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| COURT FILE NUMBER | 2501 13057 |
| COURT | COURT OF KING'S BENCH OF ALBERTA |
| JUDICIAL CENTRE | CALGARY |


IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, as amended

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2345137 ALBERTA LTD., 2351497 ALBERTA LTD., 2497902 ALBERTA LTD., SUMMIT S AUTO LTD., SUMMIT V AUTO LTD., MK AUTO K-M LTD., 2437342 ALBERTA LTD., 1972207 ALBERTA LTD., 1175104 B.C. LTD., 1262113 B.C. LTD., 1272986 B.C. LTD., 2412170 ALBERTA LTD. AND 2416326 ALBERTA LTD.

BDO CANADA LIMITED, IN ITS CAPACITY AS COURT-APPOINTED MONITOR OF 2345137 ALBERTA LTD., 2351497 ALBERTA LTD., 2497902 ALBERTA LTD., SUMMIT S AUTO LTD., SUMMIT V AUTO LTD., MK AUTO K-M LTD., 2437342 ALBERTA LTD., 1972207 ALBERTA LTD., 1175104 B.C. LTD., 1262113 B.C. LTD., 1272986 B.C. LTD., 2412170 ALBERTA LTD.AND 2416326 ALBERTA LTD.

DOCUMENT **BENCH BRIEF ON BEHALF OF THE LOAN STORE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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## I. INTRODUCTION

1. This application relates to the following two debtors in these CCAA Proceedings, 2412170 Alberta Ltd. and 2416326 Alberta Ltd. (the "Westcastle GMC Entities" or "Westcastle"), who together operated a dealership as Westcastle Chevrolet Buick GMC in Pincher Creek, Alberta. On January 7, 2026, the Court included the Westcastle GMC Entities in the existing Summit Auto Group CCAA proceedings and granted an order approving the sale of substantially all of the Westcastle GMC Entities assets (the "Vesting Order"). On January 9, 2026, the Court granted the Amended and Restated Westcastle GMC CCAA Order addressing, among other things, a priority charge for Administration Fees (the "Westcastle Administration Charge"), a borrowing charge, a distribution to TD Bank, and a disputed funds reserve (the "Westcastle GMC CCAA Order").[1]

2. This brief is filed on behalf of 1292709 Alberta Ltd. (the "The Loan Store"). The Loan Store is a material stakeholder in these proceedings as they relate to the Westcastle GMC Entities. It advanced substantial funds to the Westcastle GMC Entities secured by an equitable mortgage charging the Westcastle dealership lands and building at 1100 Waterton Avenue, Pincher Creek( the "Westcastle Lands").[2]

3. Bank of Montreal ("BMO") is the primary secured lender of the Summit Auto Group debtors, but is not a creditor of the Westcastle GMC Entities; TD Bank ("TD") was their senior secured lender.[3] TD has been repaid in full save for a potential contingent claim made against it by the Monitor or other stakeholders in the Summit Auto Group CCAA Proceedings.[4]

4. This leaves The Loan Store as the only known creditor asserting a proprietary claim against the assets of the Westcastle GMC Entities.

5. The Loan Store has largely been omitted from discussions and negotiations involving these proceedings and has not had the opportunity to meaningfully engage in these proceedings despite the quantum and proprietary nature of its claim.[5]

6. If The Loan Store's claim is a valid and enforceable proprietary claim, the Monitor's application will strip The Loan Store of property it received as repayment of its indebtedness and erode its equity; The Loan Store therefore opposes the relief sought by the Monitor, seeks to examine the CRO under oath, and seeks to remove BMO as a beneficiary of the administration charge granted in these proceedings.

## II. SUMMARY OF FACTS AND PROCEEDINGS

[1] Seventh Report of BDO Canada Limited in its Capacity as the Court Appointed Monitor filed May 12, 2026 (the "**Seventh Report**"), at paras 7-10; January 7 Vesting Order, recitals.

[2] Affidavit of Michael Koch sworn April 9, 2026 (the "**April Koch Affidavit**"), at paras 3-6; Affidavit of Martin Hausner sworn May 14, 2026 (the "**May Hausner Affidavit**"), at paras 11-20.

[3] Seventh Report, at para 55.

[4] Seventh Report, at paras 25 and 70.

[5] May Hausner Affidavit at paras 66-70.

**A. The Loan Store's Loan and Security**

7. The Loan Store's claim arises from a Loan Agreement dated April 3, 2023.[6] The Loan Agreement identifies The Loan Store as lender, the Westcastle GMC Entities as borrowers, and Michael Koch as co-signer. It provides for a loan facility of up to $1,900,000, interest at 35 percent per annum before default and 39 percent per annum after default, and repayment in full by April 30, 2025.[7]

8. The Loan Agreement also creates an equitable mortgage over the Westcastle Lands. The charging language refers to "West castle Chevrolet 1100 Watertown avenue pincher creek Ab T0K 1W0 Land and building", recognizes The Loan Store as a second secured party, and provides that The Loan Store would be listed as a lender on title.[8] The Loan Store subsequently submitted caveats to be registered at the Land Titles Office against the Westcastle lands to protect that interest.[9]

9. The loan was advanced in cash draws because, according to Mr. Koch, the dealership required cash advances from time to time to meet operational and business needs.[10] Between April 3, 2023 and November 26, 2024, The Loan Store advanced the full $1,900,000 principal amount to the Westcastle GMC Entities in multiple tranches.[11] Mr. Koch signed Borrower Acknowledgement of Funds and Running Balance Receipt documents in respect of those draws.[12]

10. The Monitor has relied on the fact that the acknowledgement documents refer to Mr. Koch as "Borrower" to question whether the Westcastle GMC Entities were true borrowers.[13] The Loan Store submits that the Loan Agreement must be read as a whole: the named borrowers are the Westcastle GMC Entities, with Mr. Koch a co-signer. The funds were collected by Mr. Koch in his capacity as director, and the acknowledgement documents state that they do not replace, amend, novate, or limit the Loan Agreement or any related security or guarantee documents.[14]

11. The Westcastle transaction was implemented through an asset purchase agreement dated September 22, 2025 between 2412170 Alberta Ltd. and 2672671 Alberta Ltd. (the "Dealership Sale Agreement"), and a real estate purchase contract involving 2416326 Alberta Ltd. on September 23, 2025 (the "RealCo Sale Agreement").[15] The Fourth Report attaches the Dealership Sale Agreement as Appendix "K" and the RealCo Sale Agreement as Appendix "L".

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[6] May Hausner Affidavit, para 11 & Exhibit "E"; Supplement to the Seventh Report, Appendix "P".

[7] May Hausner Affidavit, at para 12.

[8] May Hausner Affidavit, at paras 16-18 & Exhibit "E".

[9] May Hausner Affidavit, at para 19.

[10] April Koch Affidavit, at para 7.

[11] April Koch Affidavit, at para 8 & Exhibit "B".

[12] April Koch Affidavit, at paras 9, 13-16 & Exhibit "B"; May Hausner Affidavit, paras 12-15.

[13] Supplement to the Seventh Report of BDO Canada Limited in its Capacity as the Court Appointed Monitor (the "**Seventh Supplement**"), at paras 38, 62 & Appendix "I".

[14] April Koch Affidavit, at paras 9-16 & Exhibit "B"; May Hausner Affidavit, Exhibit "F".

[15] Fourth Report of BDO Canada Limited in its Capacity as the Court-Appointed Monitor filed January 6, 2026 (the "**Fourth Report**"), at paras 67-68 & Appendices "K" & "L"; May Hausner Affidavit, at para 24.

12. The Westcastle Dealership Sale Agreement did not provide that every vehicle on the premises would be purchased. The Monitor described the purchased assets as including all new, deferred new, and demonstrator vehicles as of closing and only certain used vehicles identified in advance of closing, unless excluded.[16] The agreement itself provided that used vehicles would be negotiated on a case-by-case basis and that, if value could not be agreed, the vendor would retain ownership.[17]

13. The transaction was subject to customary conditions, including third-party financing, transfer documentation, the related real estate contracts, and regulatory and manufacturer approvals, including OEM and AMVIC approvals.[18] Shareholder consent from MK Auto K-M Ltd. ("MK Auto") was required and, beginning no later than November 7, 2025, the Monitor actively considered whether to provide the shareholder resolution on behalf of MK Auto since it was given control over that company by the Court in these proceedings.[19]By the morning of December 19, 2025, all required consents and approvals to complete the transaction contemplated by the Dealership Sale Agreement and the RealCo Sale Agreement (the "Westcastle Transaction") were given,[20] with the exception of shareholder approval from MK Auto;[21] at the relevant time this court had endowed the Monitor with control over MK Auto.[22]

14. Despite MK Auto's withholding of consent, the Westcastle Transaction closed on December 19, 2025 and the following occurred:

    a. the purchaser paid approximately $5.501 million to Westcastle GMC's counsel, and RBC paid approximately $3.392 million directly to TD for vehicle inventory, for total Westcastle sale proceeds of approximately $8.893 million, with a further approximately $290,547 still to be funded directly to TD Bank for certain purchased vehicles;[23]

    b. a termination letter, was issued by the Westcastle GMC Entities to GMC and a new dealer code was issued by GMC to the Purchaser;[24]

    c. Mr. Koch issued termination letters to each of the employees of the Westcastle GMC Entities indicating that the purchaser has taken over and that they would offer employment to them on the same or similar terms and conditions as their current employment;[25]

    d. The Westcastle GMC Entities provided bills of sale for 25 used vehicles and one new vehicle to The Loan Store, and delivered 23 vehicles in part performance of a

[16] Fourth Report, at para 70.
[17] Fourth Report, Appendix "K"; April Koch Affidavit, at para 18.
[18] Fourth Report, at para 78.
[19] Fourth Report, at para 22; Supplement to the Seventh Report, at para 13.
[20] Affidavit of Michael Koch sworn January 22, 2026 (the "**January Koch Affidavit**"), at paras 11-15
[21] Fourth Report, at para 24
[22] Supplement to the Seventh Report, at para 26
[23] Fourth Report, at para 25.
[24] Fourth Report, at para 26.
[25] Fourth Report, at para 26 & Appendices "E" & "F".

settlement agreement between the Westcastle GMC Entities and The Loan Store, as more particularly discussed below.[26]

## B. Required Approvals for Westcastle Transaction

15. General Motors approved of the purchaser.[27]

16. TD Bank was the first secured creditor of the Westcastle GMC Entities.[28] Therefore, in order to complete the Westcastle Transaction, TD Bank's consent was required.[29]

17. The Loan Store had sent a caveat to be registered against the Certificate of Title for the Westcastle Lands on November 3, 2025 and again on November 10, 2025 and they were pending registrations at the time of the scheduled closing of the Westcastle Transaction; therefore its approval was required to complete the Westcastle Transaction.[30]

## C. TD's Evolving Position

18. TD's position on the Westcastle Transaction was not static; it evolved materially over the final forty-eight hours before and immediately after closing. On December 17, 2025, the Westcastle GMC Entities, through counsel, requested the payout statement required to permit closing on December 19, 2025, but the first payout figure received from TD was approximately $1.4 million higher than expected because it included floor plan financing for approximately 29 used vehicles that were not part of the purchaser's transaction and were to be retained by Westcastle.[31]

19. Mr. Koch then spoke with TD's Wassim Heematally at approximately 6:00 a.m. on December 18, 2025 and provided TD with an Excel spreadsheet separating the vehicles being sold from those being retained so that the closing waterfall could be calculated accurately.[32]

20. After receiving the Excel Spreadsheet, on December 18, 2025 at 8:55am, TD provided a revised payout statement in the amount of $7,497,145.67, and TD's counsel complained that TD was being portrayed as "holding up the closing", which is inconsistent with TD later taking the position that the transaction could not proceed on the basis of its own payout statement.[33]

21. The evidence therefore shows that, as of the morning before the closing date, TD had been supplied with transaction-specific information, had corrected its payout figure, and had issued the operative number on which the parties were entitled to rely.[34]

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[26] January Koch Affidavit, at para 18; The May Hausner Affidavit, at paras 32, 37 & Exhibit "I".
[27] January Koch Affidavit, at para 4.
[28] Seventh Supplement, at para 5; Fourth Report, at para 85.
[29] Fourth Report, at para 23, January Koch Affidavit, at paras 6-10 & Exhibit "D".
[30] May Hausner Affidavit, at para 19.
[31] January Koch Affidavit, at paras 6-7.
[32] January Koch Affidavit, at paras 8-9.
[33] January Koch Affidavit, at para 10 & Exhibit "B".
[34] January Koch Affidavit, at paras 6-10, Exhibit "A" & Exhibit "B"

22. That reliance continued into the closing day itself. At 9:15 a.m. on December 19, 2025, Mr. Jomha wrote to TD's counsel that he had been advised "from several sources" that TD was not prepared to close, but had received no communication from TD or its counsel to that effect and would therefore proceed with closing unless TD advised otherwise.[35]

23. TD did not provide a timely contrary instruction before the scheduled noon closing, and Mr. Koch's evidence is that, by approximately 11:30 a.m., he had been advised that the transaction was clear to close.[36]

24. At approximately 11:45 a.m., Mr. Koch advised Chevrolet that the sale had closed, and Mr. Jomha had received approximately $5.5 million in trust from RBC, sufficient on Mr. Koch's evidence to pay all creditors in accordance with TD's payout statement and the other agreed amounts, leaving an estimated surplus of approximately $687,000.[37]

25. TD's retraction came only after that closing sequence had occurred. At approximately 3:11 p.m. on December 19, 2025, TD's counsel delivered a revised demand that increased TD's payout by approximately $1,059,833, from $7,497,145.67 to approximately $8,556,979.[38]

26. Shortly thereafter, at approximately 4:00 p.m., Mr. Koch was advised that the Monitor, through counsel, had exercised shareholder rights to remove him as director of the Westcastle GMC Entities, that the deal had stalled, and that Mr. Jomha had been retained to act for the Monitor.[39]

27. The sequence matters: TD's reversal was not a pre-closing condition transparently asserted before the parties acted; it was a post-closing financial re-trading of the transaction after the purchaser had advanced funds, operational control had changed, and creditor arrangements — including The Loan Store settlement — had been implemented.

28. The $700,000 cash reserve is particularly significant. TD's own correspondence on December 19, 2025 stated that, "given the threat of demand/claim from the Monitor in the CCAA for pre-filing cash injections into Westcastle", TD required a $700,000 cash reserve for any clawbacks that the Monitor or another CCAA stakeholder might assert against TD, and later stated that discharges would not be delivered unless TD was paid in full, including that cash reserve.[40]

29. That was not a correction of the purchase price, a reconciliation of the floor plan, or a known closing adjustment arising from the Westcastle Transaction itself.

30. It was an additional reserve demanded by TD to protect TD against possible future CCAA claims, and its practical effect was to shift that risk onto the transaction waterfall and onto stakeholders such as The Loan Store who had structured their settlement around TD's

[35] January Koch Affidavit, at para 14 & Exhibit "C".
[36] January Koch Affidavit, at paras 14-15.
[37] January Koch Affidavit, at paras 16-17.
[38] January Koch Affidavit, at para 20 & Exhibit "D".
[39] January Koch Affidavit, at para 21.
[40] January Koch Affidavit, Exhibit "D".

earlier payout figure.[41]

31. The reserve therefore supports The Loan Store's submission that the impasse is not proof of an inevitable insolvency at the time of the Vehicle transfer, but the consequence of TD's ost-closing insistence on protection from contingent CCAA exposure.
32. The resulting prejudice to The Loan Store is direct. Before TD's revised demand, the transaction was proceeding on a payout statement that would permit closing, payment of creditors, and implementation of The Loan Store settlement.[42]

33. After TD's revised demand and reserve, the funds were frozen pending resolution,[43] TD refused to provide discharges, and Westcastle was later brought into the Summit Auto Group CCAA proceedings to provide a mechanism to vest clear title to the purchaser.[44]

34. The Court should therefore be slow to accept the Monitor's characterisation of the Vehicle transfer as a preference or a transaction for little or no consideration without first testing, on a complete evidentiary record, the role TD's post-closing reversal played in creating the very shortfall and CCAA impasse now relied upon against The Loan Store.

**D. The Settlement Between The Loan Store and the Westcastle GMC Entities (the "Settlement Agreement")**

35. The Settlement Agreement was negotiated on the eve of closing and is evidenced in correspondence between counsel for The Loan Store and counsel for the Westcastle GMC Entities.[45] On December 18, 2025, Mr. Ahmed Jomha, counsel for the Westcastle GMC Entities and Mr. Koch, advised LinQ Law that his client intended to close a transaction that included a partial payout of indebtedness to The Loan Store, and that the parties had agreed the client would be paying out the loan while retaining $500,000 to close the balance of the transaction.[46]

36. On December 19, 2025, LinQ Law confirmed that The Loan Store would close on the basis of accepting $500,000 that day, receiving a package of vehicles by bill of sale, discharging its caveat against the Westcastle Lands, and registering a caveat for the remaining funds against Mr. Koch's personal lands at 3301 Mt Fisher Drive, Cranbrook.[47]

37. Five minutes later, Mr. Jomha responded, thanking Ms. Badesha for the note and confirming that the closing was that day, and asking LinQ Law to confirm that it would discharge the caveat provided that $500,000 was sent.[48]

38. Although a single formal settlement agreement was not executed, the terms of the Settlement Agreement are evidenced by the correspondence between LinQ Law and

[41] January Koch Affidavit, at para 20 & Exhibit "D".
[42] January Koch Affidavit, at paras 6-10, Exhibit "A" & Exhibit "D".
[43] January Hausner Affidavit, at para 5.
[44] January Koch Affidavit, at para 22-23.
[45] May Hausner Affidavit, at paras 23, 25-30.
[46] May Hausner Affidavit, at paras 25-30.
[47] May Hausner Affidavit, at para 29 & Exhibit "H"; Supplement to the Seventh Report, Appendix "T".
[48] May Hausner Affidavit, at para 30.

Jomha Skrobot LLP and by the bills of sale delivered for the Vehicles.[49]

39. The bargain was straightforward: the Westcastle GMC Entities would transfer the Vehicles, pay $500,000 from sale proceeds, and provide replacement security against Mr. Koch's personal lands; in exchange, The Loan Store would discharge its caveat over the Westcastle Lands and release or compromise its rights against the Westcastle GMC Entities to permit closing.[50]

40. The Settlement Agreement gave value to the Westcastle GMC Entities in multiple ways. It reduced the outstanding indebtedness owed to The Loan Store, provided a path to remove a caveat which was required for the Westcastle Transaction to close, and allowed the purchaser to take possession of the dealership without the unwanted Vehicles. [51] The Monitor itself has described the Westcastle purchaser as a bona fide purchaser for value and the purchase price as reflective of fair value for the purchased assets.[52]

41. The Loan Store and the Westcastle GMC Entities were represented by counsel throughout the Settlement discussions.[53] The evidence of counsel-to-counsel communications is inconsistent with the Monitor's characterisation of the vehicle transfer as an unexplained, secret, or unsupported disposition.[54] At minimum, the existence, terms, and legal effect of that settlement should be determined through a litigation plan on a proper evidentiary record.

42. It is true that there is no formal settlement agreement executed between The Loan Store and the Westcastle GMC Entities, however the absence of a more polished instrument does not transform a concluded commercial bargain into no bargain at all. The better interpretation is that the parties documented their agreement in the ordinary, compressed manner of a time-sensitive closing: by email between counsel, followed by performance.[55]

43. The Monitor's reliance on Mr. Jomha's evidence to imply that counsel for the Westcastle GMC Entities was not aware of the Vehicle Transfers is selective.[56] Mr. Jomha did say that he had not spoken to Mr. Hausner personally and had never drafted or reviewed a formal agreement involving Mr. Hausner. But he also confirmed that his contact was with The Loan Store's counsel, that the first reference to vehicles came in the December 19 email at 10:28 a.m., and that Mr. Koch told him that part of his deal with The Loan Store included vehicles. The Monitor treats those statements as defeating the settlement; properly read, they confirm the opposite. The settlement was not negotiated between Mr. Jomha and Mr. Hausner personally; it was negotiated and documented between counsel, and Mr. Jomha's own email chain shows that the vehicle package was communicated before closing, was not rejected, and was followed by the issuance of bills of sale.[57]

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[49] May Hausner Affidavit, at paras 25 – 40 & Exhibits "H" & "I".
[50] May Hausner Affidavit, at paras 29.
[51] May Hausner Affidavit, at paras 41-42 & 45.
[52] Fourth Report, at paras 80-83.
[53] January Hausner Affidavit at para 8; January Koch Affidavit at para 13; May Hausner Affidavit, at para 23.
[54] Seventh Supplement, at paras 69 – 72, 81, 84.
[55] January Koch Affidavit, at para 13; January Hausner Affidavit, at para 4; May Hausner Affidavit, at paras 25-36 & Exhibit "H".
[56] Seventh Supplement, at para 70.
[57] May Hausner Affidavit at paras 23-40, Exhibit "I" & "H"; Seventh Supplement, Appendices "S" & "T".

44. The commercial purpose of the settlement is also plain. The Westcastle Purchaser was not taking all used vehicles, and the sale agreement provided that used vehicles would be negotiated case by case and retained by the vendor if value could not be agreed.[58] Mr. Koch swore that the vehicles transferred to The Loan Store were used vehicles the purchaser did not wish to acquire, and that the transfer served the dual purpose of reducing Westcastle's indebtedness and allowing the purchaser to take the dealership premises free of vehicles it had not agreed to purchase.[59] Mr. Hausner swore to the same commercial reality: the settlement both partially satisfied the indebtedness and facilitated closing of the dealership sale.[60] The Monitor cannot fairly endorse the Westcastle transaction as fair, reasonable, and value-maximising while attacking the settlement machinery that permitted that transaction to close.

45. The Monitor's suggestion that the transaction settled only Mr. Koch's personal debt is also inconsistent with the record.[61] The Loan Agreement identifies 2412170 Alberta Ltd. and 2416326 Alberta Ltd. as the borrowers, identifies Mr. Koch as co-signer, and provides for a $1.9 million facility to the Westcastle GMC Entities.[62] Mr. Koch has sworn that the acknowledgement documents bearing his name were receipts identifying the individual who physically collected cash advances on behalf of the Companies, not documents that replaced, amended, novated, or limited the Loan Agreement.[63] Mr. Hausner's evidence is to the same effect.[64] The Monitor's contrary inference[65] elevates an administrative label on cash receipts over the operative loan agreement and the sworn evidence of both the lender and the former director of the borrowers.

46. The insolvency premise is also materially overstated. The Monitor relies on TD's demand, Westcastle's later inclusion in the CCAA proceedings, and the timing of the transfer.[66] But the record also shows that the Monitor's own review of the draft FTI waterfall indicated $500,000 to $800,000 of surplus proceeds available to equity in November 2025.[67] The Monitor also reported that the transaction generated approximately $8.893 million in sale proceeds, with further proceeds to be remitted, and that TD was later paid in full.[68] The Loan Store's position does not require the Court to find solvency at this stage; it requires only recognition that insolvency is not the self-evident answer the Monitor presents, and that the point cannot be used to erase the existence of the Settlement Agreement.

47. The Monitor's "secrecy" narrative[69] is likewise unfair. The Monitor knew of The Loan Store's credit agreement by at least December 15, 2025,[70] requested the related credit

[58] Fourth Report, at Appendix "K" & "L"; April Koch Affidavit, at paras 18-19; May Hausner Affidavit, at para 41, 55-56, 59.
[59] April Koch Affidavit, at paras 18-21.
[60] May Hausner Affidavit, at para 41, 55-56, 59.
[61] Seventh Supplement, at para 71.
[62] April Koch Affidavit, at para 5 & Exhibit "A"; May Hausner Affidavit at Exhibit "E".
[63] April Koch Affidavit, at para 9.
[64] May Hausner Affidavit, at para 14.
[65] Seventh Supplement, at para 62.
[66] Seventh Supplement, at paras 73-74.
[67] Seventh Supplement, at para 11.
[68] Fourth Report, at para 25; Seventh Supplement, at para 28; Seventh Report, at para 135.
[69] Seventh Supplement, at paras 79-81.
[70] Fourth Report, at para 28(a).

and security documents on December 17, 2025,[71] and received documents from Westcastle's insolvency counsel on December 18, 2025.[72] The Monitor had Mr. Hausner's contact information, was in contact with Mr. Jomha,[73] and could readily have contacted The Loan Store or its counsel before seeking relief that directly affected The Loan Store's rights. Instead, the Monitor coordinated with TD Bank and BMO, while no one from the Monitor or its counsel contacted The Loan Store in the three-week period leading to the January 7 hearing.[74] That is not neutrality in action; it is an adversarial record dressed in the language of estate administration.

48. The repeatedly characterises the vehicle transfer as "little or no consideration",[75] "without consideration",[76] "secrecy",[77] "irregular wholesale activity",[78] and lacking business purpose,[79] despite having failed to obtain basic information from The Loan Store before making those adverse allegations.[80] It supported a direct payout to TD Bank, a secured creditor,[81] while insisting that The Loan Store's substantial proprietary and settlement-based claims be channelled through a claims process administered in the first instance by the same Monitor now asking the Court to declare the transfer void.[82] It even omitted The Loan Store from the Seventh Report's list of potential known claimants,[83] despite being fully aware of The Loan Store's asserted claim and proprietary interests.[84] These are not neutral conclusions reached after balanced investigation; they are partisan conclusions reached after selective engagement.

49. Limited weight should be afforded to the Monitor's conclusions on the settlement issue. The contemporaneous record supports the straightforward interpretation most favourable to The Loan Store: a binding settlement agreement was reached between counsel on December 19, 2025; its terms included $500,000, a package of vehicles evidenced by bills of sale, discharge of The Loan Store's caveat, and replacement security; and the agreement was entered into to permit the Westcastle transaction to close. The Monitor's interpretation requires the Court to ignore the vehicle term in the 10:28 a.m. email, discount the absence of any objection by Westcastle's counsel, disregard the bills of sale, and treat part performance as though it never occurred.[85] The Court should reject that artificial construction and find that the better, commercially sensible reading is that the settlement existed and was binding.

50. For these reasons, the Monitor's application should not be treated as a neutral request to preserve estate property. It is, in substance, an attempt to undo a completed, counsel-

[71] Seventh Supplement, at para 22 & Appendix "D".
[72] Seventh Supplement, at para 23 & Appendix "E".
[73] May Hausner Affidavit, at paras 67-68.
[74] May Hausner Affidavit, at para 70.
[75] Fourth Report, at para 28(b).
[76] Seventh Supplement, at Appendix "M".
[77] Seventh Supplement, at para 81.
[78] Seventh Supplement, at para 83.
[79] Seventh Supplement, at para 84.
[80] May Hausner Affidavit, at paras 61, 70.
[81] Seventh Supplement, at para 17.
[82] Seventh Supplement, at paras 28, 53, Appendix "C" & "O".
[83] Seventh Report, at para 138.
[84] Fourth Report, at para 28(a).
[85] May Hausner Affidavit, at paras 23-37, Exhibit "H" & Exhibit "I"; January Koch Affdavit, at para 25.

documented settlement[86] after the Monitor elected not to engage with The Loan Store before advancing a contrary narrative.[87] The Loan Store gave value, accepted vehicles in partial satisfaction of a substantial debt, agreed to facilitate the release of its land interest so the transaction could close, and then saw the cash component frozen only after the fact. [88] The appropriate conclusion is that a binding settlement agreement exists, and any remaining priority, valuation, or tracing issues should be determined on a proper evidentiary record by the Court, not by deference to a Monitor that has already aligned itself against The Loan Store's position.

## E. Refusal of Shareholder Approval

51. On November 7, 2025, the Monitor received correspondence requesting that MK Auto, as shareholder of the Westcastle GMC Entities, consent to the Westcastle Transaction in accordance with section 190 of the Business Corporations Act.[89] The Monitor then made requests to satisfy its due diligence and to determine whether it should provide the shareholder resolution on behalf of MK Auto. The Monitor says that it did not obtain sufficient information to satisfy those requirements.[90]

52. The Monitor reports that up until the eve of closing the Westcastle Transaction, it was not aware of The Loan Store's claim. [91]

53. By December 15, 2025, the Monitor and CRO were aware of The Loan Store's claim. The Fourth Report states that The Loan Store credit agreement was disclosed to the Monitor during a call with Mr. Koch's insolvency counsel on or around December 15, 2025.[92] The Supplement to the Seventh Report states that, on December 17, 2025, counsel for the Monitor requested credit and security documents relating to The Loan Store's claim and proof of funds advanced, and that on December 18, 2025, Westcastle GMC's insolvency counsel provided the documents in its possession relating to The Loan Store.[93]

54. As described above, the Westcastle Transaction then closed on December 19, 2025.[94] The purchaser advanced funds[95] and took operational control,[96] bills of sale for the vehicles were delivered to The Loan Store,[97] and the Westcastle GMC Entities proceeded on the basis of the settlement with The Loan Store and the sale to the purchaser.[98]

55. On the same day, after learning that the transaction had closed without the shareholder resolution, the Monitor exercised shareholder rights on behalf of MK Auto and replaced

[86] May Hausner Affidavit, at paras 23-37, Exhibit "H" & Exhibit "I"; January Koch Affdavit, at para 25.
[87] May Hausner Affidavit, at paras 61, 67, 68, 70.
[88] May Hausner Affidavit, at paras 23-32; April Koch Affidavit, at paras 20-21.
[89] Fourth Report, at para 22; Supplement to the Seventh Report, at para. 14.
[90] Fourth Report, at para 22.
[91] Seventh Supplement, at paras 22-23.
[92] Fourth Report, at para 28(a).
[93] Seventh Supplement, at paras 22-23.
[94] May Hausner Affidavit, at para 31.
[95] January Koch Affidavit, at para 17.
[96] January Koch Affidavit, at para 22.
[97] May Hausner Affidavit, at para 32.
[98] January Koch Affidavit, at paras 18-19.

Mr. Koch as director and officer of the Westcastle GMC Entities with Mr. Lionel Robins of Full Circle.[99]

56. The record supports The Loan Store's concern that the Monitor did not engage with it during the critical period following the closing. The Monitor had Mr. Hausner's contact information through service-list entries and prior CRO communications concerning Edmonton Car Sales, and it was also in contact with Mr. Jomha, who could have identified The Loan Store's counsel.[100] Nevertheless, neither the Monitor nor its counsel contacted The Loan Store or LinQ Law between December 19, 2025 and the January 7, 2026 application to ask about the loan, the caveat, the settlement agreement, or the vehicles.[101]

57. During that same period, the Monitor and its counsel were coordinating with TD Bank, BMO, and their counsel concerning how to complete the vesting of the Westcastle properties and deal with the sale proceeds. The Supplement to the Seventh Report records discussions between December 30, 2025 and January 4, 2026 among the Monitor, the Monitor's counsel, TD Bank's counsel, and BMO's counsel. The Loan Store was not included in that dialogue despite being the creditor whose caveat, settlement, and vehicle transfer were directly implicated.[102]

58. Exhibit "D" to the January Koch Affidavit is central to the fairness analysis. At approximately 3:11 p.m. on the closing date, TD's counsel increased the payout demand by approximately $1,059,833, from $7,497,145.67 to approximately $8,556,979. Mr. Koch's evidence is that the revised demand included additional Dentons legal fees, a $700,000 cash reserve for possible CCAA clawback claims, an increase on his Visa, and an increase on his vehicle loan.[103] The corresponding email states that, given the threat of a demand or claim from the Monitor in the CCAA for pre-filing cash injections into Westcastle, TD required a $700,000 cash reserve for possible clawbacks the Monitor or another stakeholder might claim against TD.[104]

59. The practical effect of those demands was to cause TD to not consent to the Westcastle transaction, thereby preventing its completion and The Loan Store from receiving the $500,000 payable under the settlement.[105] Before the revised demand and reserve, the transaction was proceeding on the basis of a payout that would permit closing;[106] after the revised demand, Mr. Jomha advised that all funds were frozen in trust pending resolution with another registered party, and the sale was ultimately brought into the CCAA proceedings to provide a mechanism for clear title and distribution.[107]

60. The materials support at least the inference that the Monitor's communications with TD concerning potential pre-filing transfer claims had the effect, whether intended or not, of causing TD to withhold discharges or support unless the increased payout and reserve

[99] Fourth Report, at para 27; Seventh Supplement, at para 26, Appendices "F" & "G".
[100] May Hausner Affidavit, at paras 61, 66-70.
[101] May Hausner Affidavit, at paras 61, 70.
[102] Seventh Supplement, at para 28.
[103] January Koch Affidavit, at para 20 and Exhibit "D".
[104] January Koch Affidavit, Exhibit "D".
[105] May Hausner Affidavit, at para 47.
[106] January Koch Affidavit, at paras 8-14.
[107] January Koch Affidavit, at paras 20-23.

were satisfied.[108] The record also shows coordination among the Monitor, TD, and BMO during the relevant period.[109]

61. The January 7 application materials did not fairly present The Loan Store's deal to the Court. The Notice of Application and Fourth Report sought to include Westcastle in the CCAA proceedings and vest the purchased assets, while the Fourth Report characterised The Loan Store as a newly disclosed creditor and described vehicle transfers for "little or no consideration" without setting out The Loan Store's claim, counsel-negotiated settlement, or the fact that the purchaser did not want the used vehicles.

62. At the January 7 hearing, the Court asked whether The Loan Store was present. The transcript records that no one appeared and that counsel had not reached out and did not know who represented The Loan Store.[110] The Loan Store says that answer illustrates the problem: the Monitor sought urgent relief that directly affected The Loan Store's rights before taking the obvious step of contacting Mr. Hausner or asking Mr. Jomha for The Loan Store's counsel's information.

**F. The January 7 and January 9 Applications — Insufficiency of Notice**

63. The Affidavit of Service of Marica Ceko sworn January 6, 2026 states that unfiled application materials were served by TitanFile on January 5, 2026, filed materials were served by email on January 6, 2026, and updated clean versions of the proposed orders were served by TitanFile on January 6, 2026.[111] The service materials show The Loan Store being served at INFO@THELOANSTORE.CA, including the initial January 5 email, the filed materials on January 6, and clean and redlined versions of the proposed orders sent late in the evening on January 6.[112]

64. That service was insufficient in the circumstances. The Loan Store was a material creditor with an asserted proprietary claim measured in the millions of dollars; [113] the Monitor knew of the claim by mid-December; [114] the Monitor had Mr. Hausner's contact information; and the Monitor could readily have asked Mr. Jomha to identify The Loan Store's counsel.[115] A single generic customer-service email address was not a fair substitute for meaningful notice where the application sought orders that would vest assets free and clear of The Loan Store's asserted interests and alter the intended distribution waterfall.

65. The insufficiency is compounded by the content of the materials. The application materials did not identify the settlement with The Loan Store, did not set out The Loan Store's asserted claim, did not explain that the vehicle transfer was part of a counsel-negotiated arrangement that included discharge of a caveat and replacement security, and did not fairly disclose the effect of the proposed orders on The Loan Store's rights. The Court was therefore asked to proceed on an incomplete picture of the affected creditor landscape.

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[108] January Koch Affidavit, Exhibit "D"; Supplement to the Seventh Report, at paras 28-32.

[109] Supplement to the Seventh Report, at para 28; Miller Thomson fee records for January 1-2, 2026.

[110] January 7 Transcript, p. 20, lines 3-18.

[111] Affidavit of Service of Marica Ceko, at paras 2-4.

[112] Affidavit of Service of Marica Ceko, Exhibits "A", "C" and "D".

[113] Seventh Supplemental, at paras 54-56 & Appendices "P", "Q" and "R".

[114] Fourth Report, at para 28(a).

[115] May Hausner Affidavit, at paras 61, 66-70.

The Monitor's evidence is that it did not know about the settlement,[116] however, it had sufficient time and the means to reach out to The Loan Store or its then counsel between becoming aware of The Loan Store's claim on December 15, 2026 and the Court applications on January 7 and 9, 2026, and did not.[117]

66. The transcripts confirm that The Loan Store did not meaningfully participate or did counsel for the other parties address The Loan Store's position substantively. On January 7, when the Court asked whether The Loan Store was present, no appearance was identified.[118] On January 9, the appearances did not include The Loan Store.[119] The Loan Store accordingly takes the position that it did not have the fair opportunity that should have been afforded to a substantial creditor whose proprietary interests were being affected in real time.

**G. Lack of Evidence of Insolvency of the Westcastle GMC Entities**

67. The Monitor asserts that Westcastle was insolvent at the time of the vehicle transfer, relying on TD Bank's September demands, the later Westcastle CCAA Order, and the Monitor's preference analysis.[120] The Loan Store does not accept that those matters, without more, establish what the Westcastle GMC Entities' actual financial conditions were at the time of the settlement and vehicle transfer.[121] Insolvency must be determined on evidence of the entities' balance sheet and cash-flow position at the relevant time, not inferred from the Monitor's later characterisation of a transaction it did not investigate with The Loan Store before seeking relief.

68. The TD correspondence is important because it shows an evolving position, not a static insolvency fact. Mr. Koch's evidence is that TD first issued an unexpectedly high payout because it included floor plan financing for used vehicles that were not part of the purchaser's transaction. After Mr. Koch provided an Excel spreadsheet separating the vehicles being sold from those to be retained, TD provided a revised payout statement of $7,497,145.67.[122] That sequence is consistent with a transaction capable of closing on an agreed waterfall, rather than an inevitable insolvency event.

69. The later change in TD's position materially altered the outcome. The January Koch Affidavit and Exhibit "D" record that TD's counsel then increased the payout by approximately $1,059,833, including additional professional fees and a $700,000 reserve tied to potential claims by the Monitor or other CCAA stakeholders.[123] Mr. Koch's evidence, echoed in his January 9 submissions, is that these changes prevented the original deal from cascading through the creditor waterfall as contemplated.[124]

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[116] Seventh Supplemental, at para 20

[117] May Hausner Affidavit, at paras 66-70.

[118] January 7 Transcript, p. 20, lines 3-18.

[119] January 9 Transcript, appearances page.

[120] Supplement to the Seventh Report, at paras. 73-74, 78-86.

[121] May Hausner Affidavit, at paras 62-65.

[122] January Koch Affidavit, at paras 6-10 and Exhibits "A" and "B".

[123] January Koch Affidavit, at para 20 and Exhibit "D".

[124] January Koch Affidavit, at paras 20-27; January 9 Transcript, p. 5 lines 21-41

70. The evidence supports a distinction between insolvency of the Westcastle GMC Entities and a transaction failure caused or materially exacerbated by post-closing conduct. The Monitor's own materials state that the purchaser advanced approximately $8.893 million in sale proceeds, that TD Bank was ultimately repaid in full, and that the Monitor viewed the purchase price as reflecting fair value.[125] Those facts are inconsistent with treating insolvency at the moment of transfer as self-evident.

71. The Court's Westcastle CCAA Order was obtained in the context of an urgent impasse and on a record that did not include The Loan Store's evidence or meaningful participation. It should not preclude The Loan Store from contesting the Monitor's insolvency and preference allegations now that the Court has before it evidence of the loan, the settlement, the used-vehicle terms of the sale agreements, and the changing TD payout position. A litigation plan is therefore necessary to test the Monitor's insolvency and preference theories on a complete record.

## III. ISSUES

72. The issues considered in this Brief are:

    a. Does The Loan Store have proprietary interest in the Westcastle sale proceeds?

        i. Does The Loan Store have a valid equitable Interest?

        ii. Can The Loan Store marshal into TD's secured position?

    b. Is the transfer of the Vehicles, as a term of the Settlement Agreement, to The Loan Store a preferential payment to a creditor under the BIA section 95(1)(a) and the CCAA section 36.1(1) and therefore void?

    c. Should The Loan Store's claims be determined in the Claims Process?

    d. What sales process for the Vehicles will maximize their value, The Loan Store's or the Monitor's?

    e. Is it appropriate in the circumstances to grant an order permitting The Loan Store to examine Lionell Robbins under oath?

    f. In respect of the Westcastle Administration Charge:

        iii. Should paragraphs 8 and 9 of the Westcastle GMC CCAA Order be varied or clarified in respect of counsel for BMO's entitlement to the Westcastle GMC Administration Charge?

[125] Fourth Report, at paras 25, 80-81; Sixth Report of BDO Canada Limited in its Capacity as the Court-Appointed Monitor filed March 19 2026 (the "**Sixth Report**"), at paras 69-70; May Hausner Affidavit, at paras 58-60.

iv. Is it fair and appropriate that the entirety of the Monitor's and its counsel's fees incurred in the Summit Group CCAA Proceedings be paid entirely from the Westcastle GMC Entities estate?

v. Is it necessary to increase the Westcastle GMC Administration Charge?

## IV. LAW AND ARGUMENT

### A. The Loan Store has a Proprietary interest in the Westcastle Sale Proceeds

#### a. The Loan Store Has a Valid Equitable Interest in the Sale Proceeds

##### i. Law

73. At paragraph 60 of the Seventh Supplement, the Monitor specifically acknowledges that the requirements of the Land Titles Act (Alberta) are not required for the creation of a equitable charge in land, and further, that no specific language is necessary.

74. This is a point of law reiterated in numerous cases, including in Frado v. Bank of Montreal at para 12 which states:

> There is another fallacy in the submission in question. A mortgage, be it the common law mortgage, the statutory mortgage or an equitable mortgage, is a contract. **An equitable mortgage, in order to be an equitable mortgage, does not have to take a particular form.** A deposit of title deeds is merely one of the methods by which an equitable mortgage can be created. **As an equitable mortgage is a matter of contract, the form of the contract is irrelevant**.[126] (emphasis added)

75. For example, in Powers, Re, the Court held that a handwritten note that pledged "any and all assets" was sufficient to create an equitable charge in the land.[127]

76. As such, strict identification requirement of the land in question does not need to be specifically identified so long as the charging agreement is not void for uncertainty.[128]

77. Of assistance, the CED states that an "agreement to charge land and execute a mortgage on demand will create a present equitable mortgage".[129]

78. A more recent decision from the Alberta Court of Appeal in Sunridge Nissan Inc. v. McRuer stated:

[126] *Frado v. Bank of Montreal*, 1984 CarswellAlta 161, at para 12.
[127] *Powers, Re*, 2005 ABQB 660, at para 16.
[128] *Ibid*, at para 12.
[129] CED § 19. Agreement to Mortgage.

> An equitable mortgagee is entitled to exercise the same remedies as the holder of a legal mortgage [130]

79. In discussing what is an equitable mortgage, the Court in Sunridge, stated at para 19:

> Unlike a legal mortgage that transfers the legal title in the property to the mortgagee, an equitable mortgage is a contract that creates in equity a charge upon the property, one that is enforceable under the equitable jurisdiction of the court. As neatly summarized in *Elias Markets Ltd., Re*, 2006 CanLII 31904 (Ont CA) at para 65:
>
> > In essence, the concept of an equitable mortgage seeks to enforce the common intention of the mortgagor and mortgagee to secure property for either a past debt or future advances, where that common intention is unenforceable under the strict demands of the common law.[131]

80. As such, a key requirement in finding an equitable charge is finding that there was a common interest to secure the loan by way of land. [132]

81. It is also well-established that an equitable mortgage gives the lender a priority interest over unsecured parties in the sales proceeds of the land.[133]

### ii. ARGUMENT

82. There is no ambiguity in the language of the Loan Agreement seeking a charge or security in the Land.

83. Firstly, the description of the land is unambiguous. Paragraphs 12 of the Loan Agreement outlines that in exchange for the Loan, The Loan Store is getting security in the land and buildings located at West Castle Chevrolet 1100 Waterton Avenue, Pincher Creek, AB T0K 1WO.

84. Secondly, notwithstanding the Monitor opining on the intentions of the parties as an outside observer who has not made even cursory inquiries into the parties intentions, one only needs to read the plain language of the Loan Agreement to establish the common intent to grant a charge against the Westcastle Land.

85. In addition to paragraph 12 referenced above, the Loan Agreement goes into specifics at paragraph 13 which reiterates that The Loan Store is being provided security in the land. The provision goes on to even establish future options to formalize the security interest but does not mandate the same.

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[130] *Sunridge Nissan Inc. v. McRuer*, 2023 ABCA 128, at para 26 ("***Sunridge***").
[131] *Ibid*, at para 19.
[132] *Ibid*, at para 19.
[133] *Rahemtulla v. Kushwaha*, 2013 ABQB 136, at para 19.

86. Paragraph 9 of the Loan Agreement confirms that The Loan Store will have a subordinate position to TD in the land – again only reaffirming the parties mutual intention and understanding to grant a charge in the lands.

87. Further, during the negotiations of the Settlement Agreement, the parties specifically contemplated the discharge of The Loan Store's interest in the lands so the Westcastle Transaction could proceed.

88. It is unclear why the Monitor has not taken any steps to inquire why a caveat was not registered earlier. That said, the issue is moot as a caveat does not afford any rights in land, it simply provides notice that a party is claiming an interest.

89. The sole reasoning given by the Monitor challenging the validity of the Loan Agreement's ability to charge the land appears to be focused on use of the language "security interest" notwithstanding reading the Loan Agreement as a whole eliminates any confusion as to what the parties intentions were.

90. Respectfully, the Monitor appears to have taken an overly formalized approach in its assessment and as noted in numerous court decisions, the form of the contract is irrelevant and there are no specific requirements for an equitable charge.

91. As an aside, and a point not addressed by the Monitor despite being aware that The Loan Store is claiming an equitable interest in the land, is that The Loan Store's equitable interest would take priority over any and all unsecured creditors.

92. As such, a determination as to The Loan Store's interest in the land is paramount to any claims process.

### b. The Loan Store is Entitled to Marshal into TD's Secured Position

#### i. LAW

93. The Loan Store does seek to provide an exhaustive accounting of the law on marshalling at this juncture; its intention is to simply raise that this is a live issue that will require future determination; specifically whether or not The Loan Store is entitled to marshal into the rights of TD.

94. Succinctly, the doctrine of marshalling in its most basic form states that a person having resort to two funds shall not, by choice, disappoint another who only has one.[134]

95. Marshalling is used to prevent the arbitrary action of a senior creditor from destroying the rights or expectations of a junior creditor or a creditor with less security.[135] It is used to lessen the chance that the junior creditor may lose its security solely at the whim of the senior creditor's choice of property to pursue.[136]

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[134] *Trimmer v Bayne (1803)*, 9 Ves June 209 at 211, 32 ER 582 (Eng Ch) at 583.

[135] *Surrey Metro Savings Credit Union v Chestnut Hill Homes Inc.*, 1997 CarswellBC 153 at para. 54.

[136] *Surrey Metro Savings Credit Union v Chestnut Hill Homes Inc.*, 1997 CarswellBC 153 at para. 54

96. The seminal decision with respect to the doctrine of marshalling in Alberta is First Investors Corp. v Veeradon Developments Ltd., 1988 ABCA 38 ("First Investors"), which, in addition to relying on the above quoted passages, adopted the following reformation of the doctrine:

> 1. The doctrine. Where there are two creditors of the same debtor, one creditor having *a right to resort to two funds of the debtor for payment of his debt*, and the other a right to *resort to one fund* only, the court will so "marshall" or arrange the funds that both creditors are paid as far as possible. "A person having resort to two funds shall not by his choice disappoint another, having one only." Though the doctrine has several applications, marshalling as between mortgagees is perhaps the most usual. If, for instance, a person having two estates, Blackacre and Whiteacre, mortgages both estates to A, and afterwards mortgages only Blackacre to B, either with or without notice of A's mortgage, the proper course is for A to realise his debt first out of Whiteacre and to take only the balance out of Blackacre, in order to leave as much as possible of Blackacre to satisfy B. The *doctrine of marshalling is not allowed to prejudice the first mortgagee, however, and A can therefore realise his securities as he pleases*, for A is not a trustee for B. But if A pays himself out of Blackacre, B is allowed to resort to Whiteacre to the extent to which Blackacre has been exhausted by A, and to have the same priority against Whiteacre as A had.
>
> 2. No marshalling to the prejudice of purchasers. In the above example, B's right to marshal will be enforced not only *against the original mortgagor* but also against all persons claiming through him as volunteers, as where the mortgagor dies and Blackacre and Whiteacre pass to different persons. But it is not allowed to prejudice purchasers or mortgagees of one of the estates. Thus if in the above example the mortgagor had created another mortgage of Whiteacre in favour of C, B would have no equity to throw the whole of A's mortgage on Whiteacre, and so destroy C's security.[137]
>
> [*Emphasis* in original]

97. The doctrine of marshalling is not applied only to mortgages,[138] and has been applied, or acknowledged that it could be applied, in other circumstances, including with respect to builders' liens,[139] wrongful pledges,[140] and with respect to guarantees.[141]

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[137] *First Investors Corp. v Veeradon Developments Ltd.*, 1988 ABCA 38 at para. 11.
[138] *Gerrow v Dorais*, 2010 ABQB 560 at para. 27.
[139] *Narduzzi v Richardson*, 2009 BCSC 588 at para. 29.
[140] *CA Macdonald & Co., Re*, 1961 CarswellAlta 3.
[141] *Scott Steel Ltd. v "Alarissa" (The)*, 1996 CarswellNat 519.

### ii. ARGUMENT

98. While The Loan Store does not believe this is an appropriate time to resolve whether or not The Loan Store is entitled to marshal into the TD Bank's secured position respecting the Vehicles, The Loan Store maintains its right to do so.

99. Given the complex and legal nature of this determination, it is respectfully submitted this further supports the need for a court adjudicated process to resolve The Loan Store's interest in the Westcastle Estate.

## c. The transfer of the Vehicles to The Loan Store, as part of the Settlement Agreement, did not constitute a preferential payment to a creditor and is therefore not void

### i. LAW

100. Section 95(1)(a) of the BIA,[142] incorporated into the CCAA under Section 36.1(1),[143] permits a monitor to set aside preferential transactions only where:

a. the transaction occurred within three months before CCAA proceedings commenced;
b. the debtor company was insolvent on the transaction date;
c. the parties dealt at arm's length; and
d. the transaction gave the creditor a preference over other creditors.[144]

101. Once these elements are established, section 95(2) of the BIA presumes the transaction was made to prefer the creditor. The creditor must then prove, on a balance of probabilities, that the debtor's dominant intention was not preferential—assessed objectively.[145]

### ii. ARGUMENT

102. The Monitor has not proven these elements. Critically, the Westcastle GMC Entities were not insolvent on December 19, 2025, the date the Westcastle Dealership Sale Agreement and the Settlement Agreement closed.

103. In order for the transaction to be preferential and therefore void, the debtor company must be bankrupt or insolvent, or deemed insolvent under the Winding-up and Restructuring Act.[146] The CCAA does not define "insolvent", as a result, courts apply the BIA's "insolvent person" definition.[147]

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[142] *Bankruptcy and Insolvency Act,* R.S.C., 1985 c. B-3 ("***BIA***") section 95.
[143] *Companies' Creditors Arrangement Act,* R.S.C., 1985, c. C-36 ("***CCAA***") at section 36.1(1).
[144] *Accel Canada Holdings Limited, Re*, 2020 ABQB 204 at paras 27-28.
[145] *Accel Canada Holdings Limited, Re*, 2020 ABQB 204 at paras 58-59
[146] CCAA s. 2(1).
[147] *UBG Buildings Inc. Re*, 016 ABQB 472 at para 110

104. The BIA defines an "insolvent person" as one who is not bankrupt, resides or carries on business or has property in Canada, has liabilities exceeding $1,000, and:

a. cannot meet obligations as they generally become due;
b. has ceased paying current obligations in the ordinary course of business as the generally become due; or
c. the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due.[148]

105. Section 95 requires proof of insolvency on the transaction date—not "around" it. Courts require clear, date-specific evidence and will not presume insolvency.[149]

106. In Servus Credit Union v JRD Investments Inc., [150] the Court considered whether a debtor was insolvent and therefore payment was void as a fraudulent preference under the Fraudulent Preference Act. Although that case was decided under the provincial Fraudulent Preference Act rather than section 95 of the BIA, the insolvency analysis is analogous because both statutes require proof that the debtor was insolvent at the relevant time. The Court confirmed that an unpaid debt alone does not prove insolvency.[151] In order to determine a company's solvency, "it is not sufficient for a petitioning creditor to prove that an unpaid debt is owed to him alone. Some evidence is required that the debtor has ceased to meet his liabilities to others and the allegation must be strictly proven."[152]

107. The Monitor has failed to provide on the record any contemporaneous evidence, such as a separate valuation, balance sheet, cashflow analysis, or creditor affidavits proving insolvency on December 19, 2025. The Bezner affidavit (sworn January 8, 2026) establishes only that TD made demands on September 12, 2025, the debt was $7,791,547.24, and $3,441,564.80 was paid post-transaction—none of which proves insolvency on the Vehicle transfer date.[153] Without such evidence, the section 95 claim fails at the threshold.

108. The Monitor's own Supplement to the Seventh Report undermines any suggestion of insolvency. FTI's draft review included an estimated proceeds waterfall based on Westcastle GMC's balance sheet showing approximately $500,000 to $800,000 of surplus realization proceeds available to the equity interest. This contemporaneous estimate is flatly inconsistent with any claim that insolvency at closing was self-evident.[154]

109. Even if insolvency were established, the presumption is rebutted: the Westcastle Transaction and Settlement Agreement was a bona fide commercial transaction to facilitate a global repayment plan for all creditors of Westcastle in existence at that time—not an attempt to prefer one creditor.

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[148] *BIA* at s. 2.
[149] *UBG Buildings Inc. Re*, 016 ABQB 472 at paras 111, 112 and 130.
[150] 2020 ABQB 249.
[151] Ibid at para 38.
[152] Ibid at para. 40.
[153] Affidavit of Amanda Bezner sworn on January 8, 2026 at paras 22-24.
[154] Seventh Supplement, at para. 11

110. In ATB Financial v Devlin Construction Ltd.[155], the Court identified principles for rebutting the presumption:

a. The creditor must show the debtor's "dominant intent" was not preferential;

b. The standard is balance of probabilities;

c. Although the creditor bears the onus, it is the debtor's intention that governs;

d. The demonstrated intent must be objectively reasonable;

e. A stated desire to stay in business may suffice if there is a reasonable probability of survival; and

f. Evidence of creditor "pressure" is inadmissible to rebut the presumption.156

111. In Catalina Exploration & Development Ltd., Re,[157] the Court considered a novation agreement under which an insolvent general contractor's obligations to a subcontractor were restructured so that the subcontractor would complete the remaining work and be paid directly by the project owner. The Court found the presumption rebutted, holding that "the continuance of the Little Chicago job was for the benefit, not only of the bankrupt, but of all its creditors" and that the novation was "in no sense a preference but was beneficial for everyone concerned."[158]

112. In Orion Industries Ltd. (Trustee of) v Neil's General Contracting Ltd. ("Orion Industries"), [159] the Court of Appeal held that a preferential payment by an insolvent company may be valid where the dominant intent was not to prefer but to secure access to a valuable asset for future sale in order to generate revenue for creditors' benefit. The Court held that "even a preferential payment made by a insolvent company at a time when its financial collapse is inevitable may be found to be legitimate if the payment was made with a view to generating income or liquidating assets to satisfy the insolvent's creditors".[160]

113. We submit that the circumstances surrounding the Westcastle Transaction and the Settlement Agreement are analogous to Orion Industries.

114. Here, the intention of the Debtor company in entering the Settlement Agreement, was to enable the Westcastle Dealership Sale Agreement to close and all creditors to be paid in full.[161]

115. Consideration in a transaction is fair and reasonable if the payment and consideration are reasonably proportionate—the law does not require penny-for-penny

[155] 2020 ABQB 574.
[156] Ibid at para 6.
[157] 1971 CarswellAlta 3.
[158] *Ibid* at para 24.
[159] 2013 ABCA 330.
[160] *Ibid* at paras 12, 16-17.
[161] January Koch Affidaivt, at para 24.

equivalence.[162]

116. The Loan Store gave consideration to Westcastle for the Vehicles in two forms:

a. The Loan Store accepted the Vehicles in partial satisfaction of the substantial indebtedness owed by the Westcastle GMC Entities to The Loan Store under the Loan Agreement. As at December 19, 2025, the Westcastle GMC Entities owed The Loan Store $2,202,438.36. The transfer of the Vehicles reduced the amount owing by the Westcastle GMC Entities to The Loan Store. The absence of "cash proceeds" does not mean there was no consideration; it means that the consideration took the form of a reduction in the debt owed by the Westcastle GMC Entities to The Loan Store rather than a cash payment.
b. As part of the Settlement Agreement, The Loan Store agreed to discharge its caveat registered against the real property at 1100 Waterton Ave, Pincher Creek, AB T0K 1W0. This discharge was a necessary condition to allow the Westcastle Transaction to close. The caveat protected The Loan Store's interest in the real property. By agreeing to discharge the caveat, The Loan Store gave up a valuable property right. This discharge constituted valuable consideration flowing from The Loan Store.[163]

117. The Fourth Report further confirms the legitimacy of the transaction: closing occurred on December 19, 2025, at a purchase price of approximately $9.184 million; the Monitor itself concluded that the purchase price reflected fair value; and the Westcastle Dealership Purchaser was a bona fide purchaser for value. TD Bank was subsequently repaid in full from the sale proceeds and related receipts—demonstrating that the transaction benefited, rather than prejudiced, the creditor.

118. The transfer of the Vehicles to The Loan Store, as part of the Settlement Agreement, does not meet the statutory requirements for a voidable preference under BIA s. 95(1)(a) or CCAA s. 36.1(1). The debtor was not insolvent at the time of the Settlement Agreement, and The Loan Store gave valuable consideration—including discharging its caveat to enable the Westcastle Transaction to close. The Westcastle Dealership Sale Agreement benefited, rather than prejudiced, creditors.

### d. The Loan Store's Claims Should not be determined in a Claims Process

119. The Monitor has applied for a Claims Procedure Order in these proceedings to determine claims made against the Westcastle GMC Entities. The Loan Store opposes this relief and requests that this Honourable Court instead order a litigation schedule to determine the validity and enforceability of The Loan Store's claim.

#### i. LAW

120. While the Court has the authority to grant a claims process pursuant to section 11 of the CCAA,[164] the objective of a validly constituted claims process is "to achieve cost-

[162] *Servus Credit Union v JRD Investments Inc.,* 2020 ABQB 249 at para 55.
[163] May Hausner Affidavit, at para 50.
[164] *CCAA* at section 11.

effective, timely decisions, and procedural and systemic fairness and efficiency".[165]and to "serve the best interests of the commercial parties".[166]

121. A claims process must therefore be proportionate to the nature of the dispute it is being asked to determine. It is respectfully submitted that where the proposed process would impose disproportionate cost and risk on one creditor, or would materially affect proprietary rights before those rights have been adjudicated, it is not an appropriate use of estate or Court resources.

122. Starting at paragraph 41 of Royal Bank v. Cow Harbour Construction Ltd., the Court cited Justice Romaine in BA Energy stating:

> "The objective of a claims procedure order is to attempt to ensure that all legitimate creditors come forward on a timely basis. A claims procedure order provides the debtor and the Monitor with the information necessary to fashion a plan that may prove acceptable to the requisite majority of creditors given the financial circumstances of the debtor and that may be sanctioned by the court. The fact that accurate information relating to the amount and nature of claims is essential for the formulation of a successful plan requires that the specifics of a claims procedure order should generally be observed and enforced, and that the acceptance of a late claim should not be an automatic outcome. The applicant for such an order must provide some explanation for the late filing and the reviewing court must consider any prejudice caused by the delay.
>
> The claims procedure process was developed to give creditors a level playing field with respect to their claims and to discourage tactics that would give some creditors an unjustified advantage. Situations that give rise to concerns of improper manipulation of the process by a creditor must be carefully considered."[167]

123. Courts will look at a number of factors in assessing whether to approve a claims process order, including whether there is opposition from any stakeholders and whether the proposed process will cause unfairness to any stakeholders.[168]

124. Generally speaking, it is of upmost importance that the priority of secured creditors be recognized in a CCAA proceeding.[169]

### ii. ARGUMENT

125. The proposed Claims Procedure should not be approved at this stage. The Loan Store's claim is not merely an unsecured claim to be quantified alongside unsecured creditors. It is a proprietary claim over the Westcastle Lands, the Vehicles, and the sale proceeds generated from assets in which The Loan Store says it holds an interest.

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[165] *Pacer Construction Holdings Corporation v. Pacer Promec Energy Corporation [**Pacer**]*, 2018 ABCA 113, at para 102.
[166] *Pacer*, at para 93.
[167] *Royal Bank v. Cow Harbour Construction Ltd.*, 2011 ABQB 223, para 45.
[168] *U.S. Steel Canada Inc. (Re)*, 2017 ONSC 1967.
[169] *Windsor Machines & Stamping Ltd., Re*, [2009] OJ No 3195 ["*Windsor*"] at para 43.

126. Using the sale proceeds which, on the face of the Loan Agreement and the Settlement Agreement, are claimed by The Loan Store as secured or proprietary collateral, to fund a comprehensive claims process before The Loan Store's rights have been determined is procedurally unfair. If The Loan Store's proprietary interest is valid, then the proposed process would be funded from the very proceeds to which The Loan Store claims priority, thereby eroding its equity position and reallocating the cost of a general creditor process to one creditor.

127. The proposed Claims Procedure is also inefficient and disproportionate because it may be unnecessary, or substantially narrowed, if The Loan Store's proprietary interest is found to be valid. The determination of The Loan Store's claim and priority over the Vehicles and sale proceeds is therefore a paramount issue that should not be commingled with a broader claims process directed primarily to remaining unsecured creditor claims. Respectfully, the legal and factual issues raised by The Loan Store's claim — including the nature of the Loan Agreement, the effect of the Settlement Agreement, the priority of any interest in the sale proceeds, including The Loan Store's position that it ought to be able to marshal into TD's position, and the treatment of the Vehicles — are sufficiently complex that they should be determined by the Court in the first instance.

128. The Monitor's proposed Claims Procedure also fails to give sufficient weight to the position of The Loan Store, which is the primary remaining creditor asserting a substantial proprietary. As noted in the materials, The Loan Store is owed $2,750,755.00, significantly more than any other creditor which may have a claim[170]. Its opposition to the proposed Claims Procedure is therefore a material stakeholder objection that should weigh against approval of the process in its current form.

129. The fairness concern is heightened by the Monitor's own statements and proposed relief. The Monitor has stated that it has not "opined on the validity, enforceability or priority of The Loan Store claim or the Security Package" [171], yet its materials also advance conclusions that the vehicle transfer is void, that the transfer was for little or no consideration, and that entitlement to the Vehicles and proceeds should be dealt with through the proposed Claims Procedure [172].

130. The Seventh Report, read together with the Seventh Supplement, illustrate the difficulty: the Monitor disclaims a final opinion on The Loan Store's security position while at the same time advancing conclusions and proposed relief that would materially affect the very rights said to remain undetermined. That is not a criticism of the Monitor's institutional role, but it does demonstrate why a process in which the Monitor makes the first-instance determination of The Loan Store's claim would not provide the appearance or substance of a genuinely open adjudicative process.

131. The Monitor has already stated that it is not in a position to determine the validity, enforceability, or priority of The Loan Store's claim without further information[173]. Given the length of time that The Loan Store's asserted interest has been known, this suggests that Court determination is likely required in any event and that an interim claims adjudication process would add cost and delay rather than resolve the core dispute.

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[170] The May Hausner Affidavit, at para 22; Seventh Report at para 138.

[171] Seventh Report at para 104.

[172] Seventh Supplement at paras 65-72 including the heading and paras 75-86.

[173] Seventh Supplement at Appendix "T".

132. We are also concerned that the complexity of The Loan Store's claims, including the factual interpretation differences and in particular, the marshalling argument are not well suited for a claims process and will likely require a court determination. Therefore, it is more efficient to simply invoke that process now rather than going through the motions of a claims process.

133. As noted earlier in this brief, the Monitor's materials and the CRO's reports contain conclusions adverse to The Loan Store's position, including conclusions as to consideration, preference, and the character of the Vehicle transfers. Those conclusions may be contested, but they also underscore that the dispute is now litigation-like in nature and should be determined through a litigation schedule rather than through the Monitor's initial adjudication.

134. The Monitor and CRO have made comments which appear conclusory in nature and allege facts from which misconduct or impropriety may be inferred[174], while also maintaining that no opinion has been given on the validity, enforceability or priority of The Loan Store's claim[175]. Respectfully, those positions are difficult to reconcile for the purpose of a claims process in which The Loan Store would first be required to submit to the Monitor's determination;

135. The Loan Store also raises concerns about the extent and timing of communication with it before orders were obtained affecting its proprietary rights and interests. Those concerns are relevant to process and prejudice, particularly where the proposed Claims Procedure may bar, extinguish, discharge, or release claims if strict procedural steps are not met.

136. Given the foregoing, it is respectfully submitted that approval of the proposed Claims Procedure at this stage would be an inefficient use of estate resources, and would cause real and disproportionate prejudice to The Loan Store if its claim and proprietary interests are ultimately established. The more appropriate course is for the Court to direct a litigation schedule for the prompt determination of The Loan Store's claim, including its asserted interests in the Vehicles and sale proceeds, before any broader claims process is implemented or funded from the disputed proceeds.

### e. The Loan Store Ought to Be Able to Liquidate the Vehicles

## I. ARGUMENT

137. The Loan Store wants the Vehicles sold to preserve value; it opposes the Monitor's request to take custody of them and sell them through a Monitor-controlled wholesale auction process before the Court has determined who owns them and who is entitled to their value. The requested relief is premature and unnecessary because The Loan Store can sell the Vehicles through its own retail and dealer channels under Court-approved safeguards that preserve the parties' positions and protect the net proceeds pending determination of entitlement.

[174] May Hausner Affidavit, at paras 49-53, for example.
[175] Seventh Report, at para 104.

138. The threshold problem is that ownership of the Vehicles has not been determined. As has been outlined in this brief, The Loan Store's position is that it acquired the Vehicles pursuant to a negotiated settlement arrangement, supported by bills of sale, and in partial satisfaction of the indebtedness owing by the Westcastle GMC Entities. The Monitor disputes that position and seeks an order declaring the transfer void, but the Monitor's own Seventh Supplement acknowledges that its counsel has not opined on the validity, enforceability, or priority of The Loan Store's claim or security package. In those circumstances, the Vehicles should not be sold by the Monitor as estate property; they should be sold by The Loan Store under a supervised process that preserves all parties' entitlement arguments until the proprietary dispute is finally determined.

139. Until ownership is determined, any sale process must preserve—not prejudice—The Loan Store's proprietary position. If the Monitor sells the Vehicles now, The Loan Store's asserted proprietary interest will be converted into a disputed proceeds claim and exposed to further professional costs and charges before entitlement has been adjudicated. That prejudice is heightened because the Monitor is also seeking to increase the Westcastle GMC Administration Charge from $250,000 to $500,000 to secure professional costs in respect of the Westcastle GMC estate[176]. No such charge should attach to the Vehicles unless and until the Court determines that the Vehicles are property of the Westcastle GMC estate.

140. The Vehicles should be sold now to preserve value, but they should be sold by The Loan Store, which is better placed than the Monitor to maximize net sale proceeds.

141. Since 2007, The Loan Store has been in the business of purchasing, reconditioning, financing, marketing, and selling motor vehicles at both the wholesale and retail level[177]. Mr. Hausner is licensed by AMVIC to sell motor vehicles, and The Loan Store holds AMVIC registration for broker, leasing, retail, and used sales activities[178]. The Loan Store also has nearly two decades of practical experience in vehicle valuation, market behavior, financing structures, and the operational realities of independent dealerships and private lenders[179]. That experience, together with The Loan Store's existing retail and dealer channels, makes it at least comparable to—and likely better than—a Monitor-administered wholesale auction for achieving the highest net recovery.

142. There is also a fundamental inconsistency in the Monitor's position. The Monitor and the CRO have repeatedly criticized wholesale vehicle transactions in these very CCAA Proceedings as value-eroding, including wholesale transactions said to have resulted in cumulative losses exceeding $1 million and transactions involving The Loan Store and Squamish Chrysler that the Monitor says resulted in approximately $746,366 owing[180]. Yet the Monitor now asks the Court to approve the sale of these Vehicles through OpenLane, a wholesale auction platform[181]. Wholesale auctions may provide speed and liquidity, but buyers in that market price in resale margin, uncertainty, and auction fees. The Monitor's own prior criticisms of below-market wholesale dispositions

[176] Seventh Report, at para 124.
[177] May Hausner Affidavit, at para 4.
[178] May Hausner Affidavit, at paras 5 & 6.
[179] May Hausner Affidavit, at para 10
[180] Seventh Supplement, at Appendix "N".
[181] Seventh Report, at para 107.

support, rather than undermine, The Loan Store's proposed retail and dealer-channel process.

143. The Loan Store's proposed sale process is designed to permit an immediate sale while answering the Monitor's stated stakeholder concerns. The Loan Store proposes to realize on the Vehicles through its existing retail and dealer channels, subject to prior approval for each sale, regular reporting, prior approval of material repair or reconditioning costs, prompt remittance of net proceeds after approved costs, and the Monitor holding those net proceeds in trust pending final determination of entitlement[182]. Those safeguards preserve transparency and control while allowing the party with the relevant market experience and sales network to pursue a value-maximizing sale process. They also directly address the Monitor's concerns about timing, information flow, and the costs of supervising a sale through The Loan Store.

144. Finally, The Loan Store respectfully submits that no charge should attach to the Vehicles in favour of the Monitor pending final determination of ownership and entitlement.

145. The Monitor has not yet obtained a determination that the Vehicles belong to the Westcastle GMC estate, and its own materials acknowledge that further review is required in respect of The Loan Store's claim[183]. Imposing an administration charge on the Vehicles now would be prejudicial and premature because it would burden assets that may ultimately be found to belong to The Loan Store.

146. The appropriate course is to preserve the parties' positions, permit The Loan Store to conduct the sale under robust Court-approved safeguards, and hold any net proceeds pending the Court's final determination.

147. In the alternative, if the Court orders that the Vehicles be returned to the Monitor for sale, the Monitor should be required to compensate The Loan Store for the costs it has incurred to transport, store, preserve, repair, and refurbish the Vehicles. Those costs were incurred because The Loan Store received and began dealing with the Vehicles before the Monitor obtained the Freezing Order, and because the Freezing Order has prevented The Loan Store from moving or realizing on the Vehicles since January 22, 2026. It would be unfair for the Monitor to take the benefit of those expenditures while leaving The Loan Store to bear costs incurred to preserve and enhance assets whose ownership remains disputed.

**f. It is appropriate in the circumstances to grant an order permitting The Loan Store to examine Lionell Robins under oath**

**i. LAW**

148. The Loan Store takes the position that it is necessary to examine the CRO on a number of express issues/conclusions.

[182] Seventh Report, at paras 102-106.
[183] Seventh Report, at para 104.

149. It is well-established that a CRO is appointed by the court as an office of the court to oversee and direct the restructuring of a debtor's affairs.[184]

150. Although there is no general right to question a CRO in CCAA proceedings, [185] courts have found that questioning can be conducted under a number of circumstances, including:

a. when an officer refuses to cooperate in clarifying part of a report or expand on an element in the report which is reasonably requested.[186];
b. where there are questions as to whether the officer of the court did not observe his or her duty of neutrality and objectiveness;[187]
c. In determining what additional conclusions and information the court officer has which lead to the initial appointment;[188] and
d. Questions seeking to address records received and reviewed by the officer.[189]

151. If a party seeks to question a court officer, that party must provide particulars of the questionable conduct alleged.[190]

152. CROs, much like monitors, owe a fiduciary duty to all stakeholders. Further, CROs are required to account to the court, must act independently, and importantly, treat all parties reasonably and fairly. An officer of the court is not an advocate for one party over the others.[191]

## ii. ARGUMENT

153. The Loan Store respectfully submits that a focused examination of the CRO is warranted. Although questioning of a CRO is not an automatic right, the CRO has offered adverse conclusions against The Loan Store, making this an appropriate circumstance to permit examination into the basis of those conclusions.

154. As addressed in the materials, there are a number of concerning conclusions or opinions being offered by the CRO which suggest further assessment, including:

a. That The Loan Store knowingly received property which was transferred in breach of trust or fiduciary duty – this being related to the Squamish Chrysler Allegations[192];

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[184] *Altus Energy Services Ltd., Re*, 2011 CarswellAlta 2782.
[185] *Big Sky Living Inc., Re*, 2007 ABQB 249, at para 4 to 6.
[186] *Big Sky Living*, at para 6.
[187] *Ibid*, at para 6.
[188] *Edmonton Region Community Board for Persons with Development Disabilities v. Aboriginal Partners & Youth Society,* 2004 ABQB 337, at para 18.
[189] *Edmonton Region Community Board for Persons with Development Disabilities v. Aboriginal Partners & Youth Society,* 2004 ABQB 423, at para 19.
[190] *Big Sky Living*, at paras 8 to 12.
[191] *Winalta Inc., Re*, 2011 ABQB 399, at paras 67 and 68.
[192] Seventh Report, Appendix "L".

b. That The Loan Store is affiliated with, or compromised with, 2279148 Alberta Ltd[193]; and
c. That twenty-six (26) vehicles were sold to The Loan Store without consideration[194].

155. The Loan Store needs to assess the level of analysis completed by the CRO in coming to its conclusions/opinions, including:

d. What steps were taken by the CRO to assess the validity of the Settlement Agreement; and
e. What steps were taken by the CRO to inquire with The Loan Store and to gather information prior to making any conclusions or opinions about its alleged impropriety, including details of any of those discussions given the lack of clarity in its Report(s);

156. In an effort to address these concerns, The Loan Store, through counsel, contacted counsel for the Monitor on May 5, 2026, and provided a detailed letter outline the numerous concerns on which counsel for The Loan Store required examination of the CRO.[195] Despite requests to seek clarity from the Monitor regarding the CRO's above conclusions, no substantive response has been provided and efforts to establish a voluntary examination have been denied[196].

157. While it is appreciated that questioning of a CRO is not an automatic right, given the nature of the presumptions, opinions and conclusions made by the CRO in its Reports, and given the value which the court places on these unsworn Reports, fairness dictates that The Loan Store be given an opportunity to address the process and basis for the determinations made by the CRO.

158. It is further submitted that determination of the above would assist the Court in assessing the validity of The Loan Store's claims and as such, minimize the resources required of the Monitor.

## g. The Westcastle Administration Charge Issues

### c. BMO Should Not Benefit From The Administration Charge in the Westcastle GMC CCAA Order

### i. LAW

159. Section 11.52 of the CCAA provides the court with jurisdiction to order a charge over a debtor's assets to cover professional costs, including those of the monitor, and financial or other experts engaged for the purposes of CCAA proceedings:

[193] Fourth Report, Appendix "H" at para 14.
[194] *Ibid*, at para 14.
[195] Seventh Supplement, at Appendix "N".
[196] Seventh Supplement, at Appendicies "L", "M", "N" & "O".

**Court may order security or charge to cover certain costs**

> **11.52 (1)** On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of
>
> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
>
> **(c)** any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.[197]

160. Courts apply a non-exhaustive list of factors in assessing an administration charge In Canwest Publishing Inc./Publications Canwest Inc., Re, 2010 ONSC 222 at para 54, the Court identified factors including: the size and complexity of the restructuring; the proposed role of the beneficiaries; avoidance of unwarranted duplication; the reasonableness of the quantum; and the positions of affected secured creditors and of the monitor.[198]

161. Charges awarded pursuant to Section 11.52 often secure the involvement of necessary professionals required to achieve the best possible outcome for stakeholders,[199] or to those who are essential to the CCAA proceedings.[200] Parties should benefit from the professional services which a charge pursuant to Section 11.52 will be directed to securing.[201]

162. In sum, parties who receive a charge pursuant to Section 11.52 should not only bring value to the proceedings, that value should be necessary or essential to the circumstances of the particular case.

## ii. ARGUMENT

163. Paragraph 8 of the Westcastle GMC CCAA Order granted an Administration Charge in favour of the Monitor and its counsel, and BMO, while preserving any party's right to apply to vary the Order to remove BMO. The Loan Store so applies.[202]

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[197] *CCAA* Section 11.52.

[198] *Canwest Publishing Inc./Publications Canwest Inc., Re*, 2010 ONSC 222 ("***Canwest***") at para 54.

[199] *Indiva Limited et al.*, 2024 ONSC 3691 at para 17.

[200] *Re Earth Boring Co. Ltd.*, 2025 ONSC 2422 at para 61.

[201] *Roman Catholic Episcopal Corporation of St. John's (Re)*, 2022 NLSC 81.

[202] Amended and Restated Order dated January 9, 2026, at para 8.

164. BMO does not fall within any of the three classes that s. 11.52(1) permits to be secured:

- It is not the Monitor, nor an expert engaged by the Monitor: s. 11.52(1)(a).
- It is not an expert engaged by the debtor companies (the Westcastle GMC Entities): s. 11.52(1)(b).
- It is not an expert "engaged by any other interested person" for whom the Court has found a charge "necessary for their effective participation": s. 11.52(1)(c).

165. BMO is, moreover, not a creditor of the Westcastle GMC Entities. Its own counsel acknowledged on January 9, 2026 that BMO was not a Westcastle creditor and that transactional review properly rests with the Monitor.[203]

166. The jurisprudence confirms that the Administration Charge secures the fees of those professionals whose involvement is necessary to advance the restructuring's objectives and to serve stakeholders generally.

167. Applying the Canwest factors:

- Size/complexity and roles: The professionals whose fees must be secured for this proceeding to function are the Monitor (and its counsel) and the CRO. There is no defined professional role for BMO within the proceeding.
- Duplication: Any contribution BMO proposes overlaps with the Monitor's statutory functions and those of existing court-approved professionals.
- Impact on secured creditors: Inclusion of BMO as a beneficiary primes recoveries that would otherwise flow to actual Westcastle GMC secured creditors — which the The Loan Store asserts it is. In this case it is submitted that the same can be said for the Westcastle GMC Entities' creditors generally since BMO would only be entitled to funds if MK Auto recovers any funds by reason of its equity stake in the Westcastle GMC Entities, which would only occur if all creditors of the Westcastle GMC Entities are paid in full.
- Necessity and statutory fit: Section 11.52 is textually limited to securing specified professional fees. It does not authorize securing a non-creditor financial institution's costs merely to monitor its own interests where the Monitor is performing that court-supervised role. Including BMO — a non-creditor with no court-approved expert role — exceeds s. 11.52's text and does not further those objectives.

2. The Court should vary paragraph 8 of the 9 Westcastle GMC CCAA Order to remove BMO as a beneficiary of the Administration Charge. The Administration Charge should be confined to the Monitor (and its counsel) and the CRO, consistently with s. 11.52 and the *Canwest* factors. This variation accords with the statutory text, avoids unwarranted duplication, protects the positions of actual creditors of the Westcastle GMC Entities, and advances the CCAA's remedial objectives.

[203] May Hausner Affiavit, Exhibit "L", p. 10, Lines 40-41, p. 11 Lines 1-3.

### b. It is Not Fair or Appropriate That The Entirety of the Monitor's and its Counsel's Fees Incurred in the Summit Group CCAA Proceedings be Paid from the Westcastle GMC Entities estate

### i. LAW

168. It is a fundamental principle that court ordered charges must be fair and equitable[204]

169. Allocation of court ordered charges in a CCAA proceeding is within the Court's discretion and each case must be judged on its facts.[205]

170. If a monitor's proposed allocation is prima facie fair, the onus falls on the objecting creditor to demonstrate inequity.[206]

### ii. ARGUMENT

171. At Paragraph 86 of the Seventh Report the Monitor reports that its fees in the approximate amount of $358,000 will be paid from the Westcastle GMC estates, despite reporting that the Monitor and its counsel incurred the aggregate amount of $50,428.15 in fees from February 1, 2026 to April 17 in respect of the Monitor and April 30 in respect of its counsel, Miller Thomson.[207]

172. Later in the Seventh Report, the Monitor states that it and its legal counsel have accrued but unpaid professional fees and disbursements totalling approximately $358,529 (inclusive of GST) including amounts previously approved by the Court in the aggregate amount of $308,101.[208] The Westcastle GMC Entities became subject to these proceedings on January 7, 2026. Even if fees incurred during the period between December 19, 2026 to January 7, 2026 are included, this means that the Monitor and its counsel incurred $308,100 in costs over a 42 day period for an estate where the Monitor was not required to operate an ongoing business or administer a sales process.

173. In our respectful view those costs are surprisingly high and the Monitor has not adduced sufficient evidence to establish that this allocation is fair.

174. The Monitor's fee allocation request should be rejected to the extent it seeks to charge the Westcastle estate with fees incurred for the broader Summit Auto Group proceedings rather than work performed for the benefit of the Westcastle GMC Entities and their creditors. The Monitor seeks to increase the Westcastle GMC Administration Charge from $250,000 to $500,000 and states that approximately $358,000 of professional costs incurred to date, together with future costs in respect of the administration of the Westcastle GMC estates, will be paid out of the Westcastle GMC Administration Charge cash reserve[209]. That request is not supported by a reasoned allocation methodology.

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[204] *Respec Oilfield Services Ltd.*, Re, 2010 ABQB 277 at para 22.
[205] *Winnipeg Motor Express Inc., Re*, 2009 MBQB 204 at para 41.
[206] *Medican Holdings Ltd., Re*, 2013 ABQB 224 at para 39.
[207] Seventh Report, at paras 82, 83 & 86.
[208] Seventh Report, at para 126.
[209] Seventh Report, at para 86.

175. The Monitor's own fee evidence demonstrates the problem. For the February to April 2026 period, the Monitor reported total fees and disbursements of $328,527.39 , but only $20,735.93 of that amount related to the Westcastle GMC mandate. For the same period, Miller Thomson reported total fees and disbursements of $156,803.41 for the, but only $29,692.22 related to the Westcastle GMC mandate. The professional fees schedule similarly separates Summit Auto Group fees from Westcastle GMC fees and identifies total Westcastle GMC fees for that period of $50,428.15, against combined Summit Auto Group/Westcastle GMC fees of $485,330.80.[210]

176. The Westcastle charge was not established as a general funding source for the entire Summit proceeding. In the Fourth Report, the Monitor described the Westcastle Administration Charge as securing professional fees and disbursements "related specifically to Westcastle GMC".[211]

177. The Monitor's proposal is not prima facie fair. It does not identify an objective basis on which the Westcastle estate should bear professional costs incurred for the benefit of the broader Summit Auto Group estates. It does not explain why Westcastle creditors should fund work relating to BMO-financed dealerships, Summit-wide liquidity, other dealership sales, or broader operating matters when the Monitor's own materials treat Westcastle proceeds as segregated and unavailable for general liquidity.

178. The absence of common creditors makes the proposed allocation especially unfair. BMO is the senior secured lender to the original Summit Auto Group debtors and was described by the Proposed Monitor as the fulcrum creditor for those debtors.[212] Westcastle GMC, by contrast, had TD Bank as its primary secured creditor, and TD Bank has now been repaid in full from the Westcastle transaction proceeds. The Monitor's list of known or potential Westcastle claimants refers to Great North Auto and Financing Ltd., related parties, CRA, trade creditors, an employee, former customers, and other potential claimants, which confirms that the Westcastle estate is a distinct creditor pool.[213]

179. The Loan Store does not submit that the Monitor can never recover reasonable fees properly incurred for the administration of the Westcastle estate. The objection is to the absence of a principled allocation between Westcastle-specific work and work performed for the broader Summit proceedings. Fairness requires that only properly proven Westcastle-specific fees be charged to Westcastle proceeds, and that any broader Summit costs remain charged to the estates and stakeholders for whose benefit they were incurred.

180. Accordingly, the Court should deny the Monitor's request to increase or apply the Westcastle Administration Charge in a manner that funds non-Westcastle fees. Alternatively, any increase should be limited to reasonable, necessary, and properly allocated fees incurred specifically in relation to the Westcastle GMC Entities, with the Monitor required to provide a clear allocation of time, disbursements, and benefit before any payment is made from Westcastle sale proceeds.

[210] Seventh Report, at paras 82 & 83 & Exhibit "K".
[211] Fourth Report, at para 8(d)(i)(II).
[212] Fourth Report, at para 69.
[213] Seventh Report, at para 138.

### c. It is Not Necessary to Increase the Westcastle GMC Administration Charge

#### i. Argument

181. As noted above, the Monitor is seeking to double the amount of the Westcastle Administration Charge from $250,000 to $500,000[214].

182. The existing Administration Charge is sufficient on the present record and need not be increased at this time. The Monitor's own waterfall already accounts for the proposed amended Administration Charge as a material reduction from the funds otherwise available for distribution, and the Monitor has not identified a present Westcastle-specific need that justifies increasing that charge ahead of a proven requirement[215].

183. That conclusion is stronger if no claims process is approved, because the principal rationale for future Westcastle-specific administration would materially diminish. It is stronger still if BMO is removed as a beneficiary: BMO is the fulcrum creditor of the original Summit estates, not the Westcastle estate, and Westcastle proceeds are segregated and unavailable for general Summit liquidity.

## V. CONCLUSION

184. The Monitor's application should be dismissed. The record does not support treating The Loan Store as a stranger who received vehicles for no value. The Loan Store was a substantial creditor; its loan documents identified the Westcastle GMC Entities as borrowers and the Westcastle Lands as security; the vehicle transfer formed part of a counsel-negotiated settlement that included the discharge of The Loan Store's caveat and replacement security; and the vehicles were predominantly used vehicles the purchaser did not wish to acquire.

185. The Court should also refuse relief that would compound the unfairness. The Monitor should not be permitted to sell the disputed vehicles before entitlement is determined, nor should it be permitted to increase the Westcastle GMC Administration Charge or pay its and its counsel's fees entirely from an estate in which The Loan Store asserts proprietary and priority claims. Those steps would deplete the very fund and assets over which the dispute exists, while rewarding a process that proceeded without meaningful notice to The Loan Store.

186. The Loan Store therefore requests an order: (a) dismissing the Monitor's application to set aside the transfer of the vehicles as a fraudulent preference; (b) refusing the Monitor's request to take possession of and sell the vehicles; (c) refusing the Monitor's request to increase the Westcastle GMC Administration Charge; (d) refusing the Monitor's request to pay its fees and its counsel's fees entirely from the Westcastle GMC estate; (e) establishing a focused litigation plan for determination of The Loan Store's claims; (f) permitting The Loan Store to sell the vehicles through its proposed process, with net proceeds held in trust pending determination of entitlement; (g) varying or clarifying the

[214] Seventh Report, at para 86.
[215] Seventh Report, at para 119.

Westcastle GMC CCAA Order, removing Bank of Montreal counsel's entitlement to the Westcastle GMC Administration Charge; and (h) granting an order permitting The Loan Store to examine Lionel Robins under oath.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15TH DAY OF MAY, 2026.**

**Ogilvie LLP**
**Per: Susy Trace**