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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, RSC 1985, C C-8, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF BR CAPITAL LP, BR CAPITAL INC., ICE HEALTH SYSTEMS LP, ICE HEALTH SYSTEMS GP LP, ICE HEALTH SYSTEMS INC., HEALTH EDUCATION LP, HEALTH EDUCATION GP LP, HELP INC., FIRST RESPONSE INTERNATIONAL LP, FIRST RESPONSE INTERNATIONAL GP LP, FIRST RESPONSE INTERNATIONAL INC., ICE HEALTH SYSTEMS LTD. AND SESCI HEALTH SERVICES INC.

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF HEALTH SYSTEMS INC., HELP INC., FIRST RESPONSE INTERNATIONAL INC., ICE HEALTH SYSTEMS LTD. AND SESCI HEALTH SERVICES INC. UNDER THE *BUSINESS CORPORATIONS ACT*, RSA 2000, CH B-9, AS AMENDED

APPLICANTS	BR CAPITAL LP, BR CAPITAL INC., ICE HEALTH SYSTEMS LTD., ICE HEALTH SYSTEMS GP LP, ICE HEALTH SYSTEMS INC., HEALTH EDUCATION LP, HEALTH EDUCATION GP LP, HELP INC., FIRST RESPONSE INTERNATIONAL LP, FIRST RESPONSE INTERNATIONAL GP LP, FIRST RESPONSE INTERNATIONAL INC., ICE HEALTH SYSTEMS INC. AND SESCI HEALTH SERVICES INC.
DOCUMENT	**BENCH BRIEF OF THE APPLICANTS IN SUPPORT OF AN APPLICATION FOR APPROVAL OF THE PROPOSAL**

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I. INTRODUCTION

1. BR Capital Limited Partnership ("**BR LP**"), BR Capital Inc. ("**BR GP**"), ICE Health Systems Limited Partnership ("**ICE LP**"), ICE Health Systems GP Limited Partnership ("**ICE GP LP**"), ICE Health Systems Inc. ("**ICE AB Inc**."), First Response International Limited Partnership ("**FRI LP**"), First Response International GP Limited Partnership ("**FRI GP LP**"), First Response International Inc. ("**FRI Inc**."), Health Education Limited Partnership ("**HE LP**"), Health Education GP Limited Partnership ("**HE GP LP**"), Help General Partner Inc. ("**HE Inc**."), ICE Health Systems Ltd. ("**ICE Ltd**."), SESCI Health Services Inc. ("**SESCI**"), Servicio de Excelencia en y Communication por Salud Internet (MX) ("**SEC MX**") and ICE Health Systems Inc. ("**ICE NV**") are a group of closely connected limited partnerships and corporations that carry on the business of developing and licensing cloud based software for the dental, medical, emergency service fields.

2. BR LP, ICE LP, ICE GP LP, HE LP, HE GP LP, FRI LP and FRI GP LP were all formed under the *Partnership Act*, RSA 2000, c P-3, as amended (the "***Partnership Act***"). BR GP, ICE AB Inc., HE Inc., FRI Inc., ICE Ltd., and SESCI were all incorporated under the *Business Corporations Act*, RSA 2000, Ch B-9, as amended (the "***ABCA***"). ICE NV is a Nevada corporation and SEC MX is a Mexican corporation.

3. On September 15 and 16, 2022, each of BR LP, BR GP, ICE LP, ICE GP LP, ICE AB Inc., FRI LP, FRI GP LP, FRI Inc., HE LP, HE GP LP, HE Inc., ICE Ltd. and SESCI (collectively, the "**Debtors**" or "**BR Capital**", and individually, a "**Debtor**") filed notices of intention to make a proposal (collectively, the "**NOIs**", and individually, an "**NOI**") under s. 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c C-8, as amended (the "***BIA***", and the proceedings commenced by the filing of the NOIs, the "***BIA* Proceedings**"). KPMG Inc., Licensed Insolvency Trustee, was appointed as proposal trustee of the Debtors (in such capacity, the "**Proposal Trustee**").

4. ICE NV and SEC MX did not file an NOI and are not part of the *BIA* Proceedings.

5. On January 13, 2023, the Debtors filed with the Proposal Trustee a joint consolidated proposal under Division I of Part III of the *BIA*, plan of reorganization of HE Inc. under s. 192 of the *ABCA* (the "**Reorganization**") and plan of arrangement of BR GP, FRI Inc., HE Inc., ICE AB Inc., ICE Ltd., and SESCI under s. 193 of the *ABCA* (the "**Corporate Arrangement**", and such

consolidated joint Division I proposal, Reorganization and Corporate Arrangement being the "**Proposal**"). On the same day, the Proposal Trustee filed the Proposal with the Official Receiver.

6. A meeting of the Debtors' creditors was convened and held by the Proposal Trustee on February 2, 2023 to consider and vote on the Proposal (the "**Creditors Meeting**"). At the Creditors Meeting, 100% of the creditors who submitted proofs of claim voted in person or by proxy or voting letter to accept the Proposal. One creditor indicated that it intended to vote against the Proposal but failed to file a proof of claim prior to or at the Creditors Meeting as required by s. 53 of the *BIA*.

7. This Bench Brief is submitted in support of an application by the Debtors and Proposal Trustee to approve the Proposal pursuant to ss. 56 and 60 of the *BIA* and obtain the other relief referred to in paragraphs 8, 9 and 10 below (the "**Application**").

II. THE ORDERS SOUGHT

8. The Proposal Trustee applies for an Order, *inter alia*:

   (a) abridging time for service of this Application and supporting materials, and deeming service thereof to be good and sufficient;

   (b) approving the Proposal pursuant to s. 59 of the *BIA*; and

   (c) providing such further and other relief as this Honourable Court may deem just.

9. The Debtors apply for an Order, *inter alia*:

   (a) abridging time for service of this Application and supporting materials, and deeming service thereof to be good and sufficient;

   (b) amending the style of cause in these proceedings *nunc pro tunc* to make the following corrections to the legal entity names of the following Debtors:

      (i) change BR Capital LP to BR Capital Limited Partnership;

      (ii) change ICE Health Systems LP to ICE Health Systems Limited Partnership;

(iii) change ICE Health Systems GP LP to ICE Health Systems GP Limited Partnership;

(iv) change Health Education LP to Health Education Limited Partnership;

(v) change Health Education GP LP to Health Education GP Limited Partnership;

(vi) change Help Inc. to Help General Partner Inc.;

(vii) change First Response International LP to First Response International Limited Partnership; and

(viii) change First Response International GP LP to First Response International GP Limited Partnership;

(such correct names of such Debtors being the "**Legal Names**" and such incorrect names being the "**Misnomers**");

(c) declaring that for all purposes in these proceedings, the notices of intention to make a proposal filed by the Debtors that contained the Misnomers that were filed with the Office of the Superintendent of Bankruptcy (the "**OSB**") relate and apply to, are effective against the applicable Debtors notwithstanding the Misnomers, and authorizing and directing the OSB to amend their records in respect of such Debtors to reflect the Legal Names of such Debtors;

(d) declaring that the Proposal is made in good faith and its terms are fair and reasonable and are calculated to benefit the general body of Affected Creditors (as defined in the Proposal), and has been accepted by the requisite majority of the Affected Creditors required under the *BIA*;

(e) declaring that upon the implementation of the Proposal (the "**Implementation**"), all steps, transfers, assumptions, distributions, contributions, transactions, arrangements, assignments and reorganizations effected under s. 4.3 of the Proposal

and in paragraphs 9(f) to 9(o) hereof shall be deemed to have occurred in the sequential order stipulated in s. 6.3 of the Proposal and to be valid, binding and effective;

(f) declaring that it is just and equitable to dissolve FRI LP, FRI GP LP, HE LP, GP LP and ICE GP LP, dissolving FRI LP, FRI GP LP, HE LP, GP LP and ICE GP LP pursuant to s. 39(f) of the *Partnership Act*, RSA 2000, c P-3, as amended (the "***Partnership Act***"), in furtherance thereof,

(i) cancelling certificates of limited partnership of FRI LP, FRI GP LP, HE LP, GP LP and ICE GP LP, and authorizing and directing the Registrar to record the cancellation of such certificates pursuant to s. 71 of the *Partnership Act*, as contemplated by ss. 4.3(b)(ii)(C), 4.3(c)(ii)(C), 4.3(d)(iii)(C), 4.3(e)(ii)(C) and 4.3(g)(ii)(C) of the Proposal;

(ii) distributing pursuant to ss. 4(b) and 73 of the *Partnership Act*:

(A) any interest of FRI LP in any property to BR LP and BR GP, each to hold an undivided interest therein on the basis of their respective *pro rata* interests in FR LP, as contemplated by s. 4.3(b)(ii)(B) of the Proposal;

(B) any interest of FRI GP LP in any property to BR LP and BR GP, each to hold an undivided interest therein on the basis of their respective *pro rata* interests in FRI GP LP, as contemplated by s. 4.3(c)(ii)(B) of the Proposal;

(C) any interest of HE LP in any property to BR LP and BR GP, each to hold an undivided interest therein on the basis of their respective *pro rata* interests in HE LP, as contemplated by s. 4.3(d)(iii)(B) of the Proposal;

(D) any interest of HE GP LP in any property to BR LP and BR GP, each to hold an undivided interest therein on the basis of their respective *pro rata* interests in HE GP LP, as contemplated by s. 4.3(e)(ii)(B) of the Proposal;

(E) any interest of ICE GP LP in the general partner units in ICE LP to ICE GP Corp as contemplated by s. 4.3(g)(ii)(B) of the Proposal; and

(F) any interest of ICE GP LP in any property to BR LP and ICE GP Corp, each to hold an undivided interest therein on the basis of their respective *pro rata* interests in ICE GP LP, as contemplated by s. 4.3(g)(ii)(B) of the Proposal;

(g) declaring that:

(i) this Order is an order for reorganization for the purposes of s. 192(2) of the *ABCA*;

(ii) the statutory procedures applicable to the reorganization HE Inc. contemplated by s. 4.3(f)(iii) of the Proposal (the "**Reorganization**") have been met and satisfied; and

(iii) the Proposal and this Application have been put forth in good faith;

(iv) the Reorganization is fair and equitable, both substantively and procedurally, and in the best interests of such corporation and its creditors, shareholders and other stakeholders;

(h) pursuant to the Reorganization:

(i) amending the articles of incorporation of HE Inc. to change the name of HE Inc. to ICE GP Corp., as contemplate by 173(1)(a) and 192(2) of the ABCA,

and approving the articles of reorganization of ICE GP Corp which shall be substantially in the form attached as Schedule "E" to the Proposal; and

(ii) approving the bylaws of ICE GP Corp which shall be substantially in the form attached as Schedule "F" to the Proposal;

(i) declaring that the transactions contemplated by ss. 4.3(b) to 4.3(f) of the Proposal are a corporate arrangement for the purposes of ss. 193(1)(a), 193(1)(b), 193(1) (e) and 193(1)(f) of the *ABCA* (the "**Corporate Arrangement**") and that:

(i) the Corporate Arrangement is fair and reasonable, has a valid business purpose, and arranges legal rights in a fair and balanced way, and that it is impractical to effect the Corporate Arrangement under any other provision of the *ABCA*; and

(ii) the statutory procedures applicable to the Corporate Arrangement have been met and satisfied and the Proposal and this Application have been put forth in good faith;

(j) approving the Corporate Arrangement pursuant to s. 193(4)(e) of the *ABCA* and as contemplated thereby:

(i) transferring any interest of FRI Inc. in any property to FRI LP, as contemplated by s. 4.3(b)(i) of the Proposal, and any interest of HE Inc. in any HE Property to HE LP, as contemplated by s. 4.3(d)(i) of the Proposal;

(ii) authorizing and directing FRI Inc., in its capacity as GP of FRI GP LP to transfer any interest of FRI GP LP in any property to FRI LP, as contemplated by s. 4.3(b)(i) of the Proposal, and to transfer its general partner units in FRI GP LP to BR GP, as contemplated by s. 4.3(c)(i) of the Proposal;

(iii) authorizing and directing HE Inc., in its capacity as GP of HE GP LP, to transfer all the right, title or interest of HE GP LP in any property to HE LP,

as contemplated by s. 4.3(d)(i) of the Proposal, and to transfer its general partner units in HE GP LP to BR GP, as contemplated by s. 4.3(e)(i) of the Proposal;

(iv) amalgamating FRI Inc. and BR GP to form BR GP 2023, as contemplated by s. 4.3(f)(i) of the Proposal and as contemplated thereby:

(A) approving the articles of amalgamation of BR GP 2023 substantially in the form attached as Schedule "C" to the Proposal, as contemplated by s. 4.3(f)(i)(E) of the Proposal; and

(B) approving the bylaws of BR GP 2023 substantially in the form attached as Schedule "D" to the Proposal, as contemplated by s. 4.3(f)(i)(G) of the Proposal;

(v) transferring the shares held by the shareholders in HE Inc. and ICE AB Inc. to BR GP 2023, as contemplated by ss. 4.3(f)(ii) and 4.3(f)(iv) respectively of the Proposal, and further transferring such shares in ICE AB Inc. from BR GP 2023 to BR LP, in exchange for additional BR LP Units, as contemplated by s. 4.3(f)(iv) of the Proposal;

(vi) amalgamating ICE AB Inc. and SESCI to form SESCI 2023, as contemplated by s. 4.3(f)(v) of the Proposal, and as contemplated thereby:

(A) approving the articles of amalgamation of SESCI 2023, substantially in the form attached as Schedule "C" to the Proposal, as contemplated by s. 4.3(f)(v)(E) of the Proposal; and

(B) approving the bylaws of SESCI 2023 substantially in the form attached as Schedule "D" to the Proposal, as contemplated by s. 4.3(f)(v)(G) of the Proposal;

(vii) dispensing under s. 193(4) of the *ABCA* with:

(A) any requirement of ICE AB Inc., FRI Inc., HE Inc. to provide any shareholders thereof with notice of the Corporate Arrangement;

(B) any requirement of ICE AB Inc., FRI Inc., HE Inc., BR GP or SESCI to call, hold and conduct a meeting of any shareholders thereof to consider and approve the Corporate Arrangement; and

(C) any right of any shareholder of ICE AB Inc., FRI Inc., HE Inc., BR GP or SESCI to dissent in respect of the Corporate Arrangement;

(k) authorizing and directing (A) BR GP, ICE GP and SESCI 2023 to file with the Registrar under the *ABCA* the articles of reorganization, arrangement and amalgamation, as applicable, in respect of the Reorganization and Corporate Arrangement, and (B) BR GP and ICE GP Corp to file with the Registrar under the *Partnership Act* all documentation required thereunder in connection with the dissolution of FRI LP, FR GP LP, HE LP, HE GP LP and ICE GP LP;

(l) declaring that the Reorganization and Corporate Arrangement shall, upon the filing of the required documents with the Registrar and the issuance of a proof of filing thereof, become effective in accordance with their terms and will be binding on all persons affected by the Reorganization and Corporate Arrangement upon Implementation;

(m) transferring to the ULC:

(i) any BR LP Unit held by any BR Limited Partner that is a non-resident BR Limited Partner to the ULC in exchange for an equal number of common shares in the ULC, as contemplated by s. 4.3(j)(ii) of the Proposal; and

(ii) any BR LP Unit issued to an unsecured creditor or Interim Lender who is a non-resident in exchange for an equal number of common shares in ULC, as contemplated by s. 4.3(j)(iii) of the Proposal;

(n) staying the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against any Debtor, Released Party (as defined in s. 7.3(b) of the Proposal) or Director in respect of any Claims or Liabilities (as defined in ss. 1.1(aa) and (yyyy) of the Proposal respectively) settled or released pursuant to ss. 7.2, 7.3(a) or 7.4 of the Proposal;

(o) approving an increase in the maximum principal amount of the Interim Financing and the Interim Financing Charge by an amount sufficient to fund the cash distributions required to be paid under the Proposal; and

(p) providing such further and other relief as this Honourable Court may deem just;

10. The Proposal Trustee and the Debtors, jointly, apply for an Order, *inter alia*:

(a) declaring that effective upon Implementation, the sole right of any creditor affected by the Proposal is to receive the distributions provided for in ss. 4.1, 4.2, 6.3(a), 6.3(j), 6.3(k), 6.3(l) and 6.3(m) of the Proposal (as the case may be);

(b) declaring that effective upon Implementation, all contracts and agreements to which a Debtor is party shall be and remain in full force and effect, unamended, and no counterparty thereto on or following Implementation shall accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such obligation, agreement or lease, by reason:

(i) of any event which occurred prior to, and not continuing after, Implementation or which is or continues to be suspended or waived under the Proposal, which would have entitled such counterparty to enforce those rights or remedies;

(ii) that any Debtor has sought or obtained relief or has taken steps as part of the Proposal under the *BIA* or *ABCA*;

(iii) of any default or event of default arising as a result of the financial condition or insolvency of any Debtor; and

(iv) of the Reorganization, Corporate Arrangement, dissolutions or other effects on any Debtor of the steps and transactions contemplated by the Proposal;

(c) declaring that the Debtors and the Proposal Trustee shall be authorized, in connection with the taking of any step or transaction or performance of any function under or in connection with the Proposal, to apply to any Governmental Authority (as defined in s. 1.1(ggg)) for any consent, authorization, certificate or approval in connection therewith;

(d) authorizing the Trustee to perform its functions and fulfil its obligations under the Proposal to facilitate Implementation;

(e) declaring that upon completion by the Proposal Trustee of its duties and obligations under the Proposal, the *BIA* and any Orders, the Proposal Trustee may file with this Honourable Court a certificate stating that all of its duties under the Proposal, the *BIA* and any Orders have been completed and thereupon, KPMG Inc. shall be deemed to be discharged from its duties as Proposal Trustee;

(f) declaring that upon payment in full or the making of provision for all debt secured by the *BIA* Charges, and the Proposal Trustee filing a certificate with this Honourable Court confirming such payment or provision, such *BIA* Charges shall be discharged and released;

(g) declaring that the Debtors, the Proposal Trustee or any other interested Person may apply to this Honourable Court for advice and direction in respect of any matter arising from or under the Proposal; and

(h) providing such further and other relief as this Honourable Court may deem just.

III. FACTS

A. General Background

11. The facts are set out in the Affidavits of Dr. Mark Genuis sworn October 5, 2022 (the "**Genuis Affidavit**") and October 6, 2022, the Affidavit of James Lawson sworn November 14, 2022 (the "**First Lawson Affidavit**") and the Affidavit of James Lawson sworn February 21, 2023 (the "**Second Lawson Affidavit**"), filed in these proceedings. All capitalized terms used herein and not otherwise defined are as defined in the Proposal attached as Exhibit "L" to the Second Lawson Affidavit.

B. Pre-Proposal Organizational Structure

12. BR Capital together with SEC MX and ICE NV make up a group of seven limited partnerships and eight corporations that develop cloud based software, fund the development through equity and debt financing and license the software, with the ultimate objective of allowing investors to benefit from that business. Exhibit "A" to the Second Lawson Affidavit sets out a pre-Proposal organization chart for the group.

Second Lawson Affidavit, Exhibit "A"

13. BR LP is an Alberta limited partnership with 243 limited partners (collectively, the "**BR Limited Partners**"). BR GP, an Alberta corporation, is the general partner of BR LP and has four shareholders, each of whom possess 25% of the shares of BR GP.

Second Lawson Affidavit, paras 11 and 12

14. BR LP is the sole limited partner of ICE LP, HE LP and FRI LP, each of which is an Alberta limited partnership.

Second Lawson Affidavit, para 13

15. The general partner of ICE LP is ICE GP LP, an Alberta limited partnership, and the general partner of ICE GP LP is ICE AB Inc., an Alberta corporation. ICE LP owns all of the shares of ICE Health Systems Inc. ("**ICE NV**"), a Nevada corporation, and of ICE Ltd., an Alberta corporation (collectively, the "**ICE Group**"). ICE Ltd. owns all of the shares of Servicio de

Excelencia en y Communication por Salud Internet, a Mexico corporation ("**SHS MX**", which together with ICE NV and the Debtors, are collectively referred to as the "**BR Capital Group**", and individually as a "**BR Entity**") and SESCI, an Alberta Corporation. ICE NV and SHS MX are not Debtors and have not filed NOIs.

Second Lawson Affidavit, para 14

16. The general partner of FRI LP is FRI GP LP, an Alberta limited partnership, and the general partner of FRI GP LP is FRI Inc., an Alberta corporation (collectively, the "**FRI Group**"). The general partner of HE LP is HE GP LP, an Alberta limited partnership, and the general partner of HE GP LP is HE Inc., an Alberta corporation (collectively, the "**HE Group**").

Second Lawson Affidavit, para 15

17. HE GP LP, an Alberta limited partnership, is the general partner of HE LP, and HE Inc. is the general partner of HE GP LP.

Second Lawson Affidavit, para 16

18. ICE GP LP, FRI GP LP and HE GP LP were formed because it was believed that they could earn valuable administration and management fees from ICE LP, FRI LP and HE LP's software that would attract investors. Each of ICE GP LP, FRI GP LP and HE GP LP have the same seven limited partners.

Second Lawson Affidavit, para 16(b)

19. The corporate governance of BR Capital is organized as follows:

(a) the board of directors of BR GP (the "**BR Board**") provides overall management and direction both to BR GP and BR LP, and to the group at a general level;

(b) the directors of ICE AB Inc., FRI Inc. and HE Inc. provide management and direction to their respective corporations and to the associated limited partnerships (being ICE LP and ICE GP LP in the case of ICE AB Inc., FRI LP and FRI GP LP in the case of FRI Inc., and HE LP and HE GP LP in the case of HE Inc.);

(c) the directors of ICE Ltd., SESCI, ICE NV and SEC MX provide management and direction to their respective corporations.

The CEO and CFO plus two other individuals are directors on the BR Board. The same individuals, plus two additional directors, are on the boards of FRI Inc., HE Inc. and ICE AB Inc. The CEO and the CFO are the directors of ICE Ltd. and SESCI and the CEO is the director of ICE NV and SHS MX. BR GP employs the CEO and the CFO, who act in those capacities for all of BR Capital. All of the other current and former employees since May 2018 were employed directly by SESCI but through SESCI their services were provided to all of the BR Entities.

Second Lawson Affidavit, paras 12 and 14(e)

C. The Business

20. The ICE Group, HE Group and FRI Group each separately developed their own cloud-based software systems, own any intellectual property associated therewith, and licensed the software to their respective customers.

Second Lawson Affidavit, para 19

21. The HE Group developed software that provides online information to patients and the public with respect to urological issues (the "**HE Software**") and licenses the HE Software to medical institutions in Canada for use by their patients. Although the HE Group has had a number of licenses with institutions in Alberta and British Columbia, it had limited success because medical practitioners were unwilling to spend money to educate their patients when they had available free materials from drug companies that they could distribute.

Second Lawson Affidavit, para 20

22. The FRI Group developed an extensive learning management system for training and education emergency service personnel (such personnel, the "**EMS Staff**", and such software, the "**FRI Software**"). The FRI Group licenses the FRI Software to Alberta's provincial government and is utilized to train all of its EMS Staff. It is also licensed to one of Alberta's cities. Just over half of BR Capital's revenues are derived from the licenses of the FRI Software.

Second Lawson Affidavit, para 21

23. The ICE Group developed a cloud-based software system that permits the collection, organization, management and storage of data, information and records for dental and medical practices (the "**ICE Software**", and together with the HE Software and FRI Software, the "**BR Software Systems**"). ICE NV licenses the ICE Software to a large dentistry faculty of a major university in the United States, which utilizes the ICE Software to operate a network of community dental care clinics staffed by students who are supervised by faculty members. It also licenses the ICE Software to one of the largest private dental groups in the United States which has over 1,000 offices. Where licenses are entered into in Canada and elsewhere in the world, ICE Ltd. will be the licensor.

Second Lawson Affidavit, paras 22 and 23

24. Prior to the onset of the COVID 19 pandemic, SESCI had 27 employees but as a result of the cost cutting measures described below, SESCI now has 5 employees. ICE AB Inc. had leased office space in Calgary where BR Capital operated from until December, 2021, but that lease was also surrendered as a result of those cost cutting measures.

Genuis Affidavit, at paras 38 and 39(a)

25. BR LP financed the development of the BR Software Systems and the business and operations of the BR Capital through a series of subscriptions from the BR Limited Partners for their BR LP Units, which raised in aggregate approximately $31,487,000 from 2006 to 2021, and through the issuance of unsecured promissory notes, which are described in paragraph 31.

Second Lawson Affidavit, para 19

D. Causes of BR Capital's Financial Difficulties

26. While a number of factors led to BR Capital's financial difficulties, a major problem is the nature of the software development business itself. Where a software development business does not already have in place license revenues from developed software, it will not be able to fund or pay the development costs from revenues. Where the business resorts to debt financing before it has sufficient license revenue to service the debt, it can end up having significant financial difficulties. Unfortunately, this dynamic proved to be an over-whelming problem for BR Capital.

Second Lawson Affidavit, para 28

27. BR Capital had the HE Software and FRI Software in place while it was developing the ICE Software, the HE Software and FRI Software never generated the necessary license revenues to support the development of the ICE Software. Of the $31,487,000 raised from BR Limited Partners, and the $6,923,921 borrowed from the BR Noteholders, approximately $29.0 million was expended on the development, collaboration and implementation of the BR Software Systems. The majority of this related to the ICE Software.

Second Lawson Affidavit, para 29

28. The process of licensing the ICE Software proved to be difficult and time consuming. The potential customers are large governmental and medical/educational institutions, and large corporate groups with multiple geographically diverse offices, who can be bureaucratic and slow to develop new and unproven technologies. Further, the ICE Software, even if operational, had to be adapted to the regulatory requirements of each jurisdiction in which its potential customers intended to use it. Often, those customers would require all of those adaptions be made up-front, before they were willing to enter into licenses.

Second Lawson Affidavit, para 30; Supplemental Affidavit, paras 7-11

29. Further, because the vast majority of the capital raised by BR Capital was required to develop and program the BR Software Systems, there was not sufficient capital required to properly market the ICE Software and develop a client base that could support those costs.

Second Lawson Affidavit, para 31

30. As described above, ICE NV was able to enter into a number of licenses of the ICE Software with education institutions in the United States. BR Capital also made significant efforts to license the ICE Software to governmental and private institutions in Mexico. However, the Mexican initiative had to be suspended because of a combination of political difficulties and onset of the COVID-19 pandemic.

Second Lawson Affidavit, paras 32-35

31. The Mexican initiative had the effect of doubling BR Capital's expenditures in 2018 and 2019. BR LP financed these expenditures and working capital requirements through the issuance of the unsecured promissory notes (collectively, the "**BR Notes**") to forty companies and individuals (collectively, the "**BR Noteholders**") in the aggregate principal amount of $6,923,921, which bore interest at 12% per annum. Twenty-six of the BR Noteholders are BR Limited Partners and seventeen are third party investors. Because the BR Board and management believed that they would be able to enter into licenses in Mexico and the United States very quickly, the BR Notes only provided short term financing, with terms between three and twelve months. Because of delays in entering into licenses in Mexico and the United States, and then the suspension of the Mexican project, BR Capital was unable to repay the BR Notes, all of which had matured by December 31, 2019. BR Capital also ceased making interest payments. The aggregate amount outstanding under the BR Notes as of July 31, 2022 was $9,713,052 of which $6,923,921 was principal and $2,789,131 was accrued and unpaid interest.

Second Lawson Affidavit, paras 19, 35, 36 and 41

32. The market disruptions caused by the global COVID-19 pandemic also reduced both the revenues received by the Debtors under their licenses and the demand for new licenses. BR Capital attempted to maintain and increase their license revenue in this period. BR Capital was able to enter into new licenses with two large dental service organizations and an American University. However, because there was insufficient capital available to invest in adapting and implementing the ICE Software for these licensees, two of the new licenses had to be cancelled. BR Capital has also prepared a license agreement with a Canadian University, but this license will not be put in place unless a Proposal is successfully implemented. In addition, as described in more detail below, BR Capital undertook measures to reduce costs throughout the pandemic but were unable to general sufficient revenue to repay the amounts outstanding under the BR Notes or other liabilities as they become due.

Second Lawson Affidavit, paras 35 and 37

33. For the two years prior to the filing of the NOIs, BR Capital implemented a number of measures to resolve its financial difficulties:

(a) the CEO and CFO were able to negotiate forbearance agreements with many of the BR Noteholders, but all of those forbearance agreements expired in 2021;

(b) BR Capital obtained additional funding from a small, core group of BR Limited Partners who held significant numbers of BR LP Units, but that funding was only sufficient to pay operating costs;

(c) the CFO and CEO agreed that until the financial condition of BR Capital improved, they would forgo being paid their compensation, although it would continue to accrue with interest;

(d) BR Capital focused on making significant cost reductions including:

(A) employee costs were reduced from $241,000 per month in January 2020 to $32,000 per month in January 2023;

(B) office lease costs were reduced from $11,000 per month in January 2020 to $150 per month (for record storage) in January 2023;

(C) third party technical operating costs were reduced from $28,500 per month in January 2020 to $4,000 per month in January 2023; and

(D) general office costs were reduced from $4,200 per month in January 2020 to $1,500 per month in January 2023; and

(e) BR Capital attempted to raise additional capital from private equity groups or other investors and to sell either some or all of the BR Software Systems and the licenses with BR Capital's customers. However, given the current overwhelming level of indebtedness of BR Capital, potential investors and purchasers have been unwilling to advance discussions.

Second Lawson Affidavit, para 38

E. BR Capital's Financial Position

34. As of January 13, 2023, the primary liabilities of BR Capital, totaling approximately $11,737,000, are as follows:

(a) the outstanding principal and interest under the BR Notes is approximately $9,713,000;

(b) the accrued and unpaid compensation payable to the CEO and CFO is approximately $1,662,000 ("**Unpaid Executive Compensation**");

(c) the indebtedness to other ordinary unsecured creditors is approximately $270,000;

(d) the amount owed to the Canada Revenue Agency is approximately $179,000; and

(e) the amount owed to employees is approximately $113,000.

Third Report of the Proposal Trustee dated January 13, 2023 **[Third Report**], para 38

35. By far the vast majority of BR Capital's indebtedness is owed by BR LP:

(a) BR LP's indebtedness under the BR Notes is approximately 81% of the total indebtedness of BR Capital; and

(b) approximately 95% of the total indebtedness of BR Capital is owed by BR LP.

Other than the indebtedness owing for withholding obligations, the Debtors have no secured creditors.

Second Lawson Affidavit, para 41

36. Two BR Noteholders, Copper Lake Holdings Limited ("**Copper Lake**") and R&FS Holdings Limited ("**R&FS**"), commenced an action against BR LP, BR GP and "John Doe 1", "John Doe 2", "Jane Doe 1" and "Jane Doe 2" on January 21, 2021. Copper Lake is owed approximately $1,325,000 on account of principal and interest, and R&FS is owed approximately $265,000 on account of principal and interest. In addition, a terminated employee commenced an action against ICE AB Inc. and the directors of BR GP (the "**Employee Action**").

Second Lawson Affidavit, paras 35 and 41; Genuis Affidavit, para 47

37. In July and August of 2022, the Directors obtained two valuations of the business of BR Capital from SME Business Appraisers Inc. ("**SME**") as of March 31, 2022 (each, an "**SME Valuation**"):

(a) the first SME Valuation dated July 28, 2022, assumed BR Capital's current level of indebtedness and reviewed the unaudited annual financial statements for 2019 to 2021, the quarterly financial statements for the period ending March 31, 2022, the five year projections prepared by management, and the fair market value of capital assets. SME concluded that the fair market value of the business was zero given that the fair market value of its assets was less than its indebtedness; and

(b) the second SME Valuation dated August 18, 2022, which was prepared on the same basis as the July 28, 2022 SME Valuation, except that it assumed that BR Capital's unsecured indebtedness would be converted into BR LP Units. Based on that assumption, it concluded the fair market value of the business was $451,000.

Second Lawson Affidavit, para 44

38. The SME Valuations value the assets of BR Capital based on the license revenues from the BR Software Systems. The first SME Valuation indicates the equity in BR Capital (the BR LP Units) currently has no value because the total indebtedness exceeds the value of its assets. The second SME Valuation shows that if BR Capital's indebtedness is paid or converted into BR LP Units under the Proposal, the equity has real value. However, that value has been severely constrained because of the prolonged financial difficulties and business setbacks, which prevented BR Capital from carrying out the necessary expansion of its customer base and licensee revenues.

Second Lawson Affidavit, para 45

39. In the Third Report, the Proposal Trustee stated that in a forced liquidation, only BR Capital's tangible assets (consisting of cash and accounts receivable in the approximate amounts of $25,000 and $50,000 respectively) would have realizable value, but that the realization costs would exceed the proceeds of realization, and therefore the creditors would receive nothing in that

scenario. The Proposal Trustee also stated that the BR Software Systems and licenses would have no realizable value in a forced liquidation.

Second Lawson Affidavit, para 46; Third Report, paras 45, 46, 55-58

40. The core assets of BR Capital are the BR Software Systems and their licenses, and the issues discussed above significantly and negatively impacted BR Capital's ability to enter into new licenses and earn additional license revenues, the market value of the BR Software Systems is unclear but has been severely constrained. Its future value will depend on BR Capital's ability to restructure under the Proposal and continue carrying on business thereafter.

Third Report at para 46; Second Lawson Affidavit, paras 28-36

41. Following the implementation of the Proposal, BR Capital's plan will be as follows:

(a) BR Capital will no longer have a debt burden that it is unable to service or repay, and therefore will be able to use its working capital to expand its customer base;

(b) since the core ICE Software is now fully developed, it can be maintained at present levels of usage by three employees based on its current usage, which will help control costs;

(c) the license fees BR Capital is able to charge its core dental/education customers will yield a 70% margin over operating costs;

(d) building on the experience of the Dental Faculty, the American Dental Society ("**ADSO**"), which has over 100 member organizations (which in turn are made up of large corporate groups who have thousands of offices across the United States and are continuing to acquire local dental practices), has approved a pilot program under which the ICE Software will initially be utilized by four member groups, each of whom will use the ICE Software in five clinics with students;

(e) if the ADSO program is successful, ADSO will support its adoption by all of its members. Since the license fee structure for the ICE Software is made up of a license fee for each organization, a fee for each clinic within an organization, and

a fee for each student or clinician within the organization, the potential for revenue growth is significant;

(f) a large university in the United States is using the ICE Software for a research project involving oral health clinics that they operate;

(g) once BR Capital's business is stabilized, it will seek new investors or joint venture partners in order to permit expansion into new markets and jurisdictions;

(h) the FRI Software and FRI Contracts will be maintained as they have good operating margins and are sustainable at their current levels without additional capital; and

(i) the licenses of the HE Software will also be maintained, but given their current limited value, BR Capital will not at this time will seek to expand its customer base.

Second Lawson Affidavit, para 54

F. BIA Proceedings

42. The Debtors filed the NOIs on September 15 and 16, 2022.

Second Lawson Affidavit, para 47, Exhibit "J"

43. Upon filing of the NOIs, all proceedings against the Debtors and their property were automatically stayed for an initial period of thirty (30) days ending October 16, 2022 (the "**Stay Period**").

44. On October 14, 2022, the Honourable Justice C. Dario granted an Order (the "**October 14 Order**") which, among other things:

(a) consolidated, for procedural purposes only, the estates and *BIA* Proceedings of the Debtors;

(b) authorized the Debtors to obtain interim financing (the "**Interim Financing**") from 2443970 Alberta Inc. as administrative agent for and on behalf of a group of lenders (collectively, the "**Interim Lenders**");

(c) granted an administration charge, interim lenders' charge and directors' and officers' charge; and

(d) extended the Stay Period to November 29, 2022.

Second Lawson Affidavit, para 48

45. On November 25, 2022, the Honourable Justice G. Dunlop granted an Order which, among other things, extended the Stay Period to January 13, 2023 and repaid the CFO for a temporary advance in the amount of $25,000 issued to BR LP for the funding of a payroll amount due October 31, 2022.

Second Lawson Affidavit, para 50

46. On January 13, 2023, BR Capital filed the Proposal with the Proposal Trustee and the Proposal Trustee filed the Proposal with the Official Receiver.

47. On January 18, 2023, the Proposal Trustee sent to the Debtors' creditors a package of documents, in accordance with the *BIA*, which included (i) a Notice of the February 2, 2023 meeting of creditors, (ii) a Notice of Proposal to Creditors, (iii) a copy of the Proposal, (iv) a Proof of Claim Form, (v) a Voting Letter and a list of creditors with claim amounts over $250 (the "**Creditors' Package**").

Second Lawson Affidavit, para 69, Exhibit "N"

48. On January 18, 2023, BR Capital distributed to its creditors and the BR Limited Partners an Information Memorandum which described the background of and information with respect to the Proposal.

Second Lawson Affidavit, para 70, Exhibit "O"

G. The Proposal

49. The key terms of the Proposal are as follows:

(a) The following Claims (as defined in s. 1.1(aa) of the Proposal) will be paid in full from cash distributions made by the Proposal Trustee immediately following the

Implementation (the amount thereof being the "**Cash Implementation Amount**"), the payment of which will be funded by advances under the Interim Financing:

Proposal, Lawson Affidavit, Exhibit "L", s. 1.1(aa)
Lawson Affidavit, para 56(a)

(i) **Priority Governmental Claims** (as defined in s. 1.1(rrrrr) of the Proposal), which are Claims of His Majesty in right of Canada and the provinces that must be paid within 6 months of a court's approval of a proposal under ss. 60(1.1) and 60(1.2) of the *BIA*;

Proposal, ss. 1.1(rrrrr), 4.2(a) and 4(b)(i),
Lawson Affidavit, Exhibit "L"

(ii) **Priority Employee Claims** (defined in s. 1.1(qqqqq) of the Proposal), which are claims of present and former employees of SESCI (the "**Employees**") that have priority under s. 136(1)(d) of the *BIA* and must be paid immediately after court the approval of a proposal under s. 60(1.3) of the *BIA*, or are subject to a deemed trust under s. 109(3) of the *Employment Standards Code*, RSA 2000, Ch. E-9;

Proposal, ss. 1.1(qqqqq), 4.2(a) and 4(b)(ii),
Lawson Affidavit, Exhibit "L"

(iii) **Preferred Claims** (defined in s. 1.1(mmmmm) of the Proposal), which include the levy of the Superintendent of Bankruptcy, the Administration Costs (defined in s. 1.1(b) of the Proposal as proper fees, expenses and disbursements of the Proposal Trustee and its counsel and the Debtors' counsel) and must be paid in priority to other claims under s. 60(1) of the *BIA*;

Proposal, ss. 1.1(mmmmm), 4.2(a) and 4(b)(iii),
Lawson Affidavit, Exhibit "L"

(b) The following Claims and Liabilities will be converted on Implementation into 30,430 BR LP Units to be issues upon Implementation:

(i) **Affected Unsecured Claims** (defined in s. 1.1(f) of the Proposal), which are any Claims arising before the NOIs were filed other than Preferred Claims, Priority Governmental Claims, Priority Employee Claims or Unaffected Claims, are converted into 21,480 newly issued BR LP Units in two tranches, one in respect of accrued and unpaid interest, and the other in respect of any other portion of the Affected Unsecured Claims;

Proposal, ss. 1.1(f), 4.1(a)(ii)(A) and 4.1(a)(ii)(B),
Lawson Affidavit, Exhibit "L"

(ii) **Interim Financing Debt** (defined in s. 1.1(rrrr) of the Proposal), which is any indebtedness, liabilities and obligations of the Debtors to the the Interim Lenders under the Interim Financing Agreement, are converted into 8,950 BR LP Units in two tranches, one in respect of interest accrued under the Interim Financing, and the other in respect of the principal amount of the Interim Financing Debt;

Proposal, ss. 1(rrrr) 4.1(a)(iii)(A) and 4(a)(iii)(B),
Lawson Affidavit, Exhibit "L"

(c) As a result of the conversions described in paragraph 49(c) above, the relative holdings of BR LP Units immediately following Implementation shall be as follows:

(i) the original BR Limited Partners will hold 15% of the BR LP Units;

(ii) the Affected Unsecured Creditors (defined in s. 1.1(g) as Creditors holding Affected Unsecured Claims) will hold 60% of the BR LP Units; and

(iii) the Interim Lenders will hold 25% of the BR LP Units;

Proposal, s. 4.1(a)(i), Lawson Affidavit, Exhibit "L"

(d) The Cash Implementation Amount and BR LP Units referred to in paragraphs 49(a) and 49(b) above will be distributed by the Proposal Trustee in accordance with ss. 60(2) and 60(3) of the *BIA*;

Proposal, s. 6.4, Lawson Affidavit, Exhibit "L"

(e) BR Capital will be reorganized and arranged in accordance with the following in order to simplify the organizational structure:

(i) there will be a reorganization of the limited partnership structure as follows (the "**Partnership Reorganization**"):

(A) FRI LP, FRI GP LP, HE LP and HE GP LP will be dissolved, and any FRI Property (defined in s. 1.1(eee) of the Proposal) will be distributed to BR LP and BR GP;

Proposal, ss. 4.3(b), 4.3(c), 4.3(d) and 4.3(e), Lawson Affidavit, Exhibit "L"

(B) the general partner units of ICE GP LP in ICE LP will be transferred to ICE GP Corp. (defined below), ICE GP LP will be terminated as general partner of ICE LP and ICE GP Corp. will be appointed as general partner of ICE LP in its place, and ICE GP LP will be dissolved;

Proposal, s. 4.3(g), Lawson Affidavit, Exhibit "L"

(ii) He Inc. will be reorganized under s. 192 of the *ABCA* (the "**Reorganization**") to amend its articles to, among other things, change its name to ICE GP Corp. and to modernize its articles and bylaws;

Proposal, s. 4.3(f)(iii), Lawson Affidavit, Exhibit "L"

(iii) The following the arrangement will take place under s. 193 of the *ABCA* (the "**Corporate Arrangement**"):

(A) FRI Inc. and BR GP will be amalgamated to form BR Capital (2023) Inc. ("**BR GP 2023**"), which will continue to act as general partner of BR LP;

Proposal, s. 4.3(f)(iii), Lawson Affidavit, Exhibit "L"

(B) the Affiliate Shares of Affiliate Shareholders (defined in ss. 1.1(h) and 1.1(i) of the Proposal respectively) in HE Inc. will be transferred to BR GP, and BR GP 2023 will issue an equal number of shares to such Affiliate Shareholders;

Proposal, ss. 1.1(i), 1.1(h) and 4.3(f)(ii), Lawson Affidavit, Exhibit "L"

(C) the Affiliate Shares of Affiliate Shareholders in ICE AB Inc. will be transferred to BR GP 2023, which in turn will be transferred to ICE LP and then ICE Ltd., so that ICE AB Inc. becomes a wholly owned subsidiary of ICE Ltd.;

Proposal, s. 4.3(f)(iv), Lawson Affidavit, Exhibit "L"

(D) SESCI and ICE AB Inc. will be amalgamated to form SESCI 2023 Corp.;

Proposal, s. 4.3(f)(v), Lawson Affidavit, Exhibit "L"

(E) BR LP and BR GP 2023 will transfer the FRI Property and HE Property to ICE LP, and ICE LP will transfer to ICE Ltd. the Contracts (defined in s. 1.1(d) of the Proposal), essentially consisting of licenses of the FRI Software and HE Software;

Proposal, ss. 4.3(h) and 4.3(i), Lawson Affidavit, Exhibit "L"

(f) Any BR LP Units held by a non-resident, or which would otherwise be issued to a non-resident Affected Unsecured Creditor or Interim Lender, will be issued to an unlimited liability corporation (the "**ULC**") incorporated under the ABCA, and the non-residents will receive equal numbers of shares in the ULC, in order to ensure that BR LP is a Canadian partnership for the purposes of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended (the "***Income Tax Act***");

Proposal, s. 4.3(j), Lawson Affidavit, Exhibit "L"

(g) The Implementation is conditional upon the satisfaction of certain conditions, including:

(i) the acceptance of the Proposal by the requisite majority of Affected Unsecured Creditors under s. 54(2)(d) of the *BIA*;

Proposal, s. 5.5(a)(i), Lawson Affidavit, Exhibit "L"

(ii) the approval by this Honourable Court of the Proposal;

Proposal, s. 5.5(a)(i), Lawson Affidavit, Exhibit "L"

(iii) the Cash Implementation Amount, BR LP Units and shares in the URC to be distributed under the Proposal being delivered to the Proposal Trustee;

Proposal, ss. 5.5(a)(iv) and 6.2, Lawson Affidavit, Exhibit "L"

(iv) the Senior Executives amending their employment agreements to provide that they would only receive payments on account of their Unpaid Executive Compensation as follows:

(A) in monthly installments in amounts determined on the basis of the net income of BR Capital exceeding certain thresholds over $1,000,000, which installments would increase from 10% depending on if BR Capital meets those thresholds; and

(B) if the assets or business of BR Capital are sold or over 50% of the BR LP Units are purchased by a third party, for proceeds in excess of $1,000,000, the Senior Executives would be entitled to receive a percentage of the Unpaid Executive Compensation, starting at 10%, based on the amount of such proceeds;

Proposal, s. 5.5(a)(vi), Lawson Affidavit, Exhibit "L"

(v) an amendment to the BR Partnership Agreement shall have been approved by special resolution of the BR Limited Partners.

Proposal, s. 5.5(a)(v), Lawson Affidavit, Exhibit "L"

(h) It is a condition subsequent to Implementation that the BR Partnership Agreement be amended by a second amendment (the "**Second Amending Agreement**") by special resolution of the post-Implementation BR Limited Partners, failing which the Proposal will terminate and the Implementation will be of no force or effect.

Proposal, ss. 5.6 and 5.7, Lawson Affidavit, Exhibit "L"

(i) Effective on Implementation:

(i) the Proposal Trustee and its counsel and the Debtors counsel are released from any liabilities in connection with the *BIA* Proceedings other than resulting from their gross negligence or willful misconduct;

(ii) the directors and officers are released from any liabilities which he or she is liable in his or her capacity as an officer or director, whether arising before or after the filing of the NOIs, but expressly excluding any liability relating to contractual rights of a creditor arising under a contract with an officer or director, or based on allegations of misrepresentation made by such officer or director.

Proposal, ss.7.3(b) and 7.3(c), Lawson Affidavit, Exhibit "L"

50. The reason the Second Amending Agreement is required is that the distribution scheme in the BR Partnership Agreement is based on the pro rata capital contributions made by the BR Limited Partners to BR LP. However, because the capital contributed by the pre-Implementation BR Limited Partners amounts to $31 million, and the capital of the Affected Unsecured Creditors and Interim Lenders amounts to approximately $10.4 million (being the amount of their converted Affected Unsecured Claims and Interim Financing Debt respectively), the effect of this would be that the pre-Implementation BR Limited Partners would receive 75% of any distributions going forward, and the former Affected Unsecured Creditors and Interim Lenders would receive only 25%.

Second Lawson Affidavit, paras 58(b) to 60

51. The reason that BR LP Units that are held by non-residents, or would otherwise be distributed to non-residents under the Proposal, are to be transferred to the ULC under s. 4.3(j) of the Proposal is that if even BR LP Unit is held by a non-resident of Canada, BR LP ceases to be a Canadian partnership for the purposes of the *Income Tax Act*, which has negative tax consequences for BR LP and all of the BR Limited Partners. While s. 2.10 of the BR Partnership Agreement permits BR GP to sell a non-resident's BR LP Units in certain circumstances, there is no market for the BR LP Units and therefore the remedy is not practical. It would also be inequitable because until BR LP is able to build its business, it is unclear that there would be any market for BR LP Units. By transferring the non-resident BR LP Units to the ULC, the tax issue is resolved, BR LP remains a Canadian partnership, and the interest of the non-residents is preserved.

Second Lawson Affidavit, paras 61 to 63

52. The reason for requiring the Senior Executives to execute and deliver the Executive Amending Agreements under s. 4.4(a)(vi) of the Proposal is to ensure that the Senior Executives are incentivized to build BR Capital's business but they only receive payments on account of the Unpaid Executive Compensation to the extent that BR Capital earns substantial net income or the amount paid to the Senior Executives is substantially equivalent to the value of the BR LP Units of the Affected Unsecured Creditors.

Second Lawson Affidavit, para 57

H. Meeting of Creditors to Consider the Proposal

53. The Creditors Meeting to consider and vote on the Proposal was held on February 2, 2023. According to the minutes of the first meeting of creditors prepared by the Proposal Trustee dated February 9, 2023 (the "**Creditors Meeting Minutes**") attached to the Form 40 Report of Trustee on Proposal prepared by the Proposal Trustee pursuant to ss. 59(1) and 58(c) of the BIA as of February 8, 2023 (the "**Form 40 Report**"), 100% of the Affected Unsecured Creditors with proven claims who attended and voted in person or by proxy or voting letter voted to accept the Proposal.

Second Lawson Affidavit, para 71

54. A representative of Copper Lake attended the Creditors Meeting and voted against acceptance of the Proposal, but Copper Lake did not submit a proof of claim to the Trustee at or

before the Creditors Meeting and therefore its vote was noted as disputed. Further, the former employee who had commenced the Employee Action referred to in paragraph 36 of this Brief voted against the Proposal, but her proof of claim had been disallowed, so although she was permitted to vote, she did not have a proven claim.

Second Lawson Affidavit, para 42

IV. LAW AND ARGUMENT

A. Approval of the Proposal

55. As discussed above, the Proposal contains the following main elements:

(a) the repayment in full of the Priority Employee Claims and Priority Governmental Claims, and the conversion of the Affected Unsecured Claims and Interim Financing Debt into BR LP Units, the approval of which by this this Honourable Court is governed by the *BIA*, which will be addressed in Part IV.B of this Brief;

(b) a Reorganization and Corporate Arrangement, the approval of which is governed by ss. 192 and 193 of the *ABCA*, which will be addressed in Part IV.B of this Brief; and

(c) the Partnership Reorganization, the approval of which is governed by the *BIA* and *Partnership Act*, which will be addressed in Part IV.B of this Brief.

B. Legal Requirements for Approval of the Proposal under the BIA

56. Under s. 60(5) of the *BIA*, the Court has the general discretion to either approve or refuse to approve a proposal. That discretion, however, is subject to the debtor and proposal trustee having fulfilled the technical requirements set out in the *BIA* relating to proposals, the debtor satisfying the tests under s. 59, and the proposal containing the mandatory provisions and satisfying the mandatory requirements set out in s. 60.

BIA, ss. 59 and 60 [Tab 2]

57. Under s. 59(2) of the *BIA*, the Court is required to refuse to approve a proposal if its terms are not reasonable or not calculated to benefit the general body of creditors. Courts have interpreted this to mean that (a) the terms of the proposal are reasonable, (b) the terms of the proposal are calculated to benefit the general body of creditors, and (c) the proposal has been made in good faith. In *Re Magnus One Energy Corp*, Justice Romaine wrote that the Court must consider not only the wishes and interests of creditors, but also the conduct and interests of the debtor, the interests of the public and future creditors and the requirements of commercial morality.

Magnus One Energy Corp, Re, 2009 CarswellAlta 488 [*Magnus*], at paras 10 and 11 [Tab 17]
YG Limited Partnership and YSL Residences (Re), 2021 CarswellOnt 11004 [*YG LP 2*], at paras 22, 16 and 32 [Tab35]

58. Courts have interpreted "reasonable" to mean the proposal can be carried out in accordance with its terms:

> The court is authorized to approve only proposals which are reasonable and calculated to benefit the general body of creditors. "Reasonable" means that on a dispassionate view, the court is satisfied that the things proposed can, in fact, be carried out. The court, in other words, reviews the terms of the proposal in order to ensure that creditors have not, in their enthusiasm or lack of attention approved a proposal which is bound to fail.

Olympia & York, supra at paras 28-31 [Tab 25];
Booth (Re), 1998 CarswellOnt 2053 at para 6 [Tab 9]

59. In reviewing the fairness and reasonableness of the Proposal, the Court does not and should not require perfection. Reasonable in this context has been determined to mean that the proposal must have a reasonable possibility of being successfully completed in accordance with its terms. In addition, the proposal must meet the requirements of commercial morality and must maintain the integrity of the bankruptcy system. The onus is on the trustee and the creditors who support the proposal to establish that the proposal is reasonable,

Abou-Rached, at paras 68-69 [Tab 6]

60. The Court's discretion should be informed by the objectives of the *BIA*, namely to facilitate the reorganization of a debtor for the benefit of the debtor, its creditors, employees and in many instances, a much broader constituency of affected persons.

Abou-Rached, at para 67 [Tab 6]

61. In deciding whether the test for approving a proposal has been satisfied, the court must take the following interests into account:

(a) the interests of the debtor in making a settlement with creditors;

(b) the interest of the creditors in procuring a settlement that is reasonable and does not prejudice their rights; and

(c) the interests of the public in fashioning a settlement that preserves the integrity of the bankruptcy process and complies with the requirements of commercial morality.

Re Milan, 2012 CarswellOnt 6906 [*Milan*], at para 27 [Tab 21];
Mister C's, Re, 1995 CarswellOnt 372, at para 5 [Tab 22];
Sumner Co (1984) Ltd Re , 1987 CarswellNB 26, at para 37 [Tab 29];
Kitchener Frame Ltd., Re, 2012 ONSC 234 [*Kitchener Frame*], at para 19 [Tab 16]

62. The onus is on the debtor to establish that the proposal is one that should be approved by the court.

McNamara v McNamara (1984), 53 CBR (NS) 240, at para 42 [Tab 19];

63. In addition to the tests referred to above, the Court will consider the recommendation of the trustee and the results of the creditors' vote. Where a proposal has been approved by a large majority of creditors and recommended by the trustee, a substantial deference will be accorded to their views, although the Court is not bound by them.

Abou-Rached, Re, 2002 BCSC 1022 [*Abou-Rached*], at para 65 [Tab ● 6]

64. The decided cases have illustrated multiple situations where a proposal could be found to be not reasonable or calculated to benefit general body of creditors, or where duties of good faith are not satisfied:

(a) the duty of good faith requires that there full disclosure of assets of debtor and encumbrances against them;

Mayer, Re, 1994 CarswellOnt 268, at paras 6 and 8 [Tab 18]

(b) the proposal was skillfully and craftily drafted to serve the interests of persons other than creditors not calculated to benefit general body of creditors;

Sumner Co (1984) Ltd, Re, 1987 CarswellNB 26, at para 37 [Tab 29];

(c) the proposal by its terms is bound to fail;

Booth, Re, 1998 CarswellOnt 2053, at paras 6 and 7 [Tab 9]

(d) bankruptcy would yield sufficiently more return to creditors than proposal and the proposal designed to benefit the debtor's parents;

Rennie, Re, 2010 CarswellOnt 1047, at para 44 [Tab 28]

(e) amount offered to unsecured creditors was minimal and shares were worthless;

First Toronto Mining Corp., Re, 1991 CarswellOnt 172, at paras 13 and 15 [Tab 13]

(f) the proposal provided for a release of a guarantor;

Re Innovative Coating Systems Inc., 2018 CarswellOnt 7607, at paras 29-31 [Tab 15}

(g) a proposal can be unreasonable because of exclusion of s. 38 rights and because of provisions relating to a review of preferences, fraudulent conveyances and undervalue transactions, or if facts in 173 are proven.

Milan, at para 30 [Tab 21]

65. In *Re YG Limited Partnership and YSL Residences*, although there was near unanimous approval of affected creditors who cast a vote, two groups of limited partners challenged actions of general partner. Justice Dunphy did not approve the proposal in its present form as it was not reasonable, was not calculated to benefit the general body of creditors, and failed to satisfy the requirements of 59(2) or the common law test of good faith. The proposal was drafted to benefit the proposal sponsor, full disclosure was not made by the proposal sponsor, the valuations of property were revised in a manner that benefited the proposal sponsor, construction lien holders were able to elect to treat their secured claims as unsecured, reducing the pool of funds available to unsecured creditors, without releasing their liens, claims that were in substance equity claims were being paid notwithstanding unsecured creditors were not being paid in full, the actual implied value of the proposal to unsecured creditors was less than disclosed because of the mechanics of a cap to claims, and the Court was convinced that the duty of good took a back seat to self interest. However, subsequently, the proposal was amended in a manner that addressed Justice Dunphy's

concerns and he therefore approved the proposal because it provided a superior outcome for all classes of creditors.

YG Limited Partnership and YSL Residences, Re, 2021 CarswellOnt 9651 [*YG LP 1*], at paras 18, 31, 33, 44, 49, 75, 84 [Tab 34];
YG LP 2, at paras 16, 22, 32 [Tab 35]

66. Under s. 59(2) of the *BIA*, a Court may refuse to approve a proposal if it is established that the debtor has committed any one of the offences mentioned in ss. 198 to 200 of the BIA. These include bankruptcy offences under s. 198, a failure by a debtor to disclose its bankruptcy under s. 199, and a failure to keep proper books of account under s. 200.

BIA s.59(2) [Tab 2]

67. In *YG LP 1*, Justice Dunphy wrote that in the normal course, as a matter of common sense and a very long tradition of our law, the agreement of a broad group of creditors to accept less than 100% of what they are owed is cogent evidence of the fairness and reasonable nature of a proposal, which is an indicator not to be lightly ignored. However, its weight can be attenuated by circumstances such as only a small minority voting, evidence of "side-deals" in favour of a certain group of creditors, and a lack of information disclosure and good faith. In *Magus*, Justice Romaine indicated that she is not bound to approve a proposal even though it have been recommended by the trustee and given the overwhelming support of creditors, but substantial defence should be afforded to these views.

YG LP 1, at paras 80, 83 and 84
Magnus, at paras 10 and 11

68. The degree of support for a proposal by creditors has been regarded by the courts as an important measure of whether a proposal is fair and reasonable. This support, which reflects the business judgment of the participants that their interests are treated equitably under the proposal, creates an inference that the arrangement is fair and reasonable to those who may be affected by it. The Court should be reluctant to interfere with the business decisions of creditors reached as a body.

Abou-Rached, at paras 64-66 [Tab 6]

69. Under s. 59(3) of the *BIA*, where any of the facts mentioned in 173 of the *BIA* are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents on the dollar on all unsecured claims provable against the debtor's estate or such percentage as the court may direct. Under s. 173(1)(a), one of these facts is the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible.

70. In the event that the value of the debtor's assets are not of a value equal to 50 cents on the dollar in the amount of the secured liabilities, the question then is: Did this arise from circumstances for which the debtor cannot justly be held responsible? To come within the exception, the debtor must prove that events occurred which affected the debtor exceptionally or which created such a strong commotion in the business community that it could not be reasonably foreseen nor protected against. In the majority of cases, the debtor can bring himself or herself within the exception in s. 173(1)(a) of the *BIA* and show that the failure arose from circumstances for which he or she cannot justly be held responsible. The generally bad state of commercial business which affects all businesses is not sufficient and the court must consider the circumstances of the particular case rather than applying a test of market circumstances.

Gill, Re, 1988 CarswellBC 529, at para 9 [Tab 40]
Freedman, Re, 1926 CarswellQue 4, at para 3 [Tab 41];
Albee Fruit Exchange Inc. v. Druker, 1955 CarswellQue 35, at para 10 [Tab 42]

71. In the majority of cases, the debtor can bring himself or herself within the exception in s. 173(1)(a) of the *BIA* and show that the failure arose from circumstances for which he or she cannot justly be held responsible. Where facts mentioned in s.173 of the BIA are proven against a debtor there must be some evidence presented to justify the court exercising its discretion to lower the percentage of performance security; creditors' approval of a proposal, on its own, is insufficient.

Wandler, Re, 2007 ABQB 153, at para 36 [Tab 43]

72. In *Magnus,* Justice Romaine reviewied the circumstances behind a non-operating debtor who held assets consisting of cash and minor accounts receivable, with no value attributed to undeveloped oil and gas properties. The proposal in *Magnus* was accepted by 92% of the creditors and the trustee recommended the proposal as it was advantageous for the creditors because it would result in a greater distribution to the unsecured creditors. Justice Romaine was of the view that a decision by the debtor companies to exercise their legitimate rights to attempt to resolve their debts through the BIA could not be considered bad faith. She reviewed the circumstances behind the transfer of certain oil and gas assets in partial satisfaction of the secured debt, as well as certain independent valuations, and noted that the secured debt was at an amount in excess of the valuation. Romaine J. did not find either lack of good faith or proof of facts under s. 173 that would preclude the approval of the proposals. She was satisfied that the terms of the proposals were reasonable and that they were calculated to benefit the general body of creditors, and that no creditors were being unduly prejudiced

Magnus, at paras 26 and 27 [Tab 17]

73. The *BIA* mandates that certain formal requirements must be satisfied before a court approves a proposal:

(a) s. 59(1) requires that the Court shall have heard a report of the trustee in the prescribed form respecting the terms of the proposal, the conduct of the debtor, and have heard from the trustee, the debtor, the person making the proposal, and any creditor that is opposing, objecting to or dissenting from the proposal;

(b) under s. 60(1) no proposal shall be approved by the court that does not provide for the payment in priority to other claims of all directed to be paid in the distribution of property of the debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proposal proceedings;

(c) under s. 60(1.1), unless His Majesty consents, no proposal shall be approved that does not provide for the payment in full to His Majesty, within six months after court approval of the proposal, of all amounts outstanding at the time of the filing of the NOI in the nature of employee withholdings;

(d) under s. 60(1.2), no proposal shall be approved if arrears of withholdings since the filing of the notice of intention to make a proposal;

(e) under s. 60(1.3), no proposal shall be approved in respect of employer unless:

(i) it provides for the payment to employees and former employees, immediately after court approval, of amounts at least equal to the amounts employees are qualified to receive under 136(1)(d) as well as wages, salaries, commissions or compensation after the date of the filing of the notice of intention to make a proposal; and

(ii) the court is satisfied that the employer can and will make these payments.

(f) under s. 60(1.5), no proposal is to be approved in respect of an employer who participates in a prescribed pension plan for the benefit of its employees unless it provides for the payment of unpaid arrears of amounts deducted from employee remuneration, and certain other amounts required under that provision;

(g) under s. 60(1.7), no proposal that provides for the payment of an equity claim is to be approved unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid;

BIA ss. 59(1), 60(1), 60(1.1), 60(1.2), 60(1.3), 60(1.5) and 60(1.7) [Tab 22];
1552906 Ontario (Bankruptcy), 2018 ONSC 1731 [*1552906*], at para 31-36 [Tab 5]

74. Finally, s. 60(2) and (3) of the *BIA* requires that all money, property or fees are to be distributed by the trustee.

C. The Proposal should be approved under the BIA

(1) Formal and Procedural Requirements

75. The Debtors note that they are in compliance with the formal or technical requirements in respect of proposals under the *BIA*. In particular:

(a) the Debtors are "insolvent persons" for the purposes of s. 1.1 of the *BIA* and as such may make a proposal under s. 50(1)(a) of the *BIA*, as the Debtors are not bankrupt, carry on business and have property in Canada, have ceased paying their current obligations in the ordinary course of business as they generally become due, and the value of the Debtors' property is insufficient to pay all of their liabilities;

Second Lawson Affidavit, paras ●, ●, ● and ●;
BIA, s. 54(2)(d) [Tab 2]

(b) the Proposal is made to all of the Affected Unsecured Creditors;

BIA, s. 50(1.2)

(c) the Debtors have complied with the procedural requirements of the *BIA* and all of the Orders of the Court granted in this *BIA* Proceeding.

Second Lawson Affidavit, paras 47, 48, 50, 55, 69 and 71

76. Further, the Proposal Trustee has confirmed that Debtors have complied with all of their obligations under the *BIA* and have acted, and are continuing to act, in good faith and with due diligence in the *BIA* Proceedings and has sent the Creditors' Package to the creditors and duly convened and held the Creditors Meeting in accordance with s. 51 of the *BIA*, and complied with its obligations under s. 58 of the *BIA*. The Debtors have not committed any of the offences mentioned in ss. 198 to 200 of the *BIA*.

Third Report, para ● [cite a paragraph where Proposal Trustee says this]
Second Lawson Affidavit, paras 69 and 71

77. According to the Creditors Meeting Minutes and the Form 40 Report of the Proposal Trustee, 100% of Affected Unsecured Creditors with proven claims voted in favour of the Proposal. Copper Lake voted against the proposal but did not submit a proof of claim either before or at the Creditors Meeting. A former employee also voted against the Proposal, but the Proposal Trustee had previously disallowed her claim. S. 54(2)(a)(i) of the *BIA* requires that a creditor have a proven claim in order to vote at the creditors meeting on whether or not to accept a proposal. Since Copper Lake did not submit a proof of claim, and the former employee's claim had been

disallowed, their votes were not counted for the purpose of determining whether or not the Proposal was accepted by the Affected Unsecured Creditors.

Creditors Meeting Minutes, last page
BIA, s. 54(2)(a)(i)
Muller, (Re) (1986), 62 CBR (NS) 194 (BC SC), at para ● [Tab 23]

(2) Required Provisions of Proposals

78. In addition, the Proposal complies with the statutory requirements set out in ss. 60(1), 60(1.1), 60(1.2), 60(1.3), 60(1.5) and 60(1.7) of the *BIA* which are discussed in paragraph 67 of this Brief:

BIA ss. 60(1), 60(1.1), 60(1.2), 60(1.3), 60(1.5) and 60(1.7) [Tab 2]

(a) in providing that the Preferred Claims will be paid in full upon Implementation, the Proposal satisfies the requirement under s. 60(1) of the *BIA*;

(b) in providing that the Priority Governmental Claims will be paid in full on Implementation, the Proposal exceeds the requirements of s. 60(1.1) of the *BIA*, which stipulates that arrears of Priority Governmental Payables that arose prior to the filing of the NOIs be paid within six months of the approval of the Proposal, and complies with the requirements of s. 60(1.2) of the *BIA*;

(c) in providing that Priority Employee Claims will be paid in full on Implementation, the Proposal satisfies the requirements of s. 60(1.3) of the *BIA*;

(d) the Debtors provide no prescribed pension plan and therefore s. 60(1.5) of the BIA has no application to the Proposal;

Second Lawson Affidavit, para 72

(e) the Proposal does not provide for any distribution of cash or BR LP Units to holders of equity claims, and in fact under s. 7.3(a)(ii) of the Proposal, all equity claims are released and extinguished, and therefore s. 60(1.7) is complied with. S. 2 of the BIA defines an equity claim as a claim in respect of an equity interest for a dividend,

return of capital, redemption, money loss resulting from the ownership of an equity interest or contribution or indemnity in respect of an equity claim.

79. On the basis of the forgoing, the Debtors submit that the statutory requirements for approving the Proposal under s. 54(2)(d) of the *BIA* have been satisfied.

(3) S. 59(2) – Reasonableness, Calculated to General Benefit of Creditors and Good Faith

80. The Debtors submit that as required under s. 59(2) of the *BIA*, the terms of the Proposal are reasonable and calculated to benefit the general body of creditors, and the proposal has been made in good faith.

81. Under the Proposal, only the Priority Employee Claims, Priority Governmental Claims and Preferred Claims will be paid in cash as BR Capital does not have sufficient cash to pay these amounts and is therefore raising the cash necessary to fund the Implementation Cash Amount through the Interim Lenders.

Second Lawson Affidavit, para 73(a)

82. All Affected Unsecured Creditors are being treated in exactly the same manner, namely their Affected Unsecured Claims are being converted into a pool of BR LP Units which will constitute 60% of the issued and outstanding BR LP Units post-Implementation. While the Interim Lenders will receive 25% of the post-Implementation BR LP Units, and BR Limited Partners will have 15% of the post-Implementation BR LP Units, the Debtor submits that this is not inequitable in the circumstances.

83. The Interim Lenders have funded the operations and restructuring costs of the Debtors throughout the *BIA* Proceedings, and are now funding the payment of the Implementation Cash Amount. In addition, generally interim lenders in BIA or CCAA proceedings insist upon repayment in full of their principal, interest and fees. The Interim Lenders are contributing significantly to the future success of the Debtors by forgoing repayment and accepting BR LP Units *in lieu* thereof.

84. The pre-Implementation BR Limited Partners will only have, post-Implementation, 15% of the issued and outstanding BR LP Units, which is a recognition in the first SME Valuation and the Third Report that the BR LP Units currently have no value because of BR Capital's insolvency, as discussed in paragraphs 37 to 39 of this Brief.

Second Lawson Affidavit, paras 37 to 39

85. Once, once the Proposal is implemented, BR Capital will no longer have to service its principal and interest obligations under the BR Notes and all of indebtedness will either be repaid (in the case of the Priority Employee Claims, Priority Governmental Claims and Preferred Claims) or converted into BR LP Units, other than Unaffected Claims. It will therefore be solvent and its BR LP Units will have a positive value.

86. The only Unaffected Claims (defined in s. 2.4 of the Proposal), the payment of which is not compromised by or converted under the Proposal, are as follows:

(a) Administration Costs, being the fees and expenses of the Proposal Trustee and its counsel and the Debtors counsel, which are paid on implementation;

(b) Key Supplier Payables (defined in s. 1(wwww) of the Proposal), which are owed to suppliers critical to the continued operation of the Debtor, such BR Capital's internet service provider;

(c) Excluded Claims (defined in s. 1.1(ss) of the Proposal), which are the Unpaid Executive Compensation, claims under two lines of credit provided in the aggregate amount of $200,000 made available by two BR Limited Partners (referred to in s. 1.1(aaaaa), which are required by BR Capital for its operations going forward; and

(d) Secured Claims (defined in s. 1.1(ccccccc), which are claims secured by security interests. There are no Secured Claims against any of the Debtors.

Second Lawson Affidavit, para 72

87. The Unpaid Executive Compensation will remain a debt, however, under s. 3.1(b) of the Employment Amending Agreements, interest ceases to accrue thereon as of September 15, 2023.

Further, as discussed in paragraph 52 of this Brief, the payment of the Unpaid Executive Compensation is contingent upon BR Capital either achieving certain net income thresholds or the amount paid to the Senior Executives is substantially similar to the value of the BR LP Units received by the Affected Unsecured Creditors. While the debt remains, the Debtors submit that it is receiving substantially the same treatment as is being received by the Affected Unsecured Creditors.

Second Lawson Affidavit, para 57

88. As discussed in paragraph 41 of this Brief, post-Implementation, BR Capital's licenses of the ICE Software and BR Software will have significantly positive operating margins, and therefore its financial position should gradually improve. Further, because the ICE Software is no longer in the development stage, BR Capital will no longer be incurring the development costs, it will be able to administer and maintain the ICE Software with three employees, and it has significant prospects to enter into new licenses of the ICE Software. Further, a licence with a Canadian university described in paragraph 32 of this Brief, and that has been finalized, will become effective.

Second Lawson Affidavit, paras 32 and 54

89. On the basis of the forgoing, the Debtors respectfully submit that in the circumstances, the terms of the Proposal are reasonable and are calculated to benefit the general body of creditors. Further, both throughout the *BIA* Proceedings and in making the Proposal, the Debtors have been acting in good faith:

(a) the transactions set out in the Proposal can realistically be carried out and will result in the solvency of BR Capital being restored and the Affected Unsecured Creditors receiving a 60% interest in BR Capital's equity, which although initially of modest value will have realistic growth potential;

(b) because the Proposal will restore the Debtors' solvency and allow them to continue carrying on business, the Proposal benefits multiple stakeholders including the Creditors holding Priority Governmental Claims and Priority Employee Claims, those employees who will be required going forward once the business is operating

in the ordinary course after Implementation, and the licensees who depend upon the ICE Software and the FRI Software;

(c) as indicated in paragraph 48 of this Brief, on January 12, 2023, the Debtors have provided full disclosure to the Affected Unsecured Creditors and BR Limited Partners the terms of the Proposal and some of its potential tax effects in the Information Memorandum, and provided the Creditors with a copy of the Proposal.

Second Lawson Affidavit, para 70

90. In preparing the Proposal, the Debtors have attempted in good faith to balance and accommodate multiple competing interests and issues, including:

(a) the priority rights of the Priority Employee Payables, the Priority Governmental Payables and the Preferred Claims in being paid in full;

(b) the need to ensure that the Affected Unsecured Creditors receive a meaningful return in the event that BR Capital's business revives;

(c) the reality of BR Capital's current cash flow and balance sheet insolvency which would yield the creditors nothing in a bankruptcy liquidation;

(d) the need to accommodate the Interim Lenders given the crucial supports they have given and are continuing to gibe BR Capital during the *BIA* Proceedings;

(e) the rights and interests of the BR Limited Partners given that ultimately, the value of BR Capital is currently based on a highly constrained licensee base that has real potential to grow significantly; and

(f) the complex tax issues that have to be addressed in implementing the Proposal in a manner that mitigates to the extent practical tax liabilities that can arise from the multiple transactions built into the Proposal.

91. The unanimous vote to accept the Proposal by the Affected Unsecured Creditors exceeds the double majority required under s. 54(2)(d), namely votes to accept the Proposal by a majority

in number and two thirds in value of the Affected Unsecured Creditors with proven claims present at the meeting either personally or by proxy. While this Honourable Court is not bound by that acceptance, the Debtors submit that it is in fact cogent evidence of the fairness sand reasonable nature of the Proposal which ought not be lightly ignored, and that substantial deference should be afforded to that vote. Further, the Debtors submit that none of the factors that have caused courts to disregard the acceptance of a proposal by the creditors are present. There has been full disclosure, the Debtors are acting in good faith, a substantial number of Affected Unsecured Creditors voted and there are no "side deals" benefiting favoured groups of creditors.

YG LP 1, at paras 80, 83 and 84; *Magus*, at paras 10 and 11

Creditors Meeting Minutes, last page

92. Further, the factors discussed in paragraph 61 of this Brief are not present.

(a) while post-Implementation, BR Capital will have to rebuild its business (as discussed in paragraph 41 of this Brief), it will be financially solvent and has a realistic opportunity to increase its customer base and license revenue; and

(b) bankruptcy would not yield a greater return to the Affected Unsecured Creditors than under the Proposal because immediately post-Implementation, the BR LP Units will have a positive value, whereas the Proposal Trustee has reported that there will be no recovery for the Affected Unsecured Creditors, or any other creditors, in a bankruptcy.

Second Lawson Affidavit, paras 44-46

93. As discussed in paragraph 66 of this Brief, where any of the facts mentioned in s. 173 of the BIA are proven against the Debtors, this Honourable Court is required to refuse to approve the Proposal unless it provides for reasonable security for the payment of not less than fifty cents on the dollar on all unsecured claims. Under s. 173(1)(a), one of these facts is that the value of the Debtors assets is not of a value equal to fifty cents on the dollar on the amount of its unsecured liabilities, unless that deficiency has arisen from circumstances for which the Debtors cannot justly be held responsible. The Debtors respectfully submit that they cannot justly be held responsible for that deficiency for the following reasons:

(a) as discussed in paragraphs 28 to 31 of the Second Lawson Affidavit, because BR Capital did not have mature software in place earning sufficient license revenue to fund the costs of developing the ICE Software and other BR Software Systems, eventually it had to borrow money under the BR Notes to fund that development but it lacked the revenues to repay the indebtedness thereunder;

Second Lawson Affidavit, paras 28-31

(b) political changes in Mexico together with the COVID-19 pandemic, neither of which were brought on by the Debtors, resulted in the abandonment of the potentially valuable Mexican project, but only after a great deal of cost was incurred by the Debtors;

Second Lawson Affidavit, paras 33-35

(c) the Debtors implemented many measures to reduce costs and increase BR Capital's license revenues, which ultimately were insufficient to restore BR Capital's financial condition;

Second Lawson Affidavit, paras 37 and 38

(d) Ultimately, the value of the BR System Software was dependent upon the license revenues therefrom, and during the development stage of the ICE Software, there were no revenues but there were massive development expenses.

Second Lawson Affidavit, para

94. As noted above, the Proposal is put forward in the expectation that persons with an economic interest in the Debtors will derive a greater benefit from the implementation of the Proposal and the continuation of the business as a going concern than from a bankruptcy, receivership or liquidation of the Debtors.

Second Lawson Affidavit, para 46

95. One of the issues which must be addressed in approving the Proposal is that at least upon Implementation, the value of the BR LP Units received by the Affected Unsecured Creditors will be significantly less than 50% of the total indebtedness owed to the Affected Unsecured Creditors.

Under s. 59(3) of the *BIA*, where one of the facts mentioned in s. 173 of the BIA are proved against a debtor, the court is required to refuse to approve k provides that The Affected Creditors approved the Proposal and the Proposal Trustee recommended the approval of the Proposal. Thus, the Debtors submit the Proposal is fair and reasonable in the circumstances, given it has the approval of the Affected Creditors and the Proposal Trustee and the business would continue as a going concern.

Second Lawson Affidavit, para 70

96. As the Affected Unsecured Creditors approved the Proposal and the Proposal Trustee has recommended the Court approve the Proposal, the Debtors submit the creditor approval condition has been met.

Second Lawson Affidavit, para 71

D. The Arrangement is Necessary

97. As set out above, the Proposal includes the Reorganization, which is a reorganization for the purposes of s. 192 of the *ABCA*, the Corporate Arrangement, which is a corporate arrangement for the purposes of s. 193 of the *ABCA*, and a reorganization of the limited partnership structure (the "**Partnership Reorganization**").

98. In particular, the Proposal contemplates an arrangement by which five of the limited partnerships are wound up, leaving only with two limited partnerships, and reducing the number of corporations to six corporations from eight. This reorganization will reduce the administrative and professional cost burden.

99. The *ABCA* expressly permits the reorganization of the share capital of a corporation as part of the approval of a proposal under the *BIA* provided two conditions are satisfied: (1) a corporation is subject to an order for reorganization (s. 192(2)), which under s. 192(1)(b) is defined as an order under the *BIA* approving a proposal, and (2) the proposed reorganization is authorized by s. 173 of the *ABCA*.

ABCA, ss 173, 192 **[**Tab 3]
Raymor Industries Inc., 2010 QCCS 376 at paras 43, 49

Canadian Airlines Corporation (Re), 2000 ABQB 442 at para 69

100. Pursuant to s. 193 of the *ABCA*, the Court may approve a plan of arrangement, which arrangement may include an amendment to the articles of a corporation, an amalgamation of two or more corporations, an amalgamation of a body corporate with a corporation, a transfer of all or substantially all the property of the corporation to another body corporate in exchange for securities, liquidation or dissolution of a corporation, a compromise between a corporation and its creditors or any combination thereof.

ABCA, s. 193 [Tab 3]

101. Courts have confirmed that an "arrangement" under the *ABCA* can embody a wide range of transactions and are intended to enable complex transactions that cannot otherwise be effected under discrete provisions of the *ABCA*. The test for approval by the court of a plan of arrangement is: (1) the statutory procedures have been met; (2) the application has been put forward in good faith; and (3) the arrangement is fair and reasonable.

BCE Inc., Re, 2008 SCC 69 at paras 137 [Tab 7]

102. In determining whether the proposed arrangement is fair and reasonable, the court must be satisfied that (a) the arrangement has a valid business purpose, and (b) the objects of those whose legal rights are being arranged are being resolved in a fair and balanced way.

BCE Inc., Re, supra at para 137

103. As stated by the Alberta Court of Appeal in the context of the same provision in the *Canada Business Corporations Act*:

> A court sitting on review of an arrangement must look through the lens of the purpose of the *CBCA* provisions. The focus is whether the arrangement, as a whole and viewed objectively, is fair and reasonable. It looks primarily, but not exclusively, to the interests of the parties whose legal rights are being arranged. The *CBCA* provisions provide a practical and flexible way to effect complicated transactions, and have been broadly interpreted to deal not only with reorganization of share capital but corporate reorganization more generally. The aim of the legislation goes beyond shareholders to other security holders whose *legal* rights are affected, not their economic interests which may well be prejudiced. The fact that a group whose legal rights are left intact might face a reduction in

> the value of its securities is not on its own an extraordinary circumstance that would warrant consideration of those interests.

12178711 Canada Inc v Wilks Brothers, LLC, 2020 ABCA 430 at para 12 [Tab 4]

E. S. 192 of the ABCA is Satisfied

104. With respect to the first condition, the Debtors are subject to an order for reorganization within the meaning of s. 192 of the *ABCA*, which expressly provides for such an order as part of the approval of a proposal under the *BIA*. Thus, as the Corporate Arrangement is included in the Proposal, s. 192 is satisfied.

Raymor, para 50

105. With respect to the second condition, the Debtors submit the Corporate Arrangement corresponds to changes permitted under s. 173(1) of the *ABCA*. The changes permitted under s. 173(1) include, at s. 173(1)(a), amending the corporation's articles to change its name. The Proposal contemplates changing the name of HE Inc. to ICE GP Corp., which the Debtors submit satisfies s. 192(1).

106. In addition, s. 192(2) provides that a corporation subject to an order for reorganization may have its articles amended by the order to affect any change that might lawfully be made by a an amendment under s. 173. Thus, given the change in name is permitted pursuant to s. 173, the Debtors submit the Court is authorized to also approve the articles of reorganization of ICE GP Corp and any corresponding amendments to its bylaws.

F. S. 193 of the ABCA is Satisfied

107. As noted above, the test for approval by the court of a plan of arrangement is: (1) the statutory procedures have been met; (2) the application has been put forward in good faith; and (3) the arrangement is fair and reasonable.

G. The Statutory Procedures have been Met

108. In these *BIA* Proceedings, all statutory requirements with respect to the Proposal have been met. In particular, the Proposal Trustee sent the Creditors' Package was sent to the Debtors'

creditors, which, among other things, notified the creditors of the meeting to be held on February 2, 2023 to consider and vote upon the Proposal. On February 2, 2023, the meeting of creditors of the Debtors was held, and 100% of the creditors with proven claims voting in person or by proxy accepted the Proposal, thus exceeding the double majority requirement in s. 54(1)(d) of the *BIA*.

Second Lawson Affidavit, paras 69, 71

109. In addition, the Debtors submit that s. 193(3) of the *ABCA* is satisfied. An application under s. 193(3) cannot be brought unless it is impractical to effect the arrangement under any other provision of the *ABCA*. The impracticality requirement means something less than "impossible" and generally the test is satisfied by demonstrating it would be convenient or less advantageous to the corporation to proceed under other provisions of the *ABCA*.

Renewable Energy Developers Inc., Re, 2013 ONSC 5695 [*Renewable*], at para 3 [Tab 27]

110. In considering whether it was not practical to effect the transactions contemplated by an arrangement under another provision, the courts recognize that arrangements are a practical and flexible way to effect complicated transactions. A multi-step transaction can generate a degree of complexity that makes the use of a plan of arrangement more convenient in the circumstances.

Renewable, at para 4 [Tab 27]

111. The Corporate Arrangement contemplates the following steps:

(a) transferring any interest of FRI Inc. in any property to FRI LP, as contemplated by s. 4.3(b)(i) of the Proposal;

(b) any interest of HE Inc. in any property to HE LP, as contemplated by s. 4.3(d)(i) of the Proposal;

(c) authorizing and directing FRI Inc., in its capacity as general partner of FRI GP LP:

(i) to transfer any interest of FRI GP LP in any property to FRI LP, as contemplated by s. 4.3(b)(i) of the Proposal;

(ii) to transfer its general partner units in FRI GP LP to BR GP, as contemplated by s. 4.3(c)(i) of the Proposal;

(d) authorizing and directing HE Inc., in its capacity as general partner of HE GP LP:

(i) to transfer all the right, title or interest of HE GP LP in any property to HE LP, as contemplated by s. 4.3(d)(i) of the Proposal;

(ii) to transfer its general partner units in HE GP LP to BR GP, as contemplated by s. 4.3(e)(i) of the Proposal;

(e) amalgamating FRI Inc. and BR GP to form BR GP 2023, as contemplated by s. 4.3(f)(i) of the Proposal and:

(i) approving the articles of amalgamation of BR GP 2023 substantially in the form attached as Schedule "C" to the Proposal, as contemplated by s. 4.3(f)(i)(E) of the Proposal; and

(ii) approving the bylaws of BR GP 2023 substantially in the form attached as Schedule "D" to the Proposal, as contemplated by s. 4.3(f)(i)(G) of the Proposal;

(f) transferring the shares held by the shareholders in HE Inc. and ICE AB Inc. to BR GP 2023, as contemplated by ss. 4.3(f)(ii) and 4.3(f)(iv) respectively of the Proposal, and further transferring such shares in ICE AB Inc. from BR GP 2023 to BR LP, in exchange for additional BR LP Units, as contemplated by s. 4.3(f)(iv) of the Proposal;

(g) amalgamating ICE AB Inc. and SESCI to form SESCI 2023, as contemplated by s. 4.3(f)(v) of the Proposal, and:

(i) approving the articles of amalgamation of SESCI 2023, substantially in the form attached as Schedule "C" to the Proposal, as contemplated by s. 4.3(f)(v)(E) of the Proposal; and

(ii) approving the bylaws of SESCI 2023 substantially in the form attached as Schedule "D" to the Proposal, as contemplated by s. 4.3(f)(v)(G) of the Proposal;

112. As is evident from the above, the Corporate Arrangement is complex and involves a number of steps to complete. The Debtors submits the Proposal and the Corporate Arrangement contained therein is the precise situation in which applying s. 193 to effect a plan of arrangement is more practical and more convenient in the circumstances.

113. Thus, the Debtors submit that it would be impractical to implement the steps required to successfully restructure the Debtors as contemplated in the Proposal through the Corporate Arrangement. The Corporate Arrangement is a vital part of the success of the Proposal and the Debtors emerging from insolvency as a going concern, and the need to restructure the Debtors as part of the Proposal satisfies the threshold of "impracticality" in the circumstances.

H. The Proposal is made in Good Faith

114. The Debtors assert the Proposal is made in good faith. Given the complexity of issues and the unnecessarily complex business structure, the Corporate Arrangement is intended to enhance the economic viability of BR Capital when it emerges from insolvency as a going concern. As noted above, the current corporate structure is costly and impractical as it relates to how the business evolved over time.

115. Further, following the initiation of *BIA* Proceedings, BR Capital consulted with its professional advisors and principal stakeholders with respect to the preparation of the Proposal. The process was extremely time consuming and includes the Corporate Arrangement as a means to eliminate the overly complex and expensive organizational structure in order to permit BR Capital to successfully emerge from insolvency and continue as a going concern for some time into the future.

Second Lawson Affidavit, paras 51-53

I. The Corporate Arrangement is Fair and Reasonable

116. In considering whether the Corporate Arrangement is fair and reasonable, the Court should consider whether there is a valid business purpose and whether stakeholder interests are being arranged in a fair and balanced way. The valid business purpose analysis recognizes the fact that there must be a positive value to the corporation to offset the fact that rights are being altered. An important factor for courts to consider when determining if the plan of arrangement serves a valid business purpose is the necessity of the arrangement to the continued operations of the corporation. As stated by the Supreme Court of Canada in *BCE*, "if the plan of arrangement is necessary for the corporation's continued existence, courts will more willingly approve it despite its prejudicial effect on some security holders".

BCE, paras 143, 145-146

117. The Corporate Arrangement is a key component of the Proposal, which is aimed at ensuring BR Capital is not subject to bankruptcy or liquidation. The Corporate Arrangement is designed to address the concern that a contributing factor to the Debtors' insolvency is the overly complex organizational structure, which is expensive and unsuited to the Debtors' business as it evolved over time. The Corporation is a necessary component, together with the Reorganization, the Partnership Reorganization and the remainder of the Proposal, to resolving BR Capital's insolvency and permitting it to carry on business after Implementation.

118. With respect to the second prong of the fair and reasonable analysis, the focus on whether the objections of those whose rights are being arranged are being resolved in a fair and balanced way. An important factor in this analysis is whether a majority of security holders voted to approve the arrangement, and considerable weight will be placed on the fact that an arrangement is supported by a majority of the affected stakeholders.

BCE, paras 147, 150

119. In this case, the Debtors are not aware of any objections to the Corporate Arrangement, and no vote of the shareholders of the entities affected by the Corporate Arrangement is contemplated. Where there has been no vote, courts may consider whether an intelligent and

honest business person, as a member of the class concerned and acting in their own interest, might reasonably approve of the plan.

BCE, para 151

120. The Debtors submit it is fair and reasonable in the circumstances to cancel the existing shares and units of the affected entities in conjunction with a *BIA* proposal, as the shares and units have no present value and it is unlikely they will have value in the reasonably foreseeable future, absent the Proposal. The rationale for assigning existing Affiliate Shares without consent is based on the fact that the applicable corporations are insolvent and the Affiliate Shareholders are not entitled to any recovery on liquidation. Thus, in the circumstances, the Debtors submit an intelligent and honest business person acting in their own interest, would support the Corporate Arrangement and reasonably approve of the Proposal.

Re Canadian Airlines Corp., *supra* at paras 76-77 [Tab 12]

121. Further, the Corporate Arrangement and fair and reasonable in regards to the affected limited partners, as they currently have no economic interest in the *BIA* Proceedings and thus, no entitlement to participate in the approval of the Corporate Arrangement contemplated by the Proposal. Requiring a vote under the *ABCA* would "serve no useful purpose other than to frustrate the reorganization to the detriment of all stakeholders", which is contrary to the *BIA*.

Re Canadian Airlines Corp., *supra* at paras 76, 79, 143, 145 [Tab 12];
Raymor, para 70 [Tab 26]

122. Most importantly, the Affected Creditors approved the Proposal at a meeting of the creditors. Thus, those most affected by the Proposal are in agreement with its terms. Accordingly, from their perspective, the Corporate Arrangement is fair and reasonable.

123. In summary, the Debtors submit that there is a legitimate business reason for structuring the Proposal to include the Reorganization and the Corporate Arrangement; both are necessary to effect the Proposal and ensure BR Capital successfully emerges from the *BIA* Proceedings. The contemplated restructuring will permit the simplification of BR Capital's organizational structure, which is key to BR Capital's continued operation as a going concern, as it will enable a more economically efficient business that can survive long-term.

Second Lawson Affidavit, para 52

124. Based on the above, the Debtors submit that the Reorganization and Corporate Arrangement, as contemplated in the Proposal, are fair and reasonable because stakeholders will derive a greater benefit from the business of the Debtors being continued and the reorganization is a key part of ensuring the business is viable going forward.

J. The Partnership Reorganization is Appropriate

125. The *Partnership Act* does not contain comparable provisions to sections 192 (reorganization) and 193 (arrangement) of the *ABCA* which would permit the reorganization or arrangement of limited partnerships.

126. However, the Debtors submit that there are sufficient powers in the *Partnership Act* to permit the Debtors to accomplish the steps set out in the Proposal pertaining to the dissolution of FRI LP, FRI GP LP, HE LP, HE GP LP and ICE GP LP and cancelling the certificates of limited partnership of those entities. The Court is authorized, upon application by a partner, to order a dissolution of the partnership when, in accordance with s. 39(1)(f), "circumstances have arisen that in the opinion of the Court render it just and equitable that the partnership be dissolved."

Partnership Act, s.39(1)(f) [Tab 36]

127. Courts have established that section 39(1)(f) of the *Partnership Act* (and the corresponding sections in other Provincial partnership acts) is a catch-all section pursuant to which the Court has large discretion to determine the methodology of dissolution, subject to any express or implied agreement between the parties.

Tuktaluk v. Musa, 2006 CarswellOnt 5156, at para 10 [Tab 31]
Village Gate Resorts Ltd. v. Moore, 1997 CarswellBC 2295, at para 43[Tab 32]

128. In conjunction with dissolving the limited partnerships, the Court is also authorized, pursuant to s. 71 of the *Partnership Act* to cancel the certificate of the limited partnerships, and distribute any interest in the property of the dissolved limited partnerships pursuant to s. 73 of the *Partnership Act*.

Partnership Act, ss. 71, 73 [Tab 36]

129. This is supported by s. 59(4) of the *BIA*, which provides the court approving a proposal the power or order amendments to a debtor's constating documents in accordance with the proposal to reflect any change that may be lawfully made under federal or provincial law.

BIA, s. 59(4)
Wiivv Wearables Inc., Re, 2021 BCSC 511 at para 118 [Tab 33]

130. In light of the *BIA* Proceedings and the fact that the units in the affected limited partnerships are of no value, the Debtors submit that it is just and equitable in the circumstances that the limited partnerships be dissolved as contemplated in the Proposal, and the related certificates be cancelled and any property be distributed as set out in the Proposal. It should also be noted that even though not necessary required, BR Capital intends to obtain a consent (the "**Consent**") to the Proposal, and the Partnership Reorganization, Corporate Arrangement and the dissolutions and property distributions contemplated therein, by the limited partners of ICE GP LP, FRI GP LP and HE GP LP, and the shareholders of BR GP, ICE AB Inc., FRI Inc. and HE Inc.

Second Lawson Affidavit, para 82, Exhibit "Q"

131. The Proposal also contemplates the incorporation of an unlimited liability corporation prior to the implementation of the Proposal (the "**ULC**"). It is then proposed to transfer to the ULC:

(a) any BR LP Unit held by any BR Limited Partner that is a non-resident Resident to the ULC in exchange for an equal number of common shares in the ULC, as contemplated by section 4.3(j)(ii) of the Proposal; and

(b) any BR LP Unit issued to an unsecured creditor or Interim Lender who is a non-resident in exchange for an equal number of common shares in ULC, as contemplated by section 4.3(j)(iii) of the Proposal.

132. The above affectively amounts to an arrangement of BR LP with ULC, as the BR LP Units will be exchanged for shares in the ULC (*ABCA*, s. 193(1)(f)). While the *Partnership Act* does not contain any provisions authorizing an arrangement of partnerships, it is submitted that the Court should exercise its discretion to permit the reorganization of BR LP.

133. Section 105 of the *Partnership Act* provides that the rules of equity and common law applicable to partnerships continue to be in force except where inconsistent with the express provisions of the act. Thus, the *Partnership Act* is not a complete code, but a set of default rules that are supplemented by the common law and any partnership agreements.

Partnership Act, s. 105

Elbow River Marketing Limited Partnership v Canada Clean Fuels Inc., 2012 ABQB 277 at para 76 [Tab 37]

134. Further, s.8 of the *Judicature Act*, RSA 2000, c J-2, empowers this Honourable Court to grant all remedies to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

Judicature Act, RSA 2000, c J-2, s. 8, Tab [38]

135. At common law, in a limited partnership, only the general partner is responsible for the management of the limited partner and its business. The parties' relationship will be governed by the common law, any partnership agreement and the *Partnership Act*. At common law, a general partner is obligated to act in good faith and in the bests interests of the limited partnership. Part of that duty is to is to act prudently and competently in accordance with the reasonable person standard. The Debtors submit BR Capital, and by extension BR GP, in working extensively with their professional advisors, acted in good faith and in the best interests of BR LP and its unitholders in determining the transfer or BR LP Units in exchange for ULC shares needed to be included in the Proposal.

136. Section 4.1(g) of the Proposal, which contemplates the exchange of BR LP Units for shares, is intended to address a tax issue that has arisen because over time six BR Limited Partners have ceased to be residents of Canada for the purposes of the *Income Tax Act* (Canada). Also, at least one unsecured creditor is a resident of Mexico.

Second Lawson Affidavit, para 61

137. According to BR Capital's professional advisors, if even one BR Limited Partner is a non-resident, BR LP ceases to be a "Canadian partnership" for purposes of the *Income Tax Act* and is deemed to be a non-resident of Canada. This in turn can trigger obligations to withhold taxes in respect of distributions to BR LP, deems the non-residents to be carrying on business in Canada (and thus taxable on any income earned in Canada), and triggers a 25% withholding tax on any "taxable Canadian property" disposed of by BR LP. In fact, no such distributions, taxable income or dispositions have occurred to date, but the potential tax problem has to be resolved as part of the overall restructuring provided for in the Proposal.

Second Lawson Affidavit, para 61

138. In order to resolve the non-resident tax issue, the BR LP Units held by non-residents will be transferred to the ULC in exchange for an equal number of common shares in the ULC, and any BR LP Units which would otherwise be issued under the Proposal to a non-resident will be issued to the ULC and the non-resident will receive an equal number of common shares in the ULC. While the shares in the ULC have unlimited liability attached to them, the shareholders are not thereby exposed to BR Capital's liabilities because the ULC only holds BR LP Units in BR LP. Effectively, the shareholders will have the same liability protections that the BR Limited Partners have.

Second Lawson Affidavit, para 62

139. Section 2.10 of the BR LP Agreement permits BR GP to require non-resident BR Limited Partners to sell of their BR LP Units, or in the event of a refusal, to sell for fair market value the BR LP Units on their behalf. In the current circumstances, the non-resident BR Limited Partners would receive nothing for their BR LP Units if they were sold, so the Directors and management of BR Capital believe section 4.1(g) of the Proposal resolves the non-residency problem in a more equitable manner. Under the Proposal, the BR Limited Partners would become shareholders of ULC, which in turn will avoid any undesirable tax consequences and permit participation in any success of BR Capital going forward.

Second Lawson Affidavit, para 63

140. Additionally, as there is no mechanism in the *Partnership Act* that provides for the transfer of partnership assets and the mechanism for the transfer of assets and change of general partner provisions in the limited partnership agreements are impractical and not designed for these types of circumstances, the Partnership Reorganization will be completed by special resolutions.

141. The Court should exercise its discretion to find that it is fair and reasonable to permit the exchange of BR LP Units for ULC shares pursuant to section 105 of the *Partnership Act*, the terms of the limited partnership agreement, and the common law. As noted above, BR Capital, and by extension BR GP, acted in the best interests of BR LP and the BR Limited Partners in determining the exchange should be included in the Proposal in order to eliminate the non-resident tax issue. Consequently, the Debtors submit that while the *Partnership Act* does not include an arrangement provision like that in the *ABCA*, the Court has the residual discretion, supported by the common law and the limited partnership agreement, to effect the arrangement contemplated in the Propsal where it is fair and reasonable, which the Debtors say it is, as it would be for the ultimate benefit of the BR Limited Partners. W

K. Releases are Appropriate and Should Be Authorized

142. S. 7.3(a) includes a release in favour of the Debtors for Affected Unsecured Claims, Preferred Claims, Priority Employee Claims, Priority Governmental Claims and Interim Financing Debt. However, the release does not affect the obligation of the Debtors to perform their obligations under the Proposal, including causing the distributions of the Implementation Cash Amounts, BR LP Units and shares in the ULC. The Debtors respectfully submit that this release is supported by s. 62(2) of the *BIA*, which provides that a proposal that is accepted by the creditors and approved by the court is binding on creditors in respect of all unsecured claims.

Proposal, s. 7.3(a), Lawson Affidavit, Exhibit "L"
BIA, s. 62(2)

143. The release in favour of the directors and officers under s. 7.3(c) of the Proposal is limited in scope to what is permitted by ss. 50(13) to 50(15) of the *BIA*. S. 50(13) which permits a release of obligations that arose prior to the filing of the NOIs and relate to obligations of a corporation where the directors are liable by law in their capacity as directors for the payment of such

obligations. S. 50(14) provides that such obligations cannot include claims relating to contractual rights of creditors arising from contracts with directors or are based on allegations of misrepresentation by directors to creditors or wrongful or oppressive conduct by directors. Under s. 1.1(nn) of the Proposal, "Director Claims" are Liabilities (as defined in s. 1.1(yyy)) for which a Director (defined in s. 1.1(mm) to be present and former officers and directors of Debtors) in his or her capacity as a Director. S. 7.3(c)(i) and (ii) parallel the restrictions in s. 50(14).

Proposal, ss. 1.1(nn), 1.1(yyy), 7.3(c), Lawson Affidavit, Exhibit "L"
BIA, ss. 50(13)-(15)

144. The test for the approval of the release is set out in s. 50(15) of the *BIA*, which permits a court to refuse a compromise against directors if it would not be just and equitable in the circumstances.

145. The Debtors submit that the release provided for in s. 7.3(c) of the Proposal is just and equitable in the circumstances and ought to be approved by this Honourable Court:

(a) s. 7.3(c) is limited to liabilities of a corporate debtor which a present or former director incurs in his or her capacity as a director;

(b) liabilities relating to contractual rights of one or more Creditors against a director are not released; and

(c) liabilities based on allegations of misrepresentation made by a director or wrongful or oppressive conduct by such director are not released.

The directors remained in place throughout the *BIA* Proceedings and should not be subject to liabilities arising only as a result of their acting in their capacity as directors, the release of which is not otherwise restricted by s. 7.3(c). By remaining in place, the directors contributed to the success of the Proposal.

146. The Senior Officers of BR Capital are directors of the corporations within BR Capital, but approval of s. 7.3(c) with respect to the release of their liabilities arguably must be justified on the basis of the jurisprudence relating to the approval of releases in proposals under the *BIA* and in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended

(the "***CCAA***"). This is also the case for the release in s. 7.3(b) of the Proposal Trustee, counsel for the Proposal Trustee, counsel for the Debtors, and any of their affiliates, employees, agents, directors, officers, shareholders, advisors and consultants (each a "**Released Party**"). That release relates to any liabilities arising from the Proposal or *BIA* Proceedings, other than arising as a result of gross negligence or willful misconduct.

147. The Court has the jurisdiction to approve a proposal that includes third-party releases, provided there is a reasonable connection between the third-party claim being compromised and the restructuring achieved by the proposal to warrant inclusion of the third-party release. The test, while established in the *CCAA* proceedings *Metcalfe & Mansfield Alternative Investments II Corp*., the criteria are applicable in the context of a proposal.

Metcalfe & Mansfield Alternative Investments II Corp., 2008 ONCA 587 [*Metcalfe*], at para 71 [Tab 20];
FT ENE Canada Inc., *Re*, 2019 ONSC 5793 [*FT ENE*], at para 48 [Tab 14]

148. In *Metcalfe*, the Court indicated that in determining whether or not to approve a release, the Courts will consider the following criteria:

(a) the parties to be released from claims where necessary and essential to the proposal;

(b) the claims to be released were rationally connected to the purpose of the proposal and necessary for it;

(c) the proposal could not succeed without the releases;

(d) the parties being released were contributing to the proposal;

(e) the release benefited the Debtors, as well as the creditors generally;

(f) the creditors voting on the proposal had knowledge of the nature and the effect of the releases; and

(g) the releases were fair and reasonable and not overly broad.

Metcalfe, at para 71 [Tab 20]
Re Target Canada Co., 2016 ONSC 3651 at paras 34-38 [Tab 30];
Kitchener Frame, paras 54, 59, 60, 71, 73, 79 and 80 [Tab 16]

149. Both the objectives of the legislation governing the applicable insolvency proceeding (whether the *BIA* or *CCAA*) and the specific circumstances of the case are to be taken into account. No single factor in the list above is determinative.

Re Target Canada Co., supra at para 38 [Tab 30]

150. The Debtors submit that the proposed releases in ss. 7.3(b) and 7.3(c) of the Proposal satisfy the criteria referred to above criteria and should be granted:

(a) the Released Parties have played a necessary and essential role in the *BIA* Proceedings and in the restructuring of the Debtors and their business;

(b) the Released Parties made significant contributions to the preparation, analysis and negotiation of the Proposal, and will play an instrumental role in ensuring its completion and Implementation;

(c) the Affected Creditors approved the Proposal knowing the nature and effect of the releases; and

(d) the Proposal Trustee recommended approval of the Proposal including the releases.

151. Further, the releases of the Released Parties in s. 7.3(b) and the Senior Officers in s. 7.3(c) are appropriately limited as required by the authorities and ss. 50(13) and 50(14) of the BIA. The release in s. 7.3(b) excludes gross negligence and willful misconduct, and the release in s. 7.3(c) excludes, as discussed above, liabilities relating to contractual rights of one or more Creditors against a Senior Officer and liabilities based on allegations of misrepresentation made by a Senior Officer or wrongful or oppressive conduct by such Senior Officer are not released. Hence, to the extent that any person has a claim that falls within the exclusion, such a person would not be prejudiced by the approval of the releases.

152. Further, the Releases are not overly broad and fair and reasonable in the circumstances or offensive to public policy. The proposed release does not release or discharge the Released Parties from: (i) any obligation under the Proposal; (ii) any criminal, fraudulent or other wilful misconduct; (iii) any claim with respect to matters set out in s. 178 of the BIA; or (iv) any claim

based upon or attributable to the Released Parties gaining a personal profit to which they were not legally entitled.

153. The releases in ss. 7.3(b) and 7.3(c) will benefit the Debtors by eliminating potential contribution and indemnity claims, which in turn, avoids the depletion of either the Debtors' assets, maximizes the potential recovery of creditors, and permits the restructuring of the Debtors. Courts have recognized this advances the best interests of stakeholders. As the Court noted in *Re Target Canada Co.*:

> "[I]t is not uncommon for *CCAA* courts to approve third-party releases in favour of persons, such as directors or officers or other third parties, who could assert contribution and indemnity claims against the debtor company." Further, as the Court stated in *Kitchener Frame* and *FT ENE*, there is no principled basis on which the analysis and treatment of a third party release in a *BIA* proposal proceeding should differ from a *CCAA* proceeding.
>
> *Re Target Canada Co.*, at para 40 [Tab 30];
> *Kitcherner Frame*, at para 78 [Tab 16];
> *FT ENE*, at para 48 [Tab 14]

154. It is also critical to the Proposal that the directors and officers of the Debtors as at the Implementation be released because current directors and officers are not prepared to assume litigation risks associated with the Debtors. Without the current directors and officers, it will not be possible to continue the business of the post-Proposal Debtors.

155. Accordingly, to ensure the Proposal benefits a substantial number of the Debtors' stakeholders, the Debtors respectfully submit that the releases are appropriate and should be authorized by this Honourable Court.

L. Stay of Enforcement against the Current Directors

156. With respect to the provisions of the Proposal contemplating a continuing stay against certain parties, the Debtors respectfully submit that this relief is entirely justified.

157. S. 69.1 of the BIA gives the Court wide jurisdiction to implement a stay on any terms it deems reasonable, provided the Debtor has acted, and is acting, in good faith and with due diligence.

BIA, *supra*, s 69.1 **[Tab 2]**

158. In the context of the *CCAA*, the courts have held that in interpreting the stay provision, the remedial nature of the *CCAA* must be taken into account. Particularly important, is that one of the purposes of the *CCAA* is "to prevent the frustration of a reorganization or restructuring plan after its implementation on the basis of events of default or breaches which existed prior to or during the restructuring period". The Debtors submit the same analysis applies under the *BIA*. To permit claims against the current Directors to proceed after the Proposal is approved for prior acts would be detrimental to the successful implementation of the Proposal, as the current Directors would not continue to act as Directors in the face of such uncertain liability. This is turn would negatively impact the ability of the Debtors to successfully emerge from the *BIA* Proceedings as a going concern, as institutional knowledge will be lost.

CannTrust Holdings Inc. v. Ernst & Young Inc., 2022 ONSC 6720, at para 43 [Tab 39];
Re, Doman Industries Ltd. (Trustee of), 2003 BCSC 376, at para 22 [Tab 44]

159. In the case at bar, the provisions of the Proposal preclude parties from exercising remedies against the Debtors and their directors. This relief is critical to the Proposal as the stay of proceedings incentivizes the CEO and CFO to say in place and work to build the resulting BR Capital Group's business following implementation of the Proposal.

Second Lawson Affidavit, para 56

160. This accords with the overall purpose of the BIA, as it facilitates the successful completion of the restructuring of the Debtors and the continued operation of their business. It is also in furtherance to the powers of this Honourable Court under s. 69.1(4) of the BIA. Accordingly, the Debtors respectfully submit that the stay in paragraph 6 of the proposed Order is necessary and appropriate and ought to be granted.

M. The Court Ought to Exercise its Discretion and Approve the Proposal

161. The *BIA* is broadly interpreted to allow a court to grant innovative solutions to the difficult and complex issues that arise during *BIA* proceedings and enable the best outcome for all stakeholders. In this case, the Proposal will preserve the business and core assets of the Debtors,

preserve the employment of its current employees and preserve value for the benefit of the stakeholders.

Renewable, at paras 2 and 4 [Tab 27]

162. The expectation is that stakeholders will work diligently to find common ground so that there can be an outcome that is fair to all. Stakeholders are required to be transparent, engage in dialogue with a view to meeting the policy objectives of the BIA, cooperate, and exercise due diligence.

163. The Debtors have updated this Honourable Court frequently and have been candid about the challenges and the concerns of various stakeholders as those issues have arisen. They have cooperated to the extent possible with their stakeholders and have worked diligently, spending significant time and energy on devising appropriate solutions to balance stakeholder needs. At every stage in the *BIA* Proceedings, they have acted diligently and in good faith to move the *BIA* Proceedings forward.

164. The Debtors submit the Proposal is fair and reasonable under the *BIA* and ought to be approved because:

(a) Considered as a whole, the Debtors and their stakeholders, including the present and former Employees, the Affected Unsecured Creditors, the Interim Lenders, the BR Limited Partners, the licensees of the BR Software Systems and Canada Revenue Agency (in respect of withholding taxes), will derive a greater benefit from the Implementation of the Proposal and the Debtors business continuing than they would upon the liquidation of the Debtors in a bankruptcy.;

(b) the Proposal Trustee recommends the approval of the Proposal;

(c) the double majority of Affected Creditors required under s. 54(2)(d) of the *BIA* have voted to accept the Proposal; and

(d) the Proposal preserves the business of the Debtors as a going concern.

165. In light of the foregoing, the Debtors submit the Proposal is fair, equitable and reasonable in the circumstances and the Approval Order should be granted.

N. Misnomer

166. As set out above, at the outset of the *BIA* Proceedings the legal entity names of certain of the Debtors were incorrectly stated. This Honourable Court has discretion to correct the Misnomers pursuant to Rule 3.74 of the *Alberta Rules of Court*:

> Adding, removing or substituting parties after close of pleadings
>
> **3.74(1)** After close of pleadings, no person may be added, removed or substituted as a party to an action started by statement of claim except in accordance with this rule.
>
> **(2)** On application, the Court may order that a person be added, removed or substituted as a party to an action if
>
> (a) in the case of a person to be added or substituted as plaintiff, plaintiff-by-counterclaim or third party plaintiff, the application is made by a person or party and the consent of the person proposed to be added or substituted as a party is filed with the application;
>
> (b) in the case of an application to add or substitute any other party, or to remove or to correct the name of a party, the application is made by a person or party and the Court is satisfied the order should be made.
>
> **(3)** The Court may not make an order under this rule if prejudice would result for a party that could not be remedied by a costs award, an adjournment or the imposition of terms.

Alberta Rules of Court, Alta Reg 124/2010, R. 3.74 [Tab 1]

167. There is no related provision in the *BIA* for correcting misnomers.

168. The proper test to be applied in cases of determining whether or not there has been a misnomer is to ask the question, —would a reasonable person reading the document understand that he is the person referred to therein but wrongly named or named under a pseudonym? If so, it is a matter of misnomer and the court will permit amendment of the style of cause and the pleadings to be amended pleadings in order to properly identify the party.

Brochner v. MacDonald, 1987 CarswellAlta 245, at para 18 [Tab 10];
Buckler v. Minchau, 2006 ABQB 291, at paras 52 and 53 [Tab 11]

169. In *Nichwolodoff*, Lefsrud J. gave the following summary of the law regarding amendments in cases of misnomer. His Lordship said:

> Amendments may be made to a statement of claim despite the expiration of the applicable limitation period if the misnaming of a party was a mere "misnomer" (Ladouceur v. Howarth (1973), 41 D.L.R. (3d) 416 (S.C.C.)). The proper form of analysis for cases of misnomer was set out in Nagy v. Phillips (1996), 137 D.L.R. (4th) 715 (Alta. C.A.). The following questions must be addressed:
>
> 1. Is this a case of misnomer according to the test set out in Davies v. Elsby Brothers Ltd. …
>
> 2. If so, were the Defendants misled or substantially injured by the misnomer?
>
> 3. Did the Plaintiff show due diligence, or a lack of unreasonable delay, in finding out the correct names of the Defendants and applying to amend to substitute them in the Statement of Claim?

Nichwolodoff v. Edmontonds, 2001 ABQB 613, at para 13 [Tab 24]

170. The effective date of an amendment pursuant to R. 3.74 relates back to the commencement of the action and take effect from the date the action was commenced.

Bernard v. Yurich, 1987 CarswellAlta 466, at para 48 [Tab 8]

171. It is submitted that a reasonable person served with the materials in the *BIA* Proceedings would understand that certain parties' legal entity names were incorrectly recorded. The Misnomers primarily relate to a Debtor's legal entity name being the abbreviation "LP" instead of "Limited Partnership" which was a drafting error. Nor in the context of the Proposal Proceedings involving HE LP and HE GP LP, would any reasonable person be misled by the absence of "General Partner" from "Help Inc. Given the facts set out in the application materials in these proceedings, it is submitted that a reasonable person reading the same would not mistake the Misnomers with another legal entity.

172. Section 187(9) of the BIA, which states that no proceedings will be invalidated by reason of any formal defect or irregularity, unless substantial injustice has been caused by the defect or irregularity, which injustice cannot be remedied by court order. The defect or irregularity in this case, namely the Misnomers, have caused no injustice, as any parties affected by the *BIA* Proceedings would have understood which legal entities commenced the proceedings.

BIA s. 187(9) [Tab 2]

173. In addition, once the Misnomers were discovered, the Debtors moved diligently to correct the style of cause in the *BIA* Proceedings. The within Application was the first available opportunity to apply to correct the Misnomers without a costly standalone application, which would have required a report of the Proposal Trustee and application materials prepared by the Debtors.

174. Accordingly, it is submitted the Misnomers should be corrected on a *nunc pro tunc* basis to the beginning of these *BIA* Proceedings and the OSB should be authorized and directed to amend their records in respect of such Debtors to reflect the correct legal names.

V. CONCLUSION

175. The Debtors have acted as diligently and expeditiously as the difficult circumstances of these *BIA* Proceedings have allowed and worked towards a Proposal that preserves as much value as possible for the stakeholders.

176. The Debtors respectfully request that this Honourable Court exercise its jurisdiction to grant the relief sought.

All of which is respectfully submitted this 23rd day of February, 2023.

GOWLING WLG (CANADA) LLP

Tom Cumming/Stephen Kroeger
Counsel for the Debtors

VI. TABLE OF AUTHORITIES

1. Alberta Rules of Court, Alta Reg 124/2010, R. 3.74
2. Bankruptcy and Insolvency Act, RSC 1985, c B-3
3. Business Corporations Act, RSA 2000, c B-9
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5. *1552906 Ontario (Bankruptcy)*, 2018 ONSC 1731
6. *Abou-Rached, Re*, 2002 BCSC 1022
7. *BCE Inc., Re*, 2008 SCC 69
8. *Bernard v. Yurich*, 1987 CarswellAlta 466
9. *Booth, Re*, 1998 CarswellOnt 2053
10. *Brochner v. MacDonald*, 1987 CarswellAlta 245
11. *Buckler v. Minchau*, 2006 ABQB 291
12. *Canadian Airlines Corp*., 2000 ABQB 442
13. *First Toronto Mining Corp., Re*, 1991 CarswellOnt 172
14. *FT ENE Canada Inc., Re*, 2019 ONSC 5793
15. *Innovative Coating Systems Inc., Re*, 2018 CarswellOnt 7607
16. *Kitchener Frame Ltd., Re*, 2012 ONSC 234
17. *Magnus One Energy Corp. (Re*), 2009 ABQB 200
18. *Mayer, Re*, 1994 CarswellOnt 268
19. *McNamara v McNamara* (1984), 53 CBR (NS) 240
20. *Metcalfe & Mansfield Alternative Investments II Corp*., 2008 ONCA 587
21. *Milan, Re*, 2012 CarswellOnt 6906
22. *Mister C's, Re*, 1995 CarswellOnt 372
23. *Muller, (Re)* (1986), 62 CBR (NS) 194 (BC SC)
24. *Nichwolodoff v. Edmontonds*, 2001 ABQB 613

25. *Olympia & York Developments Ltd. v Royal Trust Co*., 1993 CarswellOnt 182
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