

2024

Hfx No. 538745

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**")

BRIEF OF LAW OF THE MONITOR

August 10, 2026

RECONSTRUCT LLP
80 Richmond Street West
Suite 1700
Toronto, ON M5H 2A4

Sharon Kour
skour@reconllp.com
Tel: 416.613.8283

Natasha Rambaran
nrambaran@reconllp.com
Tel: 416.613.4880

Counsel for AlixPartners
Restructuring, Inc. in its capacity
as Court-appointed Monitor of
the Applicants

TO: THE SERVICE LIST

To the Honourable Associate Chief Justice Jamieson, AlixPartners Restructuring, Inc. in its capacity as Court-appointed monitor (the “**Monitor**”) of the Applicants, submits:

PART I – OVERVIEW¹

1. This brief is filed by the Monitor in support of its motion seeking an Order (the “**Settlement Approval, Direction and Ancillary Order**”), among other things:

- (a) approving the settlement agreement dated July 8, 2026 (the “**Fee Allocation Settlement**”) entered into between the Monitor, Blue Lobster Capital Limited (“**BLCL**”) and Kevin Alexander Rice (together with BLCL, the “**BLCL Parties**”);
- (b) providing advice and direction regarding the allocation of a debt repayment made by BLCL to Royal Bank of Canada (“**RBC**”) prior to the commencement of these proceedings (the “**RBC Debt Repayment**”) and whether the RBC Debt Repayment should be allocated to 3284906 Nova Scotia Limited (“**Spirit Co**”) or BLCL; and
- (c) approving the Tenth Report of the Monitor dated August 10, 2026 (the “**Tenth Report**”) and the Monitor’s activities described therein.

PART II – FACTS

2. The facts relevant to this motion are more fully set out in the Tenth Report.

¹ Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in the Eighth Report of the Monitor dated March 12, 2026 [“**Eighth Report**”].

Overview

3. The Applicants are private companies incorporated under the laws of Nova Scotia.²
4. Prior to these proceedings, the primary business of the Operating Companies was the manufacturing and sale of alcoholic beverages.³ BLCL is primarily a real estate investment company.⁴
5. Pursuant to the Initial Order granted December 13, 2024 (as amended by the Amended and Restated Initial Order granted December 20, 2024), the Applicants were granted protection under the CCAA and AlixPartners was appointed as Monitor of the Applicants.⁵
6. The Stay was subsequently extended by Orders of this Court, including by the Stay Extension Order dated June 25, 2026, which extended the Stay until and including September 9, 2026.⁶

Fee Allocation Settlement

7. To date, most of the costs of the CCAA proceedings have been funded by the Operating Companies. In the Monitor's view, BLCL should be allocated a portion of the fees and costs of these proceedings given the substantial benefits it obtained therefrom.⁷

² Tenth Report at 2.0.1.

³ Tenth Report at 2.0.2.

⁴ Tenth Report at 2.0.3.

⁵ Tenth Report at 1.0.1.

⁶ Tenth Report at 1.0.15.

⁷ Tenth Report at 3.1.2.

8. Since the date of the Ninth Report, the Monitor has entered into the Fee Allocation Settlement with the BLCL Parties, which resolves the Fee Allocation issue and remains subject to Court approval.⁸ The key terms of the Fee Allocation Settlement are as follows:

- (a) **Settlement Amount:** The BLCL Parties will jointly and severally pay \$200,000 to the Monitor, to be held in trust pending Court approval and authorization to distribute the funds;⁹
- (b) **BLCL Liabilities:** The BLCL Parties will assume and pay BLCL's unsecured claims, estimated at \$259,000, and accrued operating liabilities, estimated at \$10,000, within 90 days of Court approval;¹⁰
- (c) **BLCL Properties:** Once the payment and assumed liabilities are satisfied, the Monitor will release its interests in the remaining BLCL properties. If the liabilities remain unpaid after 90 days, the Monitor may sell properties as reasonably necessary to satisfy them and related realization costs;¹¹ and
- (d) **Mutual Releases:** The parties will provide mutual releases limited to the Fee Allocation.¹²

RBC Debt Repayment

9. The Monitor's understanding of the RBC Debt Repayment, based on information obtained from the Applicants and RBC, is described in further detail in the Tenth Report.¹³

⁸ Tenth Report at 3.1.3.

⁹ Tenth Report at 3.1.4.

¹⁰ Tenth Report at 3.1.6.

¹¹ Tenth Report at 3.1.7.

¹² Tenth Report at 3.1.8.

¹³ Tenth Report at 3.2.

10. The RBC Debt Repayment relates to a pre-filing debt repayment in the amount of \$345,000 by BLCL to RBC resulting from the sale of BLCL's condominium located at 225 Prince Street, Charlottetown, Prince Edward Island (the "**Charlottetown Property**").¹⁴

11. Although BLCL advised RBC at the time that the sale proceeds were to be applied to BLCL's indebtedness, RBC applied the net sale proceeds (the "**Sale Proceeds**") from the sale of the Charlottetown Property to reduce Spirit Co's indebtedness.¹⁵ The BLCL Parties maintain the position that the RBC Debt Repayment should be applied to BLCL's indebtedness.¹⁶ RBC maintains that the allocation of funds to Spirit Co's indebtedness was required as a condition of continued forbearance.¹⁷

12. RBC has since been repaid in full. However, the appropriate allocation of the Sale Proceeds is relevant to distribution of the remaining assets of the Applicants. If the Sale Proceeds are allocated to BLCL, distributions to unsecured creditors of the Operating Companies will be reduced and value may remain for BLCL stakeholders. If the Sale Proceeds are allocated to Spirit Co, recoveries for Spirit Co's unsecured creditors will increase.¹⁸

13. Given that the RBC Debt Repayment occurred prior to the commencement of the CCAA proceedings and before the Monitor's involvement, the Monitor seeks the Court's advice and direction as to the appropriate allocation and treatment of the RBC Debt Repayment.

¹⁴ Tenth Report at 3.2.11.

¹⁵ Tenth Report at 3.2.19 and 3.2.20.

¹⁶ Tenth Report at 3.2.12.

¹⁷ Tenth Report at 3.2.23.

¹⁸ Tenth Report at 3.2.13.

PART III – ISSUES

14. The issues to be determined are whether this Court should:
- (a) approve the Fee Allocation Settlement;
 - (b) provide advice and direction regarding the RBC Debt Repayment; and
 - (c) approve the Tenth Report and the Monitor's activities described therein.

PART IV – SUBMISSIONS

A. Fee Allocation Settlement Should be Approved

15. The Monitor seeks approval of the Fee Allocation Settlement.
16. Section 11 of the CCAA grants the Court broad discretionary power to make any order it considers appropriate, including the approval of settlements in CCAA proceedings.¹⁹
17. In determining whether to approve a settlement, the Court may consider the following factors:
- (a) whether the settlement is fair and reasonable;
 - (b) whether it provides substantial benefits to other stakeholders; and
 - (c) whether it is consistent with the purpose and spirit of the CCAA.²⁰

¹⁹ *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ["CCAA"], [s 11](#); see also *Re DCL Corporation*, [2025 ONSC 4976](#) at [para 14](#).

²⁰ *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#) at [para 49](#).

18. The Fee Allocation Settlement satisfies these factors:

- (a) **Fair and reasonable.** The Operating Companies have funded most of the costs of these CCAA proceedings to date, although BLCL has derived substantial benefits from them.²¹ The Fee Allocation Settlement is a consensual resolution under which the BLCL Parties will jointly and severally pay \$200,000 to the Monitor, and the BLCL Parties will assume BLCL's unsecured claims and accrued liabilities.²² These obligations are supported by a mechanism permitting the Monitor to retain authority over the BLCL Real Properties if the assumed liabilities are not satisfied in full within 90 days following Court approval of the Fee Allocation Settlement.²³
- (b) **Substantial benefits to other stakeholders.** The Fee Allocation Settlement provides a meaningful contribution to the estate, provides for the BLCL Parties to satisfy BLCL's unsecured claims and accrued liabilities, and avoids the additional professional costs, delay and uncertainty associated with litigating the Fee Allocation. The Monitor has been cognizant that litigating this matter would likely consume the balance of the monies available for distribution to unsecured creditors, and this settlement addresses that risk.²⁴
- (c) **Spirit and purpose of the CCAA.** The Fee Allocation Settlement resolves one of the outstanding issues in these proceedings consensually and efficiently, maximizes value for stakeholders, and facilitates the orderly completion of these

²¹ Tenth Report at 3.1.2.

²² Tenth Report at 3.1.3.

²³ Tenth Report at 3.1.7.

²⁴ Tenth Report at 3.1.9.

CCAA proceedings. It is therefore consistent with the remedial purposes of the CCAA.

B. Advice and Direction regarding RBC Debt Repayment

19. The Monitor seeks this Court's advice and direction regarding the appropriate allocation and treatment of the RBC Debt Repayment pursuant to paragraph 33 of the Amended and Restated Initial Order dated December 20, 2024, which expressly authorizes the Monitor to apply to this Court for advice and directions in the discharge of its powers and duties.²⁵

20. Section 11 of the CCAA provides the Court with broad discretion to make any order it considers appropriate in the circumstances.²⁶ The Court's supervisory jurisdiction under the CCAA is intended to permit practical, efficient and fair resolutions of issues arising in CCAA proceedings.²⁷

Parties' Positions

21. The issue around the RBC Debt Repayment should be treated as having reduced BLCL's indebtedness or Spirit Co's indebtedness to RBC, which will affect the distributions in these proceedings.²⁸

22. The BLCL Parties' position based on information provided to the Monitor is that the RBC Debt Repayment should be allocated to BLCL. The BLCL Parties maintain that BLCL's counsel directed RBC to apply the Sale Proceeds first to BLCL's term loan in respect of the Charlottetown Property and then to two other BLCL term loans. The BLCL Parties further submit that RBC's

²⁵ Amended and Restated Initial Order dated December 20, 2024 at para 33.

²⁶ CCAA, [s. 11](#).

²⁷ *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#) at [paras 59–60](#), [70](#).

²⁸ Tenth Report at 3.0.1.

security package did not authorize RBC to apply the Sale Proceeds to Spirit Co's operating line and that BLCL did not guarantee Spirit Co's operating obligations. The BLCL Parties therefore characterize the application of the Sale Proceeds to Spirit Co as an improper reduction of Spirit Co's indebtedness at BLCL's expense.²⁹

23. RBC's position based on information provided to the Monitor is that its application of the Sale Proceeds to Spirit Co's indebtedness was a condition of its continued forbearance. RBC relies on the outstanding demands, the forbearance arrangements, the intercompany guarantees, and the lack of sufficient progress on the proposed refinancing. RBC's position is that it was not required to apply the Sale Proceeds solely in accordance with BLCL's direction.³⁰

24. The Monitor's review has not identified an express direct guarantee by BLCL of Spirit Co's obligations. The materials reviewed by the Monitor do not conclusively establish whether the application of the Sale Proceeds to Spirit Co formed part of the forbearance arrangements.³¹ Further, the contemporaneous communications do not clearly establish BLCL's intended treatment of the surplus Sale Proceeds in all respects.³² The Monitor has also identified a potential marshalling issue, since RBC had recourse to assets of multiple Applicants whereas Spirit Co's unsecured creditors have recourse only to Spirit Co's assets.³³

Advice and Direction is Necessary

25. The RBC Debt Repayment occurred prior to the commencement of these CCAA proceedings and pre-dates the Monitor's appointment and involvement. The Monitor's understanding of the underlying facts is therefore based on information obtained from the

²⁹ Tenth Report at 3.4.1-3.4.2.

³⁰ Tenth Report at 3.4.3.

³¹ Tenth Report at 3.5.1.

³² Tenth Report at 3.5.2.

³³ Tenth Report at 3.5.3.

Applicants and RBC and is not based on the Monitor's firsthand knowledge or involvement.³⁴ Given these competing considerations and the potential impact of the issue on stakeholder distributions, the Monitor is not prepared to agree to a debt reallocation without the Court's guidance.³⁵

26. The Monitor requests direction in respect of the appropriate allocation of the RBC Debt Repayment. Court guidance on this issue will permit the Monitor to determine an appropriate distribution framework to bring these proceedings to conclusion.

Relief Sought

27. RBC has been repaid in full, and the Court is not being asked to determine a claim by or against RBC.³⁶ The direction sought is instead a determination, as between the Applicants' estates, of the allocation to be used for distribution purposes in these CCAA proceedings.³⁷

28. The RBC Debt Repayment issue is the sole material outstanding matter requiring determination before distributions can be finalized.

29. The proposed Settlement Approval, Direction and Ancillary Order seeks a determination as to whether the RBC Debt Repayment was made for the benefit of BLCL or Spirit Co and, accordingly, whether it is to be allocated to BLCL's or Spirit Co's indebtedness for all purposes in these CCAA proceedings. The proposed Order further authorizes and directs the Monitor to implement that allocation in calculating and making distributions from the Applicants' estates.

³⁴ Tenth Report at 3.2.4.

³⁵ Tenth Report at 3.5.5.

³⁶ Tenth Report at 3.2.3.

³⁷ Tenth Report at 3.0.1.

30. Upon determination, the Monitor will be able to finalize the allocation of the Applicants' remaining assets and proceed with distributions, thereby facilitating an orderly completion of these CCAA proceedings. The Monitor has served notice of this motion on the service list and the five largest unsecured creditors, affording affected stakeholders an opportunity to consider the RBC Debt Repayment issue and advance a position before the Court.³⁸

C. Approval of the Tenth Report and Monitor's Activities

31. The Monitor seeks approval of the Tenth Report and the activities of the Monitor referred to therein. There are good policy and practical reasons for court approval of a Monitor's report and activities, including that such approval:

- (a) allows the Monitor to move forward with next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay that would be caused by (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the Monitor.³⁹

³⁸ Tenth Report at 3.5.7.

³⁹ *Re Target Canada Co*, [2015 ONSC 7574](#) at [para 22](#).

32. Since the date of the Ninth Report, the Monitor has taken the following steps, among others, to advance these proceedings:

- (a) dealt with post-closing matters relating to the Transactions;
- (b) continued reviewing and engaging with counsel for RBC and the BLC Parties regarding the RBC Debt Repayment;
- (c) updated an analysis of net sale proceeds available to the Operating Companies' unsecured creditors, provided same to the BLCL Parties' counsel, and engaged with the BLCL Parties' counsel concerning the Outstanding Issues;
- (d) with the assistance of counsel, finalized and entered into the Fee Allocation Settlement with the BLCL Parties, subject to Court approval; and
- (e) prepared this Tenth Report and reviewed all motion material filed in connection with this motion.⁴⁰

33. The Monitor has acted in good faith pursuant to the Monitor's duties and powers set out in the CCAA and the Orders made in these proceedings.

PART IV – RELIEF REQUESTED

34. For the reasons set out above, the Monitor requests the Court grant the Settlement Approval, Direction and Ancillary Order.

⁴⁰ Tenth Report at 6.0.1.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of August 2026.



RECONSTRUCT LLP

80 Richmond Street West

Suite 1700

Toronto, ON M5H 2A4

Sharon Kour

skour@reconllp.com

Natasha Rambaran

nrambaran@reconllp.com

Counsel for KSV Restructuring Inc., in
its capacity as Court-appointed Monitor

LIST OF AUTHORITIES

1. *Re DCL Corporation*, [2025 ONSC 4976](#).
2. *Labourers' Pension Fund of Central and Eastern Canada v Sino-Forest Corporation*, [2013 ONSC 1078](#).
3. *Century Services Inc. v Canada (Attorney General)*, [2010 SCC 60](#)
4. *Re Target Canada Co*, [2015 ONSC 7574](#).

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.