

SUPREME COURT OF NOVA SCOTIA

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 an application by Blue Lobster Capital Limited, 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited (collectively, the "Applicants") for relief under s. 11 of the CCAA and other relief.

**SUPPLEMENTARY BRIEF OF LAW OF THE APPLICANTS
(Doctrine of Marshalling)**

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TO: Supreme Court of Nova Scotia
In Bankruptcy and Insolvency
The Law Courts, 1815 Upper Water Street
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AND TO: The Electronic Service List

To the Honourable Associate Chief Justice Jamieson, the Applicants submit:

PART I - OVERVIEW

1. On August 19, 2026, this Honourable Court heard the Monitor's motion for a Settlement Approval, Direction and Ancillary Order. The Court approved the Tenth Report of the Monitor dated August 10, 2026 (the "**Tenth Report**") and the Monitor's activities described in it. The balance of the relief, being approval of the Fee Allocation Settlement and direction on the allocation of the RBC Debt Repayment, is under reserve.¹
2. In the course of that hearing the Court directed the Monitor to file a brief of law on the equitable doctrine of marshalling, and put two specific questions: whether an unsecured creditor may invoke the doctrine, and whether the doctrine requires a common debtor.² The Court also directed the Applicants to deliver a copy of the forbearance agreement executed between the Applicants and RBC.
3. The Monitor filed its brief on August 26, 2026. It is a survey of the authorities. The Monitor expressly "takes no position on whether the doctrine of marshalling applies to the RBC Debt Repayment or the appropriate disposition of the underlying allocation issue."³ The Applicants file this supplementary brief to answer the two questions the Court put and to address the application of the doctrine to the record in this proceeding.
4. The Applicants' position is that the doctrine of marshalling is not engaged. Four propositions are advanced. Each is independently sufficient to dispose of the doctrine:
 - (a) No creditor invokes it. Marshalling is a remedy asserted by an identified junior creditor who says it has been or will be prejudiced by the conduct of an identified senior creditor. The Monitor served the Tenth Report on the service list and on the Applicants' five largest unsecured creditors for

¹ Eleventh Report of the Monitor dated August 28, 2026 ["**Eleventh Report**"], s 1.0, para 16; s 3.0, paras 1-3.

² Brief of Law of the Monitor dated August 26, 2026 ["**Monitor's Marshalling Brief**"] at paras 2 and 4; Eleventh Report, s 3.0, para 2.

³ Monitor's Marshalling Brief at para 34; see also para 2.

the express purpose of allowing that constituency to consider this issue and advance a position. No unsecured creditor has done so. The Monitor takes no position. The doctrine is not before the Court at the instance of any person who claims its benefit.

- (b) There is no common debtor. The authorities are consistent, and the Monitor agrees, that a single common debtor is required. BLCL and Spirit Co are separate corporations, separately documented by RBC under separate credit agreements with separate security packages. There has been no substantive consolidation of the estates and none is sought.
- (c) The principal and surety exception does not apply. The exception operates only where the relationship between the debtors permits primary liability for the debt to be placed on the other. The Monitor's own review "has not identified any express direct guarantee by BLCL of Spirit Co's obligations." The guarantee that does exist runs the other way: Spirit Co guaranteed BLCL.
- (d) The equities run against it. Marshalling would place the unsecured creditors of Spirit Co ahead of the stakeholders of BLCL, in a fund derived from a BLCL asset, when those creditors took no security and no guarantee from BLCL. That is the outcome the Manitoba Court of Appeal declined to permit in *Wolfe*, and it is precisely the type of third-party prejudice the fifth precondition of the doctrine is designed to prevent.

- 5. The Applicants ask that the Court determine that marshalling is not engaged, and allocate the RBC Debt Repayment to BLCL for all purposes in these proceedings.

PART II - THE RECORD MATERIAL TO MARSHALLING

- 6. The Applicants adopt the factual background set out in the Tenth Report and do not repeat it. Six matters in that Report bear directly on the marshalling question,

and each is drawn from the Monitor's own evidence rather than from the Applicants'.

Separate borrowers, separate agreements, separate security

7. RBC financed BLCL under a Credit Agreement dated January 18, 2021, as amended and restated on August 10, 2021. The BLCL facilities were secured by, among other things, a general security agreement, guarantees from Mr. Rice, a guarantee from Spirit Co, and various collateral mortgages and assignments of rent, including security over the Charlottetown Property.⁴
8. RBC financed Spirit Co separately, under a Loan Agreement dated January 18, 2021, as amended and restated on May 28, 2021 and May 26, 2023, for four separate facilities “that were supported by their own security package”, including a general security agreement, personal guarantees, guarantees from Lost Bell and Annapolis Cider, and various collateral mortgages and assignments of rents.⁵

The guarantee ran from Spirit Co to BLCL, not from BLCL to Spirit Co

9. Among the security supporting the BLCL facilities was a guarantee from Spirit Co.⁶ The Monitor's review “has not identified any express direct guarantee by BLCL of Spirit Co's obligations.”⁷

RBC took BLCL support where it wanted it, and did not take it for Spirit Co

10. Under the Op Co Forbearance dated February 26, 2024, BLCL was required to provide guarantees in support of Lost Bell's and Annapolis Cider's obligations.⁸ No guarantee of Spirit Co's obligations was required. The Monitor observes that it is “not clear from the communications reviewed the reason the Op Co Forbearance required BLCL to provide guarantees in support of Lost Bell's and

⁴ Tenth Report, s 3.3, para 1.

⁵ Tenth Report, s 3.3, para 2.

⁶ Tenth Report, s 3.3, para 1.

⁷ Tenth Report, s 3.5, para 1; adopted in the Brief of Law of the Monitor dated August 10, 2026 at para 24.

⁸ Tenth Report, s 3.3, para 4.

Annapolis Cider's obligations but did not specifically require a guarantee of Spirit Co's obligations.”⁹

RBC has been repaid in full

11. RBC was repaid in full from the proceeds of the Brunswick Property Transaction in December 2025.¹⁰ The Monitor confirms that the Court is not being asked to determine a claim by or against RBC, and that the direction sought is a determination, as between the Applicants' estates, of the allocation to be used for distribution purposes in these CCAA proceedings.¹¹ RBC has advised that it is not opposed to the reallocation.¹²

The estates are separately administered

12. There has been no substantive consolidation of the Applicants' estates and none is sought. The Claims Procedure solicited and determined claims against each of the Applicants separately. The Fee Allocation Settlement now before the Court for approval is itself premised on BLCL's estate being separate: it fixes BLCL's contribution toward the costs of these proceedings, provides for the BLCL Parties to assume and satisfy BLCL's own unsecured claims of approximately \$259,000 and BLCL's accrued operating costs of approximately \$10,000, and provides for the Monitor to release its interest in the remaining BLCL Real Properties upon satisfaction.¹³

No unsecured creditor has advanced a position

13. The Monitor served the Tenth Report on the service list and on the Applicants' five largest unsecured creditors so that those creditors would have the opportunity to consider the RBC Debt Repayment issue and determine whether they wished to advance a position at the motion for direction and determination in

⁹ Tenth Report, s 3.5, para 2.

¹⁰ Tenth Report, s 1.0, para 11; s 3.2, para 3.

¹¹ Brief of Law of the Monitor dated August 10, 2026 at para 27.

¹² Tenth Report, s 3.4, para 4.

¹³ Tenth Report, s 3.1, paras 1 to 8.

respect of that issue.¹⁴ None has appeared, delivered a position, or asserted an equity.

PART III - ISSUES

14. The issues addressed in this brief are:

- (a) whether an unsecured creditor may invoke the doctrine of marshalling;
- (b) whether the doctrine of marshalling requires a common debtor; and
- (c) whether, on the record in this proceeding, the doctrine of marshalling is engaged in respect of the RBC Debt Repayment.

PART IV - SUBMISSIONS

A. Marshalling is a creditor's remedy, and no creditor invokes it

15. The doctrine exists to protect an identified creditor from an identified prejudice. In *Green v Bank of Montreal* the Ontario Court of Appeal described the right to marshal as “an equitable one intended to prevent a creditor who can resort to two funds of a debtor from defeating another creditor who can resort to only one of them”, and that “[f]undamentally, the doctrine is applied for the purpose of regulating the rights of the two creditors among themselves”.¹⁵ The Manitoba Court of Appeal put it the same way in *Wolfe*: marshalling is “intended to protect the recovery of a junior creditor against the arbitrary action of a senior creditor”.¹⁶
16. The junior creditor is the claimant. In every decision filed on this motion the doctrine was raised by a creditor seeking its benefit: by the third mortgagee in *Brown*, by the judgment creditors in *Allison* and *Paddon*, by the creditor which had assumed the senior loans in *Wolfe*, by the subordinated noteholder in *Griffon*, and by the vendor take back noteholder in *Bear Creek*.

¹⁴ Tenth Report, s 3.5, para 7; see also s 3.5, para 5.

¹⁵ *Green v Bank of Montreal*, 1999 CanLII 821 (ON CA) [“*Green*”] at para 10. Filed at Tab 3 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

¹⁶ *Wolfe et al v Taylor et al*, 2020 MBCA 44 [“*Wolfe*”] at para 31. Filed at Tab 6 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

17. Here the constituency that would benefit from marshalling has had notice of the issue, has had the Tenth Report, and has elected not to be heard. The Monitor, which raised the doctrine as a consideration, does not advance it as a submission and takes no position on it.¹⁷
18. The Applicants do not put this as a submission that silence is consent, and they accept that the Court determines the question on its merits. They put it only this far. Marshalling is a discretionary equitable remedy which reallocates value between competing creditors.. In the absence of any creditor asserting the equity, identifying the prejudice said to require relief, and submitting to the consequences of the remedy sought, there is no sound basis to apply the doctrine on the Court's own motion against a party which has appeared and opposes it.

B. Question one: the weight of authority is against an unsecured creditor invoking marshalling

19. The leading Canadian statement is that of Ruttan J. in *Williamson v Loonstra*, adopted by the Ontario Court (General Division) in *Allison*:¹⁸

The doctrine does not extend to all creditors of every degree, it does not apply in favour of an unsecured creditor and it does not apply in favour of a judgment creditor unless he has obtained a charge on the estate that he seeks to have marshalled in his favour.

20. The rationale is structural. Marshalling protects a creditor's interest in a particular fund. An unsecured creditor has no proprietary or security interest in any fund; it stands in the place of the debtor and takes no more than the debtor could give it.¹⁹ On that basis the Court in *Allison* held that the applicants were not entitled to invoke the doctrine.²⁰
21. The same orientation appears in *Wolfe*, where the Manitoba Court of Appeal recorded, in the context of the bars to marshalling, that potential prejudice to

¹⁷ Monitor's Marshalling Brief at paras 2 and 34.

¹⁸ *Williamson v Loonstra et al*, 1973 CanLII 1186 (BC SC) at pp 278-279, as reproduced in *Allison (Re)*, 1995 CanLII 7146 (ON CTGD) ["*Allison*"] at para 32. Filed at Tabs 9 and 7 respectively of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

¹⁹ *Allison* at paras 32 to 34, adopting *Loonstra* and *Gray v Stone and Funnell* (1894), 69 L.T.R. (N.S.) 282.

²⁰ *Allison* at para 34.

unsecured creditors is irrelevant.²¹ The doctrine is framed around secured interests.

22. The contrary authorities collected by the Monitor are narrower than they first appear:

- (a) *Governor and Company of the Bank of Scotland v Nel (The)* concerned claimants holding interests in rem. The Court distinguished *Loonstra* on precisely that basis.²²
- (b) The statement in *Strategic Acquisition Corp v Multus Investment Corporation* that “[t]here is nothing in the doctrine that says that both creditors must be secured or mortgagees” was made on a summary judgment application and is obiter. The Alberta Court of King's Bench so held in *Griffon*.²³
- (c) *Bear Creek Contracting Ltd v Canadian Western Bank* was decided in favour of a creditor which held a \$2.5 million promissory note secured by a security interest in the assets in question and subordinated to the senior lender under an intercreditor agreement. It is not authority for marshalling at the instance of an unsecured creditor.²⁴

23. The Applicants say the better view remains that stated in *Loonstra* and applied in *Allison*. The unsecured creditors of Spirit Co hold no security, no charge and no interest in any fund. They are not, on the authorities, creditors who may marshal.

24. The Court need not resolve the point, however, because the analysis fails at a prior stage. That is the course the Ontario Court of Appeal took in *Paddon*, where

²¹ *Wolfe* at para 38, citing *Loonstra*.

²² *Governor and Company of the Bank of Scotland v Nel (The)*, 1998 CanLII 9082 (FCTD) at para 22; Monitor's Marshalling Brief at para 13.

²³ *Strategic Acquisition Corp v Multus Investment Corporation*, 2013 ABQB 534 at paras 13-14; *Re Griffon Partners Operation Corporation*, 2024 ABKB 277 [“*Griffon*”] at paras 23-24. Filed at Tabs 11 and 4 respectively of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

²⁴ *Bear Creek Contracting Ltd v Canadian Western Bank*, 2026 NLSC 13 [“*Bear Creek*”] at para 17. Filed at Tab 12 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

it expressly declined to decide whether an unsecured creditor could marshal, having found that there was no common debtor.²⁵

C. Question two: a common debtor is required, and there is none

25. The five preconditions for marshalling were stated by the Ontario Court of Appeal in *Green* and have been applied consistently since.²⁶

There are five criteria: (a) two creditors; (b) one common debtor; (c) two funds of the debtor with the superior creditor having access to both and the inferior creditor to but one; (d) no interference with the choice of remedy of the superior creditor and (e) no prejudice to third parties.

26. Halsbury's, adopted by the Ontario High Court in *Brown*, is to the same effect: "First, the claims must be against a single debtor. If one creditor has a claim against C and D, and another creditor has a claim against D only, the latter creditor cannot require the former to resort to C unless the liability is such that D could throw the primary liability on C, for example where C and D are principal and surety."²⁷
27. The Monitor's own conclusion is that "[t]he authorities are clear that there must be a common debtor for marshalling to be invoked" and that whether there is one "is a question of fact."²⁸
28. Failure of that requirement is dispositive, and has repeatedly been treated as such:
- (a) In *Wolfe*, the Manitoba Court of Appeal set aside a marshalling order: "marshalling is not available on the facts of this case as there is not a single common debtor."²⁹ The Court noted that in both of its earlier

²⁵ 807933 *Ontario Inc v Paddon and Associates*, 1998 CanLII 3766 (ON CA) ["*Paddon*"] at paras 25-26. Filed at Tab 8 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

²⁶ *Green* at para 10; adopted in *House v Baird*, 2019 ONSC 1712 ["*Baird*"] at para 39, and in *Griffon* at para 21.

²⁷ *Brown v Canadian Imperial Bank of Commerce et al*, 1985 CanLII 2116 (Ont HCJ) ["*Brown*"] at para 4, quoting 16 Halsbury's Laws of England (4th ed) at pp 962-963. Filed at Tab 13 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

²⁸ Monitor's Marshalling Brief at para 33(b).

²⁹ *Wolfe* at para 49; see also para 56.

decisions on the doctrine it had “declined to grant marshalling because there was no single common debtor.”³⁰

(b) In *Green*, one of the four reasons the doctrine had no application was that “there was no common debtor for both ‘funds’.”³¹

(c) In *Paddon*, the Ontario Court of Appeal held that the doctrine had no application because the appellant's claim lay against one of the two debtors only, and dismissed the appeal on that ground.³²

29. On the record here there is no common debtor. BLCL and Spirit Co are distinct corporations. RBC documented them under separate agreements, advanced to them under separate facilities, and took from each a separate security package. BLCL's business was real estate investment; the Operating Companies manufactured and sold alcoholic beverages.³³ They are not one debtor, and no order has been made treating them as one.

30. The requirement of “two funds of the debtor” fails for the same reason. The Charlottetown Property was BLCL's condominium.³⁴ Spirit Co never held an interest in it. There are not two funds of a single debtor available to a doubly secured creditor; there is one fund of one debtor. The doctrine cannot be used to create, after the fact, the very BLCL credit support that Spirit Co's creditors and RBC did not bargain for.

D. The principal and surety exception does not assist

31. The recognized exception to the single debtor rule is narrow. In *Griffon* the Court stated it as follows:³⁵

There clearly is an exception to the general rule that there be one debtor. That exception appears to be that marshalling may be employed in cases involving more than one debtor when one of the debtors can put primary liability upon the other, for example, when the debtors are principal and

³⁰ *Wolfe* at para 34.

³¹ *Green* at para 11.

³² *Paddon* at paras 22, 25-27.

³³ Tenth Report, s 2.0, paras 2-3; s 3.3, paras 1-2.

³⁴ Tenth Report, s 3.2, para 1.

³⁵ *Griffon* at para 31.

surety ... Such a relationship must exist, otherwise it would be inequitable to force one debtor to pay the other's debt when that debtor was not under any obligation to do so.

32. The exception is grounded in the principal debtor's obligation to indemnify the surety, and it runs in one direction only. As the Manitoba Court of Appeal explained in *Wolfe*, the exception permits the junior creditor of the surety to require the senior creditor's claim to be paid by the principal debtor. It does not operate in reverse, "because a surety has no obligation to indemnify a principal debtor."³⁶
33. Applied here, the exception would require a relationship between BLCL and Spirit Co under which primary liability for Spirit Co's operating indebtedness to RBC could be placed on BLCL. No such relationship exists:
- (a) BLCL gave no guarantee of Spirit Co's obligations. The Monitor's review has not identified any express direct guarantee by BLCL of Spirit Co's obligations.³⁷
 - (b) The guarantee that exists runs the other way. Spirit Co guaranteed BLCL.³⁸ That is the opposite of what marshalling in favour of Spirit Co's creditors would require.
 - (c) The guarantees BLCL was required to give under the Op Co Forbearance were of Lost Bell's and Annapolis Cider's obligations. They were not guarantees of Spirit Co.³⁹
34. The point was decided on closely analogous facts in *Griffon*. There the senior lenders held recourse against both the borrower and a guarantor, and the junior creditor argued that the doubly secured position of the lenders was itself sufficient. The Court rejected that submission, holding that "[a]sserting that it is equitable to employ marshalling in this case simply because the Lenders are doubly secured misses the point", and that "[t]he Court must be satisfied that one of the debtors is in a position to put primary liability upon the other ... otherwise, it

³⁶ *Wolfe* at paras 60-61.

³⁷ Tenth Report, s 3.5, para 1.

³⁸ Tenth Report, s 3.3, para 1.

³⁹ Tenth Report, s 3.3, para 4.

would be inequitable to enforce a debt against an entity who has no obligation to pay it.”⁴⁰

35. That is the principle the Ontario courts have applied since *Ernst Brothers*. It would be inequitable to permit the securities to be marshalled if in the result one who was not under any obligation to pay both debts should suffer.⁴¹ In *Paddon* the Court of Appeal held that marshalling was not intended to create such an inequity between two debtors.⁴²

E. The estates are not to be treated as one

36. If the common debtor requirement is to be met by treating BLCL and Spirit Co as a single debtor, that requires the corporate veil between them to be disregarded. In *Wolfe* the Court so held: “EPG and TBF can only be treated as one entity if the corporate veil between them is pierced.”⁴³
37. The threshold is high. In *Transamerica*, adopted by the Monitor, the Court held that the separate legal personality of a corporation is disregarded only where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct, and that complete control requires more than ownership. It must be shown that there is complete domination and that the subsidiary company does not, in fact, function independently.⁴⁴
38. *Wolfe* is instructive because the integration there was far greater than anything on this record. The two companies had the same owners and the same ownership structure, gave full security and cross guarantees to their common senior lender, prepared combined financial statements, and one of them was acknowledged on cross examination to have been operating effectively as part of the other.⁴⁵ The Court nonetheless declined to treat them as one, relying on

⁴⁰ *Griffon* at para 33.

⁴¹ *Ernst Brothers Co v Canada Permanent Mortgage Corporation* (1920), 47 OLR 362 at 371, aff’d 57 DLR 500 (CA), as quoted in *Griffon* at para 28.

⁴² *Paddon*, as quoted in *Griffon* at para 26.

⁴³ *Wolfe* at para 49.

⁴⁴ *Transamerica Life Insurance Company of Canada v Canada Life Assurance Company*, 1996 CanLII 7979 (ON CTGD) at paras 21-23. Filed at Tab 14 of the Monitor’s Brief of Authorities dated August 26, 2026 and available on CanLII.

⁴⁵ *Wolfe* at para 54.

indicia of separateness including that the companies gave individually secured mortgages, that the lender set different credit limits for each and tracked the amounts loaned to each, that the liquidator required creditors to state their claims against each company separately, and that an intercompany debt was claimed as between them.⁴⁶

39. Every one of those indicia points to separateness here. RBC documented BLCL and Spirit Co under different agreements, on different dates, with different security packages and different guarantors. RBC tracked and applied the debt of each separately, which is the very act that gives rise to this issue. The Claims Procedure determined claims against each Applicant separately. The Monitor has separately quantified BLCL's unsecured claims at approximately \$259,000 and BLCL's accrued operating costs at approximately \$10,000, and the Fee Allocation Settlement provides for the BLCL Parties to assume and satisfy those obligations alone.⁴⁷
40. The Monitor cannot ask this Court to approve a settlement premised on BLCL's estate being separately administered, separately funded and separately released, and at the same time invite the Court to treat the estates as a single pool for the purpose of the allocation question.
41. *Bear Creek*, the most recent of the decisions filed on this motion and the only one from this region, is the case in which marshalling was ordered across related entities. It illustrates what a finding of a single debtor requires. The Court found that all entities in the group shared common management and ownership control and the same directors, that one individual was the President, Chief Executive Officer and directing mind of every entity and signed all loan documents, that the group's financial statements were prepared on a consolidated basis, that all obligations were cross guaranteed, and that the senior lender itself deposed that "CWB treated the Universal Group as a single, consolidated economic entity."⁴⁸ On that record the Court found a single debtor.⁴⁹

⁴⁶ *Wolfe* at paras 55-56.

⁴⁷ Tenth Report, s 3.1, para 5; s 3.3, paras 1-2.

⁴⁸ *Bear Creek* at paras 28, 31 and 33.

⁴⁹ *Bear Creek* at para 33.

42. The record here is the reverse. RBC did not treat these companies as one. It papered them separately, and when it took additional security under the forbearance arrangements in February 2024 it turned its mind to which Operating Company obligations it wanted BLCL to stand behind, took guarantees for two of the three, and did not take one for Spirit Co.⁵⁰ That omission is not a gap for equity to fill. It is a commercial allocation of risk the doctrine of marshalling should respect.

F. Even if the threshold were met, the equities do not support marshalling

43. Marshalling is discretionary. It is refused where it is not just and equitable, and it is barred where it would prejudice third parties.⁵¹
44. In *Wolfe* the Court refused marshalling in part because the creditor seeking it could have taken security from the second company and had not.⁵² The unsecured creditors of Spirit Co extended credit to Spirit Co. They took no security over BLCL's assets and no guarantee from BLCL.
45. The Court then identified the decisive consequence:⁵³

Nonetheless, the effect of allowing marshalling is that RLW would be paid, before the unsecured creditors of EPG, from the funds of EPG that resulted from the sale of its land. RLW would effectively become a secured creditor of EPG despite it holding no security against the assets of EPG ...

46. The Court added that in respect of one component of the debt the creditor did not even hold a guarantee from the second company.⁵⁴
47. That is precisely the effect of marshalling here. The proceeds in question are the proceeds of a BLCL asset. To marshal them to Spirit Co is to pay Spirit Co's unsecured creditors out of BLCL's fund, in priority to BLCL's own stakeholders, when those creditors hold neither security over BLCL's assets nor a guarantee from BLCL. It converts them into secured creditors of a company from which they

⁵⁰ Tenth Report, s 3.3, para 4; s 3.5, paras 1-2.

⁵¹ *Green* at para 10; *Wolfe* at paras 38 and 64.

⁵² *Wolfe* at para 64.

⁵³ *Wolfe* at para 65.

⁵⁴ *Wolfe* at para 65.

never obtained security and alters the priority consequences of the parties' own documentation.

48. *Green* is to the same effect on the limits of the doctrine. The Court declined to “unscramble this omelette at the behest of one creditor to the detriment of the other two”, holding that “[t]he doctrine of marshalling does not permit the court to prefer the rights of one creditor to another.”⁵⁵
49. Two further matters bear on the equities, and the Applicants raise them so that the Court has the complete picture:
- (a) BLCL is not seeking to draw value out of the Operating Companies. Under the Fee Allocation Settlement the BLCL Parties pay \$200,000 in cash and the Monitor retains a further \$100,000 from BLCL's Brunswick Property proceeds, in each case toward costs of these proceedings which were largely incurred for the benefit of the Operating Companies, and the BLCL Parties assume and pay BLCL's own unsecured creditors in full.⁵⁶
 - (b) BLCL's unsecured creditors are therefore not competing in this proceeding. The only contest the allocation question creates is between the unsecured creditors of Spirit Co and the residual stakeholders of BLCL, which is the contest the fifth precondition exists to prevent the Court from resolving through this doctrine.

G. Nova Scotia authority

50. No party has filed Nova Scotia authority on marshalling, and the Applicants have not located a decision of this Court or of the Nova Scotia Court of Appeal applying the doctrine. The commentary relied on by the Monitor records that marshalling “has not received any significant treatment by the Supreme Court of Canada and only limited treatment among appellate courts across the country”,⁵⁷

⁵⁵ *Green* at para 12.

⁵⁶ Tenth Report, s 3.1, paras 3 to 5.

⁵⁷ Matti Lemmens, Jakub Maslowski and Heather Cattell, “The Marshalling Plan for Junior Creditors” (2024) 22 Annual Review of Insolvency Law, 2024 CanLII Docs 3047 at pp 2-3, as quoted in the Monitor's Marshalling Brief at para 8. Filed at Tab 5 of the Monitor's Brief of Authorities dated August 26, 2026 and available on CanLII.

and the Monitor summarises the authorities as establishing that the doctrine “has historically been applied inflexibly and in limited circumstances.”⁵⁸

51. The Applicants therefore put the out of province decisions as persuasive only. It is material, however, that of the appellate authorities that do exist, each declined to order marshalling for want of a common debtor: *Green* and *Paddon* in Ontario, and *Wolfe* in Manitoba. Among the authorities filed on this motion, no appellate court has ordered marshalling as between separate corporate debtors in the absence of a relationship permitting primary liability to be placed on the entity whose fund is to be marshalled.

H. Quantum remains to be confirmed

52. The Applicants record, without asking the Court to resolve it on this motion, that the parties differ on the quantum of the RBC Debt Repayment. The Tenth Report addresses a single transfer and states it at \$345,000.⁵⁹ The Applicants' evidence is that the amount is approximately \$378,000, comprising the net Charlottetown proceeds and a second transfer from vessel sale proceeds deposited to BLCL's account, with the precise figures subject to confirmation against the RBC account statements.⁶⁰
53. The question of principle is fully argued and does not depend on the arithmetic. The Applicants ask that the Court determine the principle and direct that the Monitor confirm the quantum against the RBC account statements within a fixed period, with liberty to any party to apply if the amount cannot be agreed.

PART V - RELIEF REQUESTED

54. The Applicants respectfully request:
- (a) a determination that the equitable doctrine of marshalling is not engaged in respect of the RBC Debt Repayment;

⁵⁸ Monitor's Marshalling Brief at para 8, citing Lemmens et al. at p 4.

⁵⁹ Tenth Report, s 3.2, para 1.

⁶⁰ Amended Affidavit of Kevin Alexander Rice sworn August 18, 2026 at paras 15, 18 and 28. [

- (b) a direction that the RBC Debt Repayment was made for the benefit of BLCL and shall be allocated to the indebtedness of BLCL for all purposes in these CCAA proceedings, and that the Monitor is authorized and directed to give effect to that allocation for distribution purposes;
- (c) a direction that the Monitor confirm the quantum of the RBC Debt Repayment against the RBC account statements within a fixed period, with liberty to any party to apply if the quantum cannot be agreed;
- (d) approval of the Fee Allocation Settlement, which the Applicants support; and
- (e) such further and other relief as counsel may advise and this Honourable Court may permit.

55. No relief is sought against RBC and no finding is sought against RBC. The Applicants seek no costs against the Monitor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of September 2026.

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SCHEDULE “A”
List of Authorities

1. *Allison (Re)*, 1995 CanLII 7146 (ON CTGD).
2. *807933 Ontario Inc. v. Paddon and Associates*, 1998 CanLII 3766 (ON CA).
3. *Bear Creek Contracting Ltd. v. Canadian Western Bank*, 2026 NLSC 13.
4. *Brown v. Canadian Imperial Bank of Commerce et al*, 1985 CanLII 2116 (Ont HCJ).
5. *Governor and Company of the Bank of Scotland v. Nel (The)*, 1998 CanLII 9082 (FCTD).
6. *Green v. Bank of Montreal*, 1999 CanLII 821 (ON CA).
7. *House v. Baird*, 2019 ONSC 1712.
8. *Re Griffon Partners Operation Corporation*, 2024 ABKB 277.
9. *Strategic Acquisition Corp. v. Multus Investment Corporation*, 2013 ABQB 534.
10. *Transamerica Life Insurance Company of Canada v. Canada Life Assurance Company*, 1996 CanLII 7979 (ON CTGD).
11. *Williamson v. Loonstra et al*, 1973 CanLII 1186 (BC SC).
12. *Wolfe et al v. Taylor et al*, 2020 MBCA 44.
13. Matti Lemmens, Jakub Maslowski and Heather Cattell, “The Marshalling Plan for Junior Creditors” (2024) 22 Annual Review of Insolvency Law, 2024 CanLIIDocs 3047.

Every authority listed above is available on CanLII. Each was filed by the Monitor in its Brief of Authorities dated August 26, 2026, with the exception of *Ernst Brothers Co. v. Canada Permanent Mortgage Corporation* (1920), 47 OLR 362, aff'd 57 DLR 500 (CA), which is referred to in these submissions only as it is quoted in *Griffon* and *Wolfe*, and is not separately relied upon.

SCHEDULE “B”
Statutory Authorities

***Companies' Creditors Arrangement Act*, RSC 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.