

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY & INSOLVENCY)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SLEEPING GIANT BREWING CO. LIMITED**

FACTUM OF SLEEPING GIANT BREWING CO. LIMITED
(returnable April 1, 2026 at 9:30am via videoconference)

March 30, 2026

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I – NATURE OF APPLICATION

1. On March 6, 2026, Sleeping Giant Brewing Co. Limited (the “**Company**” or “**SGBC**”) filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). BDO Canada Limited was named proposal trustee in the Company’s proposal proceedings (in such capacity, the “**Proposal Trustee**”).
2. This factum is filed in support of a motion by the Company for an order:
 - (a) extending the time for the Company to file a proposal under section 50.4(9) of the BIA up to and including May 20, 2026;
 - (b) granting a super priority charge (the “**Administration Charge**”) against the Company’s assets, undertakings, and properties in an amount not to exceed \$100,000 in favour of the Company’s legal counsel, the Proposal Trustee and the Proposal Trustee’s legal counsel (collectively, the “**Professional Group**”), to secure payment of their reasonable fees and disbursements;
 - (c) approving the first report of the Proposal Trustee dated March 27, 2026 (the “**First Report**”), and approving the actions of the Proposal Trustee described therein; and,
 - (d) such further and other relief as counsel may advise and this Court may permit.

II - FACTS

BACKGROUND

1. The Company operates a licensed craft brewery from leased premises in Thunder Bay, Ontario. Its operations include a production area/ brewery; packaging and distribution centre; a

dine-in restaurant “brew pub”; and a retail “bottle shop”, which offers packaged beers for sale to the public¹.

2. SBGC employs seventeen (17) full-time employees, each of which are non-unionized. There is no employer-sponsored pension plan². It participates actively in the community, using locally sourced ingredients for its “brew pub” food offerings, and donating portions of its beer sales to the local community during certain times of the year³.

NOI PROCEEDINGS

3. On August 5, 2023, the Company received Court approval of a proposal. Such proposal did not contemplate the sale of the Company but was simply intended to restructure the Company’s debt⁴.

4. Since its original proposal, the Company has sustained net losses of \$1,300,000 and has accrued new liabilities due to cash constraints. As a result of such losses and constraints, it has been unable to fulfill its obligations under the original proposal⁵.

5. SGBC had discussions with potential purchasers/ investors prior to filing the current NOI, but none of these discussions resulted in a sale. By the time the final discussions were held, the Company was facing significant liquidity issues and had become insolvent⁶.

6. The Company filed the current NOI on March 6, 2025 in order to preserve the Company’s assets through the initial stay of proceedings; allow the Company time to assess the viability of a sale of its business for the benefit of its creditors; and, allow the Company time to formulate and present a restructuring proposal to its creditors⁷. The Company intends to use these proceedings to preserve its going-concern operations and pursue a sale in order to maximize its value for the benefit of its stakeholders and creditors.

¹ Affidavit of Andrea Mulligan sworn March 25, 2026 (“**Mulligan Affidavit**”), Motion Record of Sleeping Giant Brewing Co. Limited dated March 25, 2026 (“**Motion Record**”), Tab 2, at para. 7.

² Mulligan Affidavit at para. 14.

³ First Report of the Proposal Trustee dated March 27, 2026 (“**First Report**”), at para. 13.

⁴ Mulligan Affidavit at para. 17.

⁵ Mulligan Affidavit at para 18-19.

⁶ Mulligan Affidavit at para 21.

⁷ Mulligan Affidavit at para 3.

7. Upon the filing of the NOI, the Company quickly canvassed the market for interest in the sale or investment in the business. Nine (9) parties (“**Existing Interested Parties**”) advised they were interested, and three requested and were provided with due diligence materials⁸.

ANTICIPATED SALE PROCESS

8. The Company is working with the Proposal Trustee to finalize a marketing process for the business in view of the market interest. The salient points of the sale process are anticipated to include:

- (a) solicitation of offers for all or part of the assets and undertakings of the Company;
- (b) the Company and Proposal Trustee will market the opportunity and disclose the details of the sale process (i) directly to the Existing Interested Parties; (ii) directly to such other potentially interested parties as the Company and Proposal Trustee may identify or who may contact the Company or the Proposal Trustee; and, (iii) publicly by way of advertisement/notice if the Proposal Trustee deems appropriate;
- (c) any party executing a non-disclosure and confidentiality agreement will be invited to review diligence materials in respect of the salient details of the business and assets of the Company;
- (d) any party wishing to tour the brewery, inspect the assets and consult with the management of the Company will be granted such access as soon as practicable;
- (e) binding offers will be required by May 1, 2026 (the “**Bid Deadline**”);
- (f) all offers must be on an “as is, where is” basis and must be accompanied by a cash deposit in the amount of 10% of the purchase price (non-refundable if accepted as the successful offer);

⁸ Mulligan Affidavit at para 25.

- (g) the Company, in consultation with the Proposal Trustee, shall consider all offers and may further negotiate one or more such offers until selecting the successful offer (the “**Successful Offer**”);
- (h) once the Successful Offer is selected, the Company shall apply to Court for final approval of the chosen transaction; and
- (i) the transaction shall close shortly following Court approval⁹.

9. The following is a summary of anticipated material timelines of the proposed sale process:

<u>Milestone</u>	<u>Deadline</u>
Go to market	Immediately after Court Hearing
Bid Deadline	May 1, 2026 (5:00 PM Eastern Time)
Selection of Successful Offer	May 7, 2026
Hearing of the Sale Approval Motion	Subject to availability of the Court
Closing the Transaction (outside date)	As soon as practicable after Court approval

10. The above deadlines may be extended where the Proposal Trustee believes appropriate¹⁰.

EXTENSION OF THE STAY

11. The statutory stay of proceedings expires on April 5, 2026. In order to facilitate the proposed sales process as outlined above, the Company requests an extension of the stay up to and including May 20, 2026¹¹.

⁹ Mulligan Affidavit at para 27.

¹⁰ Mulligan Affidavit at para 28.

¹¹ Mulligan Affidavit at para 5(a).

ADMINISTRATION CHARGE

12. The Company is seeking a first-ranking Administration Charge in the amount of \$100,000 over all its assets, undertakings and property in order to secure the fees and disbursements of its counsel, the Proposal Trustee, and counsel to the Proposal Trustee¹².

III – ISSUES

13. The issues to be determined on this motion are:

- (a) *Should the Court approve an extension of time for the Company to file a proposal?*
- (b) *Should the Court approve the Administration Charge?*
- (c) *Should the Court approve the First Report?*

14. The Company respectfully submits that the answer to each question is – *yes*.

IV – LAW AND ARGUMENT

A. The Court should approve the Stay Extension

15. The Company seeks an extension of time to file a proposal. A debtor that files an NOI automatically has the benefit of an initial 30-day stay of proceedings. This initial stay of proceedings expires on April 5, 2026.

16. Pursuant to section 50.4(9) of the BIA, the Court may grant an extension of time for filing of a proposal in 45-day increments if it is satisfied that the debtor:

- (a) has acted and is acting in good faith and with due diligence;
- (b) would likely be able to make a viable proposal if the extension were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted¹³.

¹² Mulligan Affidavit at para 5(b).

¹³ BIA s. 50.4(9)

17. Courts routinely grant extensions in NOI proceedings to allow an applicant to pursue a sale of its business to facilitate a possible proposal¹⁴.

18. The Company requests an extension of 45 days, up to and including May 20, 2026, in order to implement the proposed sale process, deliver a proposal to its creditors, and avoid a deemed bankruptcy.

19. The Company has been acting with good faith and due diligence during these proceedings. It has reached out to potential interested parties and has worked collaboratively with the Proposal Trustee to create the proposed sale process. SGBC has served all key stakeholders with this motion record¹⁵.

20. Whether an applicant would likely be able to make a viable proposal if granted an extension is determined by whether the applicant might (not certainly will) be able to present a proposal that seems reasonable on its face to a reasonable creditor¹⁶. This factor is not a difficult standard to meet in the context of a first extension¹⁷.

21. The Company is presently insolvent and will not be able to make a viable proposal at the expiry of the current stay period. Absent an extension of the NOI period, SGBC will be unable to implement the anticipated sale process, unable to make a viable proposal to its creditors, and will become bankrupt to the detriment of all stakeholders. The Company intends to use the extension of time to maximize realization for its creditors and stakeholders by preserving the going concern value of its business and implementing the proposed sale process.

22. The Proposal Trustee supports the extension of the stay¹⁸. No creditor will be materially prejudiced if the extension being applied for is granted¹⁹. The Proposal Trustee and the Company are not aware of any opposition to the requested extension.

¹⁴ See, for example: *In the Matter of the Notice of Intention to make a proposal of JointCraft Inc.*, 2026 ONSC 965 (CanLII); *Indeed Laboratories Inc. v. BDO Canada Limited*, BK-25-03213105-0032, Endorsement of Steele J. (May 2, 2025); *Kline Inc. v. Hielte et. al.*, BK-25-03224600-0031, Endorsement of Steele J. (July 29, 2025).

¹⁵ Mulligan Affidavit at para 38.

¹⁶ *H&H Fisheries Limited, Re*, 2006 NSSC 364 (CanLii) at para 22;

¹⁷ *Scotian Distribution Services Limited (Re)*, 2020 NSSC 131 at para 24 cited in *T & C Steel Ltd., Re*, 2022 SKKB 236 at paras 8 and 20.

¹⁸ Mulligan Affidavit at para 41.

¹⁹ Mulligan Affidavit at para 40.

B. The Court should grant the Administration Charge

23. The Company seeks the Administration Charge in the amount of \$100,000 in order to secure the fees and disbursements of the Professional Group, whose services are critical to these proposal proceedings. The requested Administration Charge is to rank in priority to all other claims and encumbrances in the Company's property²⁰.

24. The Court may order security or charge to cover certain costs in respect of a notice of intention or a proposal in an amount the court considers appropriate in respect of the fees and expenses of the trustee, including their legal counsel, and for financial, legal or other experts engaged by the debtor²¹. Such charge may rank in priority over the claim of any secured creditor or other person²².

25. The Company submits it is appropriate for the Court to grant the Administration Charge for the following reasons:

- (a) the continued services of the Professional Group are critical to the progress and success of these proceedings and the proposed sale process, and without a charge the professionals are unlikely to continue in their capacities to support these proceedings;
- (b) the roles of the Professional Group are distinct and there is no unwarranted duplication; and,
- (c) the quantum of the proposed Administration Charge is reasonable and appropriate in the circumstances of the NOI proceeding²³.

26. Each member of the Professional Group whose fees and disbursements are to be secured by the Administration Charge have played, and will continue to play, a critical role in these proceedings.

²⁰ Mulligan Affidavit at para 36.

²¹ BIA s. 64.2(1)

²² BIA s. 64.2(2)

²³ Mulligan Affidavit at para 36. First Report at para 47.

C. The First Report should be approved

27. The Company requests the First Report, and the activities of the Proposal Trustee described therein be approved.

28. Requests to approve a court-appointed officer's reports are not unusual in insolvency proceedings.²⁴ The First Report fairly and accurately represents the activities of the Proposal Trustee, which were necessary, and undertaken in good faith.

V – ORDER SOUGHT

29. For the reasons set forth herein, the Company respectfully requests the granting of the order substantially in the forms attached to the Notice of Motion as Schedule "A", as may be amended and presented at the hearing of this Motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: March 30, 2026



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²⁴ [*Target Canada Co. \(Re\)*](#), 2015 ONSC 7574 at para 2.

SCHEDULE “A”**LIST OF AUTHORITIES**

1. [*In the Matter of the Notice of Intention to make a proposal of JointCraft Inc.*](#), 2026 ONSC 965 (CanLII)
2. [*Indeed Laboratories Inc. v. BDO Canada Limited*](#), BK-25-03213105-0032, Endorsement of Steel J. (May 2, 2025)
3. [*Kline Inc. v. Hielte et. al.*](#), BK-25-03224600-0031, Endorsement of Steel J. (July 29, 2025)
4. [*Scotian Distribution Services Limited \(Re\)*](#), 2020 NSSC 131
5. [*T & C Steel Ltd., Re*](#), 2022 SKKB 236 at paras 8 and 20
6. [*Target Canada Co. \(Re\)*](#), 2015 ONSC 7574

SCHEDULE “B”

RELEVANT LEGISLATION

[*Bankruptcy and Insolvency Act*](#), RSC 1985, c B-3

Extension of time for filing proposal

50.4 (9) The insolvent person may, before the expiry of the 30-day period referred to in subsection (8) or of any extension granted under this subsection, apply to the court for an extension, or further extension, as the case may be, of that period, and the court, on notice to any interested persons that the court may direct, may grant the extensions, not exceeding 45 days for any individual extension and not exceeding in the aggregate five months after the expiry of the 30-day period referred to in subsection (8), if satisfied on each application that

- (a) the insolvent person has acted, and is acting, in good faith and with due diligence;
- (b) the insolvent person would likely be able to make a viable proposal if the extension being applied for were granted; and
- (c) no creditor would be materially prejudiced if the extension being applied for were granted.

Court may order security or charge to cover certain costs

64.2 (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 person in respect of whom a notice of intention is filed under [section 50.4](#) or a proposal is filed under [subsection 62\(1\)](#) 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 trustee, including the fees and expenses of any financial, legal or other experts engaged by the trustee in the performance of the trustee’s duties;
- (b) any financial, legal or other experts engaged by the person for the purpose of proceedings under this Division; 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 the effective participation of that person in proceedings under this Division.

Priority

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

THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C.,
1985, C. B-3, AS AMENDED

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF SLEEPING GIANT BREWING CO. LIMITED

Court File No. 21-3343101
Estate File No. 21-3343101

**ONTARIO
SUPERIOR COURT OF JUSTICE
(BANKRUPTCY & INSOLVENCY)**

Proceedings commenced at **Thunder Bay**

**FACTUM OF
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