Court File No. CV-25-00750817-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

RI FLOW LLC and NFS LEASING CANADA LTD.

Applicants

- and -

FLOW BEVERAGE CORP., FLOW WATER INC., FLOW GLOW BEVERAGES INC., FLOW BEVERAGES INC. and 2446692 ONTARIO LIMITED

Respondents

APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C., 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

FACTUM OF THE RECEIVER

October 1, 2025

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TO: THE SERVICE LIST

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FACTUM OF THE RECEIVER

PART A - INTRODUCTION

1. The Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted an Order (the "**Appointment Order**") dated September 4, 2025 appointing Richter Inc. ("**Richter**") as receiver (in such capacity, the "**Receiver**"), without security, over all of the assets, undertakings, and properties of Flow Beverage Corp. ("**ParentCo**"), Flow Water Inc. ("**OpCo**"), Flow Beverages Inc., 2446692 Ontario Limited, and Flow Glow Beverages Inc. (collectively, the "**Debtors**"), pursuant to subsection 243(1) of the

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3, as amended (the "**BIA**"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), following RI Flow LLC's ("**RI Flow**") and NFS Leasing Canada Ltd.'s ("**NFS**", and collectively, the "**Senior Secured Lenders**") application to the Court.

2. Capitalized terms used but not otherwise defined herein have the meanings given to them in the First Report of the Receiver dated September 23, 2025 (the "**First Report**").

3. This factum is filed in support of the Receiver's motion for:

   (a) a Reverse Vesting Order, among other things:

      (i) approving and authorizing the Transaction in respect of the shares of OpCo by way of the RVO;

      (ii) authorizing the Receiver to execute such consents and other documents required to facilitate the realization of the personal property of USCo by way of a Partial Strict Foreclosure;

      (iii) granting the D&O Releases (as defined below); and

   (b) an Ancillary Order, among other things:

      (i) approving this First Report and the Receiver's activities described herein;

      (ii) sealing Confidential Appendices "1", "2", and "3" appended to the First Report (the "**Confidential Appendices**"); and

(iii) approving the fees and disbursements of the Receiver and those of its counsel as set out in their respective fee affidavits.

PART B - FACTS

4. The facts underlying this motion are fully set out in the First Report and the Supplement to the First Report of the Receiver dated October 1, 2025, and are summarized briefly below.

a. Background

5. The Debtors develop, sell, and distribute Flow-branded water extracted from a spring in Bruce County, which is boxed for sale in a paper-based recyclable container that is marketed as more environmentally sustainable than conventional plastic bottles.[1]

6. ParentCo, the ultimate parent company, is a public company listed on the Toronto Stock Exchange.[2] Its shares are subject to a cease-trade order.

7. The Debtors' primary assets are intellectual property and a facility located in Aurora, Ontario (*i.e.*, the Aurora Facility).[3]

8. As of the date of the First Report, the Debtors employ approximately 137 people.[4]

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[1] First Report of Richter Inc., in its capacity as Court-appointed receiver of Flow Beverage Corp., Flow Water Inc., Flow Beverages Inc., 2446692 Ontario Limited, and Flow Glow Beverages Inc., dated September 23, 2025 at paras 7 and 8 [First Report].

[2] First Report at para 11.

[3] First Report at paras 13 and 20.

[4] First Report at para 15.

9. Critical to the Debtors' operations are certain licences, permits, and registrations, including from the U.S. Food and Drug Administration, a Water Permit issued by the Ministry of the Environment, Conservation and Parks, and certain licences related to alcohol production activities issued by the Canada Revenue Agency. These licences are either very difficult or impossible to transfer.[5]

10. The Debtors have historically suffered operating losses. On a consolidated basis, the Debtors have an accumulated shareholder deficit of over $50 million. According to the Latest Financials, the Debtors have limited cash and materially negative working capital. When the Receiver was appointed, the Debtors had approximately $8,000 in their bank account. For months before the receivership and since the Receiver's appointment, Flow has relied on repeated emergency cash injections from its Senior Secured Lenders.[6]

b. Senior Secured Lenders

11. NFS and RI Flow are the Debtors' Senior Secured Lenders.[7]

12. As of September 15, 2025, the Debtors owed the Senior Secured Lenders over $71 million.[8]

[5] First Report at paras 16, 98.

[6] First Report at paras 25-27.

[7] First Report at paras 32-49.

[8] First Report at para 49. As noted in the First Report, all the debt and security owing to the Senior Secured Lenders was assigned to the Purchaser in connection with the Transaction.

13. The Senior Secured Lenders have valid, perfected security against all of the Debtors' personal property.[9]

c. Attempts to Sell the Debtors' Assets

14. Between spring 2023 and the date of the Appointment Order, the Debtors pursued successive, increasingly structured attempts to enter into transactions for the sale of their business or assets.[10]

15. In April 2023, after receiving an unsolicited approach for assets tied to the Aurora Facility, the Debtors retained Deloitte to run a broad sale process for the plant, and related equipment leases and permits. Over roughly eight months, Deloitte contacted 36 potential purchasers; 14 signed NDAs and 3 submitted letters of intent. No binding offer emerged that met the company's requirements.[11]

16. In early 2024, the Debtors shifted to a more targeted path. With Stifel as advisor, the Debtors explored a merger-and-privatization with a single industry participant. That counterparty ultimately declined to proceed.[12]

17. Facing continuing losses and liquidity pressure, the Special Committee engaged Origin Merchant Partners in May 2025 to market the business and/or assets. Origin launched a formal process in July 2025.[13]

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[9] First Report at paras 37-42 and 46-48.
[10] First Report at paras 58-59.
[11] First Report at paras 60-64.
[12] First Report at paras 65-66.
[13] First Report at paras 67 and 69.

18. Out of the 182 parties Origin contacted (135 financial, 47 strategic), 58 executed confidentiality agreements and accessed a data room.[14]

19. Despite active discussions with approximately 22 parties before the August 28, 2025, Phase I bid deadline, no indications of interest were received.[15]

20. In parallel, negotiations with a strategic buyer that had previously delivered a non-binding LOI in March 2025 resumed but failed to produce a renewed LOI. The proposed purchase price remained below the amounts outstanding to the Senior Secured Lenders.[16]

d. Attempts to Secure DIP Financing

21. After the Senior Secured Lenders delivered BIA Notices on August 22, 2025, the Special Committee pivoted to attempting to secure DIP financing in aid of a potential CCAA filing. It retained KSV Advisory and canvassed more than 20 prospective lenders. Only one expressed preliminary interest and only if the Debtors first produced a satisfactory, non-binding indication of interest from a buyer through the Origin Sale Process. As noted above, this never materialized.[17]

e. Support Agreement

22. Without any liquidity, interim financing, fresh support from its Senior Secured Lenders, or an actionable transaction sufficient to repay the Senior Secured Indebtedness, the

[14] First Report at para 70.
[15] First Report at para 71.
[16] First Report at para 72.
[17] First Report at paras 73, 84-85.

Special Committee grew concerned about the Debtors' ability to make payroll. With the advice of its professional advisors, the Special Committee ultimately entered into the Support Agreement with the Senior Secured Lenders on September 1, 2025.[18]

23. Under the Support Agreement, the Debtors agreed to: (i) support the appointment of a receiver; and (ii) support a lender-led restructuring transaction structured as a PPSA foreclosure. In return, the Senior Secured Lenders agreed to provide interim funding to maintain operations until closing. The parties committed to use commercially reasonable efforts to obtain a court-ordered release in favour of the independent directors comprising the Special Committee, and the Debtors agreed to provide transitional services and to support the transaction in good faith.[19]

f. Receiver's Appointment and Activities

24. Following the execution of the Support Agreement, the Senior Secured Lenders initially asked this Court for a non-possessory receiver for limited purposes. The most prominent of those purposes was to provide a mechanism to fund the Debtors' operations by way of a receiver's borrowing charge while the structured foreclosure by the Senior Secured Lenders was implemented under the PPSA.[20]

25. As events transpired leading up to the hearing, including the resignation of all directors, the Receiver's mandate morphed in real-time. What began as a limited, non-possessory

[18] First Report at paras 77 and 86.
[19] See Support Agreement, at Appendix "F" of the First Report [Support Agreement].
[20] First Report at para 96.

appointment expanded into a full receivership with the Receiver assuming possession and control of all the Debtors' property.[21]

26. The stay of proceedings provided for by the Appointment Order carved out the Senior Secured Lenders' right to issue statutory notices to commence the 15-day notice period for a foreclosure under subsection 65(2) of the PPSA.[22]

27. After its appointment, the Receiver focused on stabilizing the business by taking possession of the assets and immediately drawing $1,000,000 from the Senior Secured Lenders under a receiver's borrowing certificate. The Receiver has since borrowed further funds for a total of $2,500,000.[23]

28. The Receiver then turned to reviewing the pre-appointment sale efforts. This included meeting with Origin, the Special Committee and Stifel and reviewing Deloitte's 2023 process materials.[24]

29. The Receiver fielded limited inbound interest in a potential sale process and tested whether the Senior Secured Lenders would be willing to fund a short supplementary sale process. The Senior Secured Lenders declined, considering the Debtors' prior sales

[21] First Report at para 90(d). See also the Appointment Order, Appendix "A" of the First Report [Appointment Order].

[22] Appointment Order at para 12.

[23] First Report at para 29; Supplement to the First Report of the Receiver, dated October 1, 2025 at para 11 [Supplement to the First Report].

[24] First Report at paras 58-76.

efforts which yielded no satisfactory offers. In parallel, the Receiver considered and concluded that financing from other parties was not feasible.[25]

30. Pre-filing Appraisals prepared in 2025 indicate that the value of the Debtors' property is substantially lower than the Senior Secured Indebtedness. The Receiver's own liquidation analysis confirms that the Debtors' liquidation would likely result in realizations materially below the Senior Secured Indebtedness.[26]

31. The Receiver notes in its First Report that the liquidity provided by the Senior Secured Lenders in these receivership proceedings, together with public messaging to the market about the Senior Secured Lenders' intention to assume ownership of the Debtors' business, has created stability and confidence with remaining employees, suppliers and customers.[27]

32. Having considered all these factors, the Receiver concluded that there was no funding for, or value in, another sale process; and that a transition of the business to the Senior Secured Lenders made sense in the circumstances.[28]

[25] First Report at para 91-95.
[26] First Report at paras 76, 112.
[27] First Report at para 94 (b) and (c).
[28] First Report at para 95.

g. Pivot in Transaction Structure

33. The Receiver then turned to understanding the mechanics of the Foreclosure and its impact on the Debtors' ongoing operations. The Receiver's aim was to ensure that, post-closing, the business could operate in the ordinary course without disruption.[29]

34. Regulatory advice made clear that key operating licences are non-transferable (or could take months to replace) and "work-around" options (*e.g.*, transition services) were complex, costly and uncertain. In the circumstances, the Receiver concluded the only practical way to preserve the Debtors' operations, licences, and 137 employees was a transaction by way of a "reverse vesting order" in Canada paired with a partial strict foreclosure for the U.S. assets under U.S. law. This is the structure of the Transaction for which the Receiver now seeks approval.[30]

35. The Receiver does not believe other stakeholders are materially prejudiced by the change in transaction structure from foreclosure to reverse vesting order.[31]

36. Having determined a reverse vesting order is necessary, the Receiver and RI WaterCo ULC (*i.e.*, the Purchaser), as the assignee of the Senior Secured Lenders' debt and security, entered into the Subscription Agreement. The terms of the Subscription Agreement are summarized in the First Report.[32]

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[29] First Report at para 96-97.
[30] First Report at para 98-101.
[31] First Report at para 110, 113(e).
[32] First Report at para 104.

PART C - ISSUES & LEGAL ARGUMENT

37. The issues to be addressed before this Honourable Court are whether:

(a) the Transaction should be approved;

(b) the D&O Releases should be approved; and

(c) the Confidential Appendices should be sealed.

a. The Court Should Approve the Transaction

i. *Soundair* and "Quick Flip" Principles are Met

38. In determining whether to approve a proposed sale by a receiver, the Court must consider the *Soundair* principles, namely:

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.[33]

39. Courts have characterized a "quick flip" as an immediate sale involving an already negotiated purchase agreement sought to be approved upon or immediately after the

[33] *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA).

appointment of a receiver without any further marketing process.[34] While not a usual transaction, in certain circumstances, "a 'quick flip' may well represent the best, or only, commercial alternative to a liquidation."[35] Courts have approved "quick flips" in a number of cases. [36]

40. Since the Transaction contemplates a sale of the business to the Senior Secured Lenders without further marketing and within an abbreviated filing timeline, it is proper to consider the Transaction within the "quick flip" legal framework.[37]

41. Where the Court is asked to approve a "quick flip" transaction, in addition to considering the *Soundair* principles, the Court should also:

(a) give specific consideration to the economic realities of the business and the specific transactions in question;[38] and

(b) consider the impact on various parties and assess whether their respective positions and the proposed treatment that they will receive in the "quick flip" transaction would realistically be any different if an extended sales process were followed.[39]

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[34] *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 at para 33 [*Elleway Acquisitions Limited*].

[35] *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, 2013 ONSC 6905 at para 10 [*Montrose Mortgage*].

[36] *Elleway Acquisitions Limited*; *Montrose Mortgage* at para 11; *Romspen Investment Corporation v Tung Kee Investment Canada Ltd et al*, 2023 ONSC 5911 at para 50 [*Romspen*].

[37] First Report at para 95.

[38] *Elleway Acquisitions Limited* at para 33.

[39] *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC) [*Tool-Plas*].

42. The Receiver submits the *Soundair* principles and the principles pertaining to "quick flips" are satisfied in this case.

43. Here, the economic reality is that the Debtors have relied on emergency cash injections from the Senior Secured Lenders for months only to incur significant operating losses. Previous attempts to sell the Debtors' assets highlighted the challenges inherent in valuing those assets and have left the Senior Secured Lenders suffering a shortfall. The Senior Secured Lenders determined a transition of the business was the best outcome in the circumstances, to which the Debtors consented, and the Receiver agrees.[40]

44. In *Tool-Plas Systems Inc. (Re)*, the Honourable Justice Morawetz, as he then was, approved a "quick flip" transaction where:

    (a) there was substantial risk associated with a further marketing process;[41]

    (b) the proposed sale price exceeded the going concern and liquidation value of the assets;[42]

    (c) the transaction was a successful outcome for certain stakeholders, including the secured lenders, the landlord, and certain employees;[43] and

    (d) certain parties would receive no recovery, since this outcome was inevitable.[44]

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[40] First Report at paras 27-28, 64, 72, 77-87, and 113.
[41] *Tool-Plas* at paras 10, 18.
[42] *Tool-Plas* at paras 11, 18.
[43] *Tool-Plas* at paras 16-17.
[44] *Ibid*.

45. Moreover, in the past, this Court has approved a quick flip sale where, among other things, an immediate sale was the "only realistic way" to maximize recovery for a creditor with a clear economic interest, further delay would erode value,[45] and there were legitimate efforts to sell the business to third parties.[46]

46. The Receiver submits that the proposed Transaction satisfies the *Soundair* principles and the principles relating to "quick flips" because:

(a) the Debtors have no resources to conduct a further marketing process. The Debtors have exhausted their resources and primarily rely on cash injections from the Senior Secured Lenders to fund their shortfalls in their operations. The Senior Secured Lenders are not prepared to fund a further marketing process;[47]

(b) the Transaction preserves the employment of 137 employees and provides for a beneficial economic outcome for stakeholders;[48]

(c) the assets of the Debtors appear to have been comprehensively marketed on three (3) occasions since 2023, and no party put forward a transaction that would generate proceeds sufficient to repay the Senior Secured Indebtedness. Even if possible (which it is not), there is no realistic basis to expect that a further sales process would produce a more favourable outcome.[49] Accordingly, the Receiver

[45] *Elleway Acquisitions Limited* at paras 33 and 47.

[46] *Montrose Mortgage* at para 11.

[47] First Report at paras 93 and 113(a). See also the Receiver's borrowing certificates at Appendix "D" of the Supplement to the First Report.

[48] First Report at para 113(d).

[49] *Elleway Acquisitions Limited* at para 35.

is satisfied that the potential to identify a superior transaction by pursuing a further sales process is outweighed by the risk of lower recovery for stakeholders;[50]

(d) the liquidation analysis prepared by the Receiver indicates that the liquidation value of the Debtors' assets is materially lower than the Senior Secured Indebtedness. The Receiver has also obtained favourable security opinions with respect to the security held by the Senior Secured Lenders;[51]

(e) The Subscription Agreement gives proper treatment to claims in priority to that enjoyed by the Senior Secured Lenders;[52]

(f) the Special Committee, with the advice of professional advisors, consented to transitioning the Debtors' business to the Senior Secured Lenders (albeit by way of a structured foreclosure), and the Receiver agrees with the Special Committee that a transaction with the Senior Secured Lenders is the most appropriate way forward;[53] and

[50] *Elleway Acquisitions Limited* at para 35; *Romspen* at paras 50-52.

[51] First Report at para 112; *Tool-Plas* at para 11.

[52] Subscription Agreement, at Appendix "H" to the First Report ("Priority Payments means (i) those priority payments prescribed under subsections 60(1.1), 60(1.3) (a) and 60(1.5) of the BIA, (ii) the Wind-Down Reserve, (iii) the Implementation Sales Tax Amount; (iv) an amount equal to the fees and disbursements of the Receiver and its counsel at the Closing Time; and (v) any other amounts ranking in priority to the Pre-Receivership Debt."). See also *Montrose Mortgage* at para 11.

[53] First Report at para 86, 113(c) and (d).

(g) the Receiver does not believe any stakeholder is any worse off in seeking the immediate approval of the Transaction at this time.[54]

47. The circumstances before this Court are distinguishable from those in *9-Ball Interests Inc v Traditional Life Sciences Inc* ("***9-Ball***"), where the Court declined to approve a "quick flip" transaction to a related party that amounted to a credit bid by the senior secured creditor.[55]

48. In refusing to approve the transaction in that case, the Court, among other things, placed weight on the fact that the debtor had no employees, and that there was no threat that "turn[ing] off the lights" would result in a significant loss of jobs.[56]

49. Here, unlike in *9-Ball*, there is genuine urgency. With no assurance of ongoing funding, the Receiver would likely be forced to pivot to a pure liquidation if the Transaction is not approved, resulting in the loss of significant operations and 137 jobs.

ii. RVO is Appropriate

50. This Court has jurisdiction to approve a transaction by way of an RVO within a receivership proceeding pursuant to section 243 of the BIA and section 101 of the CJA.[57]

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[54] First Report at para 113(e).

[55] *9-Ball Interests Inc v Traditional Life Sciences Inc*, 2012 ONSC 2788 at para 4 [*9-Ball*].

[56] *9-Ball* at para 25.

[57] *Nuance Pharma Ltd v Antibe Therapeutics Inc*, 2025 ONSC 706 at para 10 [*Nuance Pharma*].

51. Under subsection 243(1)(c), a receiver may "take any other action that the court considers advisable."[58] Courts have held that an RVO is incidental or ancillary to a receiver's power to sell under section 243.[59]

52. Additionally, subsection 183(1) of the BIA provides that this Court with "such jurisdiction at law and in equity as will enable [it] to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act."[60] Case law has recognized that an RVO may be granted under a court's general jurisdiction provided for under this subsection.[61]

53. RVOs have become increasingly common for transactions where the debtor operates in a highly regulated environment and has licences and permits that are difficult or impossible to transfer.[62]

54. This Court in *Harte Gold Corp (Re)* listed the factors it will consider in determining whether to approve an RVO, namely:

    (a) Why is the RVO necessary in this case?

    (b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?

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[58] BIA, s 243(1)(c).

[59] *British Columbia v Peakhill Capital Inc*, 2024 BCCA 246 at para 24 [*Peakhill Capital*].

[60] *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, s 183(1) [BIA]

[61] *Peakhill Capital* at paras 21-22, citing *PaySlate Inc (Re)*, 2023 BCSC 608 at paras 84-86.

[62] *Validus Power Corp. et al v Macquarie Equipment Finance Limited*, 2024 ONSC 250 at para 46 [*Validus Power*].

(c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?

(d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?[63]

55. While *Harte Gold* was a case under the CCAA, its principles have been applied in the context of RVOs in receivership.[64]

56. The Receiver submits that the *Harte Gold* factors are satisfied in this case:

(a) **The RVO is necessary.** The Debtors hold licences and permits that are necessary for their operation and not readily transferable. The pivot to an RVO occurred at the Receiver's request after carefully determining the mechanics of the proposed foreclosure were not feasible because of regulatory issues surrounding the licences. The RVO will facilitate the timely and efficient preservation of licences and permits in circumstances where applying for new licences would involve significant risk, delay, and cost – factors that courts have previously recognized as justifying approval of an RVO.[65]

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[63] *Harte Gold Corp (Re)*, 2022 ONSC 653 at paras 38 [*Harte Gold*].

[64] *Peakhill Capital Inc v Southview Gardens Limited Partnership*, 2023 BCSC 1476 at para 76 [*Peakhill Capital*], aff'd 2024 BCCA 246, leave to appeal to SCC refused (No. 41483).
appv'd See also *In re FGC Health Ltd. et. al.* (Court File No. 2401-08064), Approval and Vesting, Reverse Vesting, Assignment and Sealing Order dated October 9, 2024 (where Justice Feasby of the Court of King's Bench of Alberta approved a reverse vesting order transaction in a receivership).

[65] First Report at paras 16, 98; *Harte Gold Corp (Re)*, 2022 ONSC 653 at paras 4, 71.

(b) **The RVO produces an economic result that is at least as favourable as any other viable alternative.** Because the RVO facilitates the Debtors' regulatory compliance, it supports the preservation of going-concern operations and offers a more favourable outcome than either a foreclosure or a traditional asset sale.[66]

(c) **No stakeholder is worse off under the RVO structure than they would have been under another viable alternative.** The Receiver concludes that no stakeholder is worse off because of the RVO. On the contrary, key stakeholders, such as employees and customers relying on the Debtors' alcohol licences, are likely better off.[67]

(d) **The consideration being paid reflects the value of the intangible assets being preserved under the RVO.** The consideration in the proposed transaction is a credit bid. While the Purchaser may receive the benefit of tax losses that would otherwise not have been available in a foreclosure or a traditional asset sale, the results of the Debtors' previous marketing efforts indicate that no party was prepared to pay consideration greater than the Senior Secured Indebtedness for these assets, and neither of those options preserves necessary licences and permits.[68]

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[66] First Report at paras 16, 98; *Harte Gold Corp (Re)*, 2022 ONSC 653 at paras 4, 71.

[67] First Report at paras 113(d) and (e).

[68] First Report at paras 64, 66, and 71-72.

57. Accordingly, the Receiver submits that in this case, the RVO is appropriate and consistent with the well-established purposes of a receivership to enhance and facilitate the preservation and realization of the assets of the debtor for the benefit of creditors.[69]

b. Releases for the Independent Directors Should be Granted

58. The Receiver seeks a broad court-ordered release in favour of the Independent Directors (the "**D&O Releases**"). This relief is contemplated by the Support Agreement, under which the parties agreed to use commercially reasonable efforts to obtain such a release. It is also required under the Subscription Agreement, which requires the Receiver to include in the Reverse Vesting Order a provision requiring the Receiver to seek a court-ordered release in favour of the Independent Directors.[70] The Receiver submits that it is appropriate and not extraordinary in the circumstances.

59. In considering whether to exercise the discretion to approve RVO release provisions, courts have considered the following factors:

(a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

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

(c) whether the plan could succeed without the releases;

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[69] *Nuance Pharma* at para 10.

[70] Support Agreement; Subscription Agreement, s 5.1, Appendix "H" to the First Report.

(d) whether the parties being released were contributing to the plan; and

(e) whether the release benefitted the debtors as well as the creditors generally.[71]

60. No one factor is determinative, and it is not necessary for each of these factors to apply to the proposed release to be granted.[72]

61. In *Validus Power Corp et al and Macquarie Equipment Finance Limited*, this Court approved an RVO transaction in a CCAA proceeding coupled with a receivership. The order included releases for former directors. The directors had contributed substantial value, the releases provided significant benefits for stakeholders, and they avoided the need for a duplicative claims process. The Court emphasized that the releases were consistent with those previously approved in other cases and that they were narrowly tailored with carve-outs for gross negligence and wilful misconduct.[73] This case illustrates that, provided the releases contain the appropriate statutory carve-outs, and the directors have acted in good faith and made a material contribution to the proceedings, such releases align with the objectives of insolvency law.

62. Like in *Validus*, the Independent Directors made a material contribution to this restructuring because:

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[71] *Peakhill Capital* at para 79, citing *Lydian International Limited (Re)*, 2020 ONSC 4006 at para 54 [*Lydian International*].

[72] *Harte Gold* at para 80.

[73] *Validus Power* at paras 26, 67-70.

(a) they agreed to serve on the Special Committee with a view to good corporate governance;

(b) they managed the Origin Sale Process until its conclusion;

(c) with no actionable transactions and severe liquidity constraints, they carefully evaluated the Debtors' strategic alternatives and ultimately secured the Support Agreement. They determined it to be in the best interests of the Debtors and their stakeholders, and the Support Agreement laid the foundation for this receivership and the Transaction that enables a forward-looking restructuring; and

(d) they were immensely helpful in facilitating the Receiver's mandate after the Appointment Order. They provided information to the Receiver promptly upon request during the Receiver's diligence review and made themselves available to the Receiver to discuss the circumstances around the Support Agreement and Origin Sale Process.[74]

63. The D&O Releases appropriately do not apply to claims or liability: (a) arising out of any gross negligence or wilful misconduct by the applicable Independent Director; or (b) that is not permitted to be compromised pursuant to section 50(14) of the BIA. This approach is consistent with the statutory carve-outs in other cases.[75]

[74] First Report at paras 82-87, 114-120. See also *Lydian International* at para 54; *Harte Gold* at paras 78-86.
[75] *Lydian International* at para 51.

64. The Receiver is not aware of any creditor or stakeholder asserting a claim against the Independent Directors, and the Debtors are current with respect to wages, vacation pay, source deductions and sales tax remittances.[76]

65. For these reasons, the Receiver submits it is appropriate to grant the requested release in favour of the Independent Directors.

c. Confidential Appendices Should be Sealed

66. The Receiver is asking that the Confidential Appendices be sealed.[77]

67. The Court may seal confidential documents under section 137(2) of the *Courts of Justice Act* (the "**CJA**"). Section 137(2) of the CJA provides that "[a] court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record."[78]

68. In *Sherman Estate v. Donovan*, the Supreme Court of Canada established a three-part test for a sealing order: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[79]

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[76] First Report at paras 30, 120

[77] First Report, at paras 128-129.

[78] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 137(2).

[79] *Sherman Estate v. Donavan*, 2021 SCC 25 at para 38 [*Sherman Estate*].

69. The Supreme Court of Canada reasoned in *Sherman Estate* that a general commercial interest in preserving confidential information is an important interest because of its public character.[80]

70. Here, the important public interest to be protected is the ability for companies in an insolvency proceeding to protect the economic interests of stakeholders by keeping third-party asset and business valuations, and liquidation analyses prepared by a court officer, confidential.

71. Such valuations and liquidation analyses are highly sensitive: if such information were made public, it could prejudice the Purchaser in any future attempt to sell or remarket the purchased assets by signalling floor pricing or impairing negotiating leverage. This, in turn, could diminish recoveries available to stakeholders and undermine confidence in court-supervised sales processes. The sealing order sought is narrowly tailored to protect only this limited category of confidential material, is proportional to the risk of harm, and balances the open court principle with the need to preserve stakeholder value.

PART D - ORDER REQUESTED

72. The Receiver requests that this Court grant the Reverse Vesting Order and the Ancillary Order.

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[80] *Sherman Estate*, at para 41.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 1st day of October, 2025.

PATRYK SAWICKI

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Royal Bank of Canada v Soundair Corp*, 1991 CanLII 2727 (ON CA).
2. *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009.
3. *Montrose Mortgage Corporation v Kingsway Arms Ottawa*, 2013 ONSC 6905.
4. *Romspen Investment Corporation v Tung Kee Investment Canada Ltd et al*, 2023 ONSC 5911.
5. *Tool-Plas Systems Inc (Re)*, 2008 CanLII 54791 (ON SC).
6. *9-Ball Interests Inc v Traditional Life Sciences Inc*, 2012 ONSC 2788.
7. *Nuance Pharma Ltd v Antibe Therapeutics Inc*, 2025 ONSC 706.
8. *British Columbia v Peakhill Capital Inc*, 2024 BCCA 246.
9. *PaySlate Inc (Re)*, 2023 BCSC 608.
10. *Validus Power Corp. et al v Macquarie Equipment Finance Limited*, 2024 ONSC 250.
11. *Harte Gold Corp (Re)*, 2022 ONSC 653.
12. *Peakhill Capital Inc v Southview Gardens Limited Partnership*, 2023 BCSC 1476.
13. *In re FGC Health Ltd. et. al.* (Court File No. 2401-08064), Approval and Vesting, Reverse Vesting, Assignment and Sealing Order of Feasby J dated October 9, 2024.
14. *His Majesty the King in Right of the Province of British Columbia v. Peakhill Capital Inc., et al.*, 2025 CanLII 38366 (SCC).
15. *Lydian International Limited (Re)*, 2020 ONSC 4006.
16. *Sherman Estate v. Donavan*, 2021 SCC 25.

SCHEDULE "B"

TEXT OF STATUTES

Courts of Justice Act, R.S.O. 1990, c. C.43

101 Injunctions and receivers

(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

137 Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3

50 Who may make a proposal

Exception

(14) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors arising from contracts with one or more directors; or

(b) are based on allegations of misrepresentation made by directors to creditors or of wrongful or oppressive conduct by directors.

183 Courts vested with jurisdiction

(1) The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:

(a) in the Province of Ontario, the Superior Court of Justice;

243 Court may appoint receiver

(1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

***Personal Property Security Act*, R.S.O. 1990, c. P.10**

65 Compulsory disposition of consumer goods

Acceptance of collateral

(2) In any case other than that mentioned in subsection (1), a secured party may, after default, propose to accept the collateral in satisfaction of the obligation secured and shall serve a notice of the proposal on the persons mentioned in clauses 63 (4) (a) to (d).

Court File No. CV-25-00750817-00CL

RI FLOW LLC et al	- and -	FLOW BEVERAGE CORP. et al
Applicants		Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

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