

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SIENA LENDING GROUP CANADA LLC

Applicant (Moving Party)

and

GLOBAL FOOD AND INGREDIENTS INC., GLOBAL FOOD AND
INGREDIENTS LTD. and GFI BRANDS INC.

Respondents

FACTUM OF THE APPLICANT (MOVING PARTY)
(Motion to Lift Stay)

June 26, 2025

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TO: **SERVICE LIST**

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PART I - OVERVIEW

1. Siena Lending Group Canada LLC (“**Siena**”) brings this motion to lift the stay of proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), to permit Siena to commence a claim against the Debtor, Global Food and Ingredients Inc. (“**GFI Ltd.**”), and certain of its former directors and officers for negligence, negligent misrepresentation, and breach of contract in order to enable Siena to seek recovery on a contract of insurance held by GFI Ltd.

2. Under section 69.4 of the *BIA*, a court may lift a stay where it is satisfied that “it is equitable” to do so.¹ This Court has specifically recognized that “permitting a plaintiff to seek recovery on a contract of insurance [i]s a sound reason to lift the stay,” particularly where, as here, “there is no prejudice to the creditors” or the debtor.²

3. The motion is brought with the consent of the Receiver and unopposed by any other party.

4. This Court should grant the motion.

PART II - FACTS

A. THE CLAIM AGAINST GFI LTD. AND ITS DIRECTORS AND OFFICERS

5. Siena is an asset-based lender incorporated under the laws of Delaware with its principal place of business in Stamford, Connecticut.³ Together with its parent, Siena provides financing solutions to middle-market companies across the United States and Canada.⁴

¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 69.4](#).

² *Re Aleafia Health*, 2024 ONSC 3456, at [paras. 8-9](#).

³ May 15, 2025 Affidavit of J. Simpson, at para. 3 (MR at 10).

⁴ May 15, 2025 Affidavit of J. Simpson, at para. 3 (MR at 10).

6. On February 1, 2024, Siena entered into a Loan and Security Agreement (the “**LSA**”) with GFI Ltd., Global Food and Ingredients Inc. (“**GFI Inc.**”), and GFI Brands Inc. (“**GFI Brands**”) and, collectively, with GFI Ltd. and GFI Inc., the “**Debtors**”), each of whom are part of the Global Food and Ingredients group of companies, a plant-based food and ingredients business that sources and processes raw materials from farmers, and distributes plant-based protein ingredients to food companies.⁵

7. Under the LSA, Siena agreed to make revolving loans and provide letters of credit to the Debtors.⁶

8. Several months later, on May 7, 2024, the Debtors announced that they were winding down their business due to “recent macro-economic events” that prevented the Debtors from securing an adequate supply of “raw material inputs” for their products.⁷

9. Following the Debtors’ announcement, Siena discovered that it had a claim against the Debtors and certain of their former directors and officers for negligence, negligent misrepresentation, and breach of contract relating to the LSA.⁸

10. Siena intends to claim that, despite knowing that Siena was relying on the representations of GFI Ltd. and its directors and officers, those individuals negligently failed to disclose to Siena certain material adverse facts relevant to Siena’s decision to enter into the lending agreement.⁹

⁵ May 15, 2025 Affidavit of J. Simpson, at paras. 4, 6 (MR at 10).

⁶ May 15, 2025 Affidavit of J. Simpson, at para. 6 (MR at 10).

⁷ May 15, 2025 Affidavit of J. Simpson, at para. 7 (MR at 10).

⁸ May 15, 2025 Affidavit of J. Simpson, at para. 8 (MR at 11).

⁹ Draft Statement of Claim, at paras. 2-5, Ex. “C” to May 15, 2025 Affidavit of J. Simpson (MR at 231-232).

11. More specifically, the Overview of the Draft Statement of Claim describes the claim as follows:¹⁰

2. On February 1, 2024, the parties entered into a loan and security agreement under which the Plaintiff, Siena Lending Group Canada LLC (“Siena”), loaned certain subsidiaries of the Defendant, Global Food and Ingredients Ltd. (“GFI”), over \$11,000,000 USD to help expand GFI’s business, which involved supplying plant-based products worldwide. As a Guarantor under the agreement, GFI represented that, since March 31, 2023, there had been no material adverse change in its financial condition, business, prospects, operations, or properties, and that it had provided Siena with full disclosure of all facts which had, or could reasonably be expected to have, a material adverse effect on its business.

3. Shortly after Siena advanced the funds, it became aware that GFI had failed to disclose a material adverse fact; namely, that on December 8, 2023, the Indian government had revised the import policy for one of GFI’s most important raw materials, yellow peas, in a manner that significantly increased the competition and demand for yellow peas, and thereby threatened GFI’s business. Shortly thereafter, in response to the revised import policy, GFI’s competitors acquired substantially all of the supply of yellow peas, leaving GFI without the ability to purchase adequate supplies of raw materials for its business. Within a matter of months, GFI’s business collapsed, and, on May 7, 2024, it announced its plan to wind-down its operations. It entered into receivership proceedings shortly thereafter.

4. The Defendants owed Siena a duty of care, as they knew or ought to have known that Siena was relying on their representations in determining whether to enter into the loan agreement. The Defendants were negligent in failing to disclose to Siena the fact of the revised import policy and its likely impact on GFI’s business. Siena entered into the loan agreement in reasonable reliance on the Defendants’ representations that GFI’s business prospects were strong, and that there had been no material change in those prospects since March 31, 2023. Had Siena been aware of the revised import policy, or its likely impact on GFI’s business, it would not have entered into the agreement or funded the loan. The Defendants’ failure to disclose the fact of the revised import policy also breached the representation provisions of the agreement.

5. Siena is owed approximately \$2,294,892 in unpaid principle, interest, fees, and other amounts owed under the terms of the agreement.

¹⁰ Draft Statement of Claim, at paras. 2-5, Ex. “C” to May 15, 2025 Affidavit of J. Simpson (MR at 231-232).

B. GFI LTD.’S INSURANCE POLICY

12. In 2023, GFI Ltd. and Allied World Specialty Insurance Company (the “**Insurer**”) entered into a contract of insurance under which the Insurer is obliged to pay for losses, including compensatory damages, incurred by any directors or officers of GFI Ltd. (the “**Insurance Contract**”).¹¹

13. More specifically, the Insurance Contract requires the Insurer to pay on behalf of Insured Persons the Non-Indemnified Loss incurred by the Insured Persons arising from any Claim first made during the Policy Period of June 13, 2023 to June 13, 2024.¹²

14. Under the Insurance Contract, Insured Persons is defined to include “any past, present or future duly elected or appointed director [or] officer . . . of [GFI Ltd.]”¹³

15. The Insurance Contract defines “Loss” to mean “any amount the Insured Persons are legally obligated to pay by reason of a Claim, including without limitation: (i) compensatory damages; (ii) punitive, aggravated or exemplary damages or the multiple portion of a multiplied damages award; (iii) judgments, settlements, pre-judgment and post-judgment interest; [and] (iv) plaintiffs’ legal fees . . .”¹⁴

16. The Insurance Contract does not exclude claims for negligence, negligent misrepresentation, or breach of contract.¹⁵

¹¹ May 15, 2025 Affidavit of J. Simpson, at para. 5 (MR at 10).

¹² Insurance Contract, at 1, Ex. “A” to May 15, 2025 Affidavit of J. Simpson (MR at 19).

¹³ Insurance Contract, at 8, Ex. “A” to May 15, 2025 Affidavit of J. Simpson (MR at 26).

¹⁴ Insurance Contract, at 9, Ex. “A” to May 15, 2025 Affidavit of J. Simpson (MR at 27).

¹⁵ Insurance Contract, at 15, Ex. “A” to May 15, 2025 Affidavit of J. Simpson (MR at 33).

C. THE RECEIVERSHIP PROCEEDINGS

17. In May 2024, Siena commenced an application for the appointment of a receiver in respect of the assets of the Debtors.¹⁶

18. On May 31, 2024, this Court appointed Richter Inc. as receiver (the “**Receiver**”) without security, of those assets that constitute the ABL Priority Collateral (as defined in the May 31, 2024 Order) of the Debtors.¹⁷

19. Section 9 of the May 31, 2024 Order directed that no proceedings were to be commenced against any of the Debtors except with leave of this Court:¹⁸

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors or the ABL Priority Collateral shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the ABL Priority Collateral are hereby stayed and suspended pending further Order of this Court.

D. THE MOTION TO LIFT THE STAY OF PROCEEDINGS

20. In light of the stay of proceedings imposed by the May 31, 2024 Order, Siena commenced this motion to seek permission to bring its claim against GFI Ltd. and certain of its directors and officers to seek recovery under the Insurance Contract.

21. On April 4, 2025, in advance of bringing this motion, Siena sought the consent of the Receiver to lift the stay in order to commence the proposed claim.

22. On April 28, 2025, the Receiver provided its consent.

¹⁶ May 31, 2024 Order of Justice Steele.

¹⁷ May 31, 2024 Order of Justice Steele, at para. 3.

¹⁸ May 31, 2024 Order of Justice Steele, at para. 9.

23. On April 29, 2025, Siena then provided courtesy copies of its motion materials to the Service List, advising that it intended to formally serve its motion on May 14, 2025, and seeking any comments or concerns. In its materials, Siena provided a copy of its proposed Draft Order, which provides that, “to the extent Siena is successful in proving the claims outlined in the draft Statement of Claim, it shall not be entitled to enforce and/or execute upon the judgment against the property of GFI Ltd.”¹⁹

24. No concerns were raised by any party in response to Siena’s April 29, 2025 correspondence.

25. On June 13, 2025, following Siena’s service of its motion (served on May 15, 2025), counsel for the individual defendants in the proposed claim advised that the individual defendants would not oppose the motion.

26. No other party has indicated any intention to oppose or otherwise take a position on the motion.

PART III - ISSUES

27. The sole issue on this motion is whether this Court should lift the stay of proceedings to permit Siena to issue the proposed claim to seek recovery under the Insurance Contract.

¹⁹ Draft Order to Lift Stay, at para. 2 (MR at 256).

PART IV - LAW & ARGUMENT

A. THE COURT HAS THE POWER TO LIFT A STAY OF PROCEEDINGS TO PERMIT A PARTY TO SEEK RECOVERY ON A CONTRACT OF INSURANCE

28. Under section 69.4 of the *BIA*, a creditor may apply to the court for a declaration that a stay imposed pursuant to sections 69 to 69.31 of the *BIA* no longer operate in respect of that creditor.²⁰

29. The court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied that the creditor is likely to be materially prejudiced by the continued operation of the stay or that it is equitable on other grounds to make such a declaration.²¹

A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

30. To justify lifting of the stay, a party “is required to establish that there are sound reasons for the lifting of the stay, which are consistent with the scheme of the BIA to relieve against the automatic stay.”²²

31. This Court has repeatedly recognized that “permitting a plaintiff to seek recovery on a contract of insurance [i]s a sound reason to lift the stay.”²³ This is because, generally speaking,

²⁰ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 69.4](#).

²¹ *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 69.4](#).

²² *Re Aleafia Health*, 2024 ONSC 3456, at [para. 7](#) (citing *Re Ma*, 2001 CanLII 24076, at [para. 3](#)).

²³ *Re Aleafia Health*, 2024 ONSC 3456, at [para. 8](#); see also *Pillar Capital Corp. v. 3 Sixty Secure Corp et al.*, 2023 ONSC 4067, at [para. 3](#) (“The Court has recognized circumstances in which it is appropriate to lift a stay of proceedings [include] when an action is brought to establish judgment against a bankrupt, in order to enable the plaintiff to seek recovery on a contract of insurance.”).

“there is no prejudice to the company or the creditors” from a claim seeking recovery on a contract of insurance, “since the proceeds of the insurance, if any, would not be available to all creditors but only to third parties . . . that suffered a loss as a result of” some harm committed by the company, “if so proven.”²⁴

32. To lift the stay, it “is not necessary . . . that the plaintiff establish that the insurance policy is applicable, but only that it may possibly be available to the creditor to satisfy its claim.”²⁵ The court hearing the proposed claim “can determine whether or not the policy applies.”²⁶

B. IT IS EQUITABLE TO LIFT THE STAY OF PROCEEDINGS IN THIS CASE

33. It is equitable for the Court to lift the stay of proceedings to permit Siena to commence its proposed claim for at least the following reasons.

34. First, Siena is seeking to commence its proposed claim to recover on the Insurance Contract only. It is not seeking to recover against any assets of GFI Ltd. or the other Debtor companies. This is confirmed in the proposed Draft Order, under which Siena would “not be entitled to enforce and/or execute upon the judgment against the property of GFI Ltd.” in the event it is successful in proving the claims outlined in the draft Statement of Claim.²⁷ There will accordingly be no prejudice to the Debtors or to any creditor.

35. Second, it is clear that the Insurance Contract “may possibly be available to [Siena] to satisfy its claim,” as it is specifically intended to provide coverage for losses incurred by directors

²⁴ *Pillar Capital Corp. v. 3 Sixty Secure Corp et al.*, 2023 ONSC 4067, at [para. 5](#).

²⁵ *Pillar Capital Corp. v. 3 Sixty Secure Corp et al.*, 2023 ONSC 4067, at [para. 4](#).

²⁶ *Pillar Capital Corp. v. 3 Sixty Secure Corp et al.*, 2023 ONSC 4067, at [para. 4](#).

²⁷ Draft Order to Lift Stay, at para. 2 (MR at 256).

and/or officers of GFI Ltd., and does not exclude claims for negligence, negligent misrepresentation, or breach of contract.²⁸

PART V - ORDER REQUESTED

36. Siena respectfully requests an Order granting the motion to lift the stay under the *BIA* to permit Siena to commence a claim substantially similar to the claim outlined in the Draft Statement of Claim for the purpose of seeking recovery on a contract of insurance.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of June, 2025.



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²⁸ Insurance Contract, at 1, 8, 15, Ex. "A" to May 15, 2025 Affidavit of J. Simpson (MR at 19, 26, 33).

SCHEDULE “A”

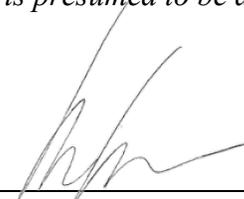
LIST OF AUTHORITIES

1. *Pillar Capital Corp. v. 3 Sixty Secure Corp et al.*, 2023 ONSC 4067.
2. *Re Aleafia Health Inc.*, 2024 ONSC 3456.

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date June 26, 2025



Devon R. Kapoor

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, RSC 1085, c B-3

69.4 A creditor who is affected by the operation of sections 69 to 69.31 or any other person affected by the operation of section 69.31 may apply to the court for a declaration that those sections no longer operate in respect of that creditor or person, and the court may make such a declaration, subject to any qualifications that the court considers proper, if it is satisfied

- (a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or
- (b) that it is equitable on other grounds to make such a declaration.

SIENA LENDING GROUP CANADA LLC

-and- GLOBAL FOOD AND INGREDIENTS INC., GLOBAL FOOD
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Respondents

Court File No. CV-24-00720816-00CL

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PROCEEDING COMMENCED AT TORONTO

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Service List