidential Affidavit

71. The Companies seek an order sealing the Confidential Affidavit and the appraisals appended as exhibits, pending the earlier of either court approval of a plan of compromise or arrangement in respect of the Applicants, or further Court Order.⁹⁷ The relief is being sought to protect the integrity of any potential sale process in respect of such properties.⁹⁸

72. This court has jurisdiction to make the sealing orders sought, including under s. 137(2) of the *Courts of Justice Act*⁹⁹. There is a public interest in maximizing recovery in an insolvency that goes beyond each individual case.¹⁰⁰ The relief sought meets the test in *Sherman Estate*¹⁰¹ test and are appropriate in the circumstances.¹⁰²

⁹⁶ See the Grant Affidavit, *supra*, at Affidavit paras. 133, 136-137, 147-148.

⁹⁷ Draft CCAA initial order, Tab 3 (page 332) of the application record, para. 45.

⁹⁸ See the Grant Affidavit, *supra*, at Affidavit para. 64; Confidential Affidavit.

⁹⁹ [R.S.O. 1990, c. C.43](#).

¹⁰⁰ *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#) (“*Danier Leather*”), para. 84.

¹⁰¹ *Sherman Estate v Donovan*, [2021 SCC 25](#), para. 38: (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and, (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

¹⁰² See *Canwest 2010*, paras. 63-65; *Danier Leather*, paras. 79-86; and *Alderbridge Way GP Ltd. (Re)*, [2022 BCSC 1436](#), paras. 26, 27.

IV. RELIEF REQUESTED

73. The Applicants therefore seek an initial order in the form of the suggested draft order, filed at Tab 3 (page 332) of the application record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of November, 2022.

Reconstruct LLP

RECONSTRUCT LLP
Lawyers for the Applicants

SCHEDULE A – LIST OF AUTHORITIES

- 1 *First Leaside Wealth Management Inc. (Re)*, [2012 ONSC 1299](#)
- 2 *Canwest Global Communications Corp. (Re)*, [2009 CanLII 55114 \(ON SC\)](#)
- 3 *Canwest Publishing Inc.*, [2010 ONSC 222](#)
- 4 *Priszm Income Fund (Re)*, [2011 ONSC 2061](#)
- 5 *Re: Mobilicity Group*, [2013 ONSC 6167](#)
- 6 *Jaguar Mining Inc. (Re)*, [2014 ONSC 494](#)
- 7 *Target Canada Co. (Re)*, [2015 ONSC 303](#)
- 8 *JTI-Macdonald Corp., Re*, [2019 ONSC 1625](#)
- 9 *Laurentian University of Sudbury*, [2021 ONSC 659](#)
- 10 *Pacific Shores Resort & Spa Ltd. (Re)*, [2011 BCSC 1775](#)
- 11 *Miniso International Hong Kong Limited v Migu Investments Inc.*, [2019 BCSC 1234](#)
- 12 *Clover Leaf Holdings Company, Re.*, [2019 ONSC 6966](#)
- 13 *Mountain Equipment Co-Operative (Re)*, [2020 BCSC 1586](#)
- 14 *Douglas Channel LNG Assets Partnership v DCEP Gas Management Ltd.*, [2013 BCSC 2358](#)
- 15 *Timminco Limited (Re)*, [2012 ONSC 506](#)
- 16 *AbitibiBowater inc. (Arrangement relatif à)*, [2009 QCCS 6453](#)
- 17 *Cinram International Inc. (Re)*, [2012 ONSC 3767](#)
- 18 *Danier Leather Inc. (Re)*, [2016 ONSC 1044](#)
- 19 *Sherman Estate v Donovan*, [2021 SCC 25](#)
- 20 *Alderbridge Way GP Ltd. (Re)*, [2022 BCSC 1436](#)

SCHEDULE B – RELEVANT STATUTES

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

Definitions

2 In this Act,

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

- (a) who is for any reason unable to meet his obligations as they generally become due,
- (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or
- (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

trustee or *licensed trustee* means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

Stay of proceedings — notice of intention

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

- (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;

Stay of proceedings — Division I proposals

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

- (b) unless the secured creditor otherwise agrees, 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
 - (i) a notice of intention was filed in respect of the insolvent person under section 50.4, or
 - (ii) the proposal was filed, if no notice of intention under section 50.4 was filed

from enforcing that security;

Definitions

2 (1) In this Act,

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the Bank Act, telegraph companies, insurance companies and companies to which the Trust and Loan Companies Act applies; (*compagnie*)

court means

(a.1) in Ontario, the Superior Court of Justice,

debtor company means any company that

- (a) is bankrupt or insolvent,
- (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,
- (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or
- (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

initial application means the first application made under this Act in respect of a company; (*demande initiale*)

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.

(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.
- (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.
- (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.

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

Form of applications

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

(2) An initial application must be accompanied by

- (a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
- (b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
- (c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

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.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

- (a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) The court shall not make the order unless

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

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Stays — directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees

to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

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

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

- (a) the period during which the company is expected to be subject to proceedings under this Act;
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
- (g) the monitor's report referred to in paragraph 23(1)(b), if any.

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

Security or charge relating to director's indemnification

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

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

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

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

Court may order security or charge to cover certain costs

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

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
 - (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
 - (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.
- (2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Court to appoint monitor

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

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

- (a) if the trustee is or, at any time during the two preceding years, was
 - (i) a director, an officer or an employee of the company,
 - (ii) related to the company or to any director or officer of the company, or
 - (iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or
- (b) if the trustee is
 - (i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or
 - (ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Good faith

18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.

(2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SPRINGER AEROSPACE HOLDINGS
LIMITED AND 1138969 ONTARIO INC.

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**FACTUM OF THE APPLICANTS
(CCA Initial Order Application)
(returnable November 23, 2022)**

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