

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

MOTION RECORD

(Motion by Representative Counsel for Non-Union Employees and
Retirees for approval of costs, returnable October 4, 2024)

September 18, 2024

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Representative Counsel for Non-Union
Employees and Retirees

TO: The Service List

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

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

- and -

**AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION

(Motion by Representative Counsel for Non-Union Employees and
Retirees for approval of costs, returnable October 4, 2024)

The court-appointed Representative Counsel to Non-Union Employees and Retirees of Metroland Media Group Ltd. ("**Metroland**") will make a motion before Justice Osborne of the Ontario Superior Court of Justice (Commercial List) on October 4, 2024 at 12:30 p.m., or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard by Zoom video conference, as directed by the Court.

THE MOTION IS FOR:

1. **AN ORDER** approving the additional costs of the terminated non-union employees (collectively, the "**Non-Union Employees**" or individually, each a "**Non-Union Employee**") and Retirees incurred by Representative Counsel in the all-inclusive amount of \$200,000, comprised of legal fees, costs of the Financial Advisor (defined below), and taxes and disbursements.

THE GROUNDS FOR THE MOTION ARE:**Background**

2. On September 15, 2023, Metroland filed a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"). The firm of Grant Thornton Ltd. was appointed as the Proposal Trustee.

3. That same day, the Company terminated the employment of approximately 605 employees, of which 501 were Non-Union Employees, without prior notice nor pay *in lieu* of notice.

4. On September 30, 2023, Metroland terminated the post-retirement health and life insurance benefits of the Non-Union Employees and approximately 443 Retirees.

5. The Non-Union Employees and Retirees are owed amounts by Metroland in respect of severance pay, terminated health benefits, pension contributions, post-retirement health benefits, and other amounts.

6. On October 13, 2023, Justice Osborne of the Ontario Superior Court of Justice appointed Koskie Minsky LLP ("**KM**") as Representative Counsel to the Non-Union Employees. To assist in fulfilling its mandate as Representative Counsel and pursuant to the Employee Representation

Order, KM retained the financial advisory services of Gus Tertigas, Senior Vice President at Ernst & Young Inc. ("**Financial Advisor**").

7. On December 7, 2023, the Court amended the mandate of Representative Counsel and issued the Amended Representation Order to include representation of 443 Retirees of Metroland who had claims in respect of their terminated post-retirement benefits.

8. Representative Counsel formed an *ad hoc* Employee Committee to liaise with and obtain directions in respect of the Metroland proceedings.

Activities of Representative Counsel

9. Under its mandate, Representative Counsel provides legal advice and advocacy for the Non-Union Employees and Retirees, including with respect to:

- a) revising the initial calculation of the Non-Union Employees' claims determined by the Proposal Trustee as \$14.7M and increasing it to approximately \$23M by adding a common law severance claim of 2.2 weeks' pay for each year of employment service capped at 104 weeks (as opposed to only under employment standards legislation or was originally calculated). That amount is materially higher than the \$14.7M amount that was listed in the initial Proposal, dated October 16, 2023;
- b) negotiating changes to the Proposal with the company and Proposal Trustee and other stakeholders, including pursuing the application of the Wage Earner Protection Program ("**WEPP**") first and not only after the Proposal passed a vote and received court approval (as the initial Proposal had contemplated);

- c) identifying a pension priority claim of approximately \$1M for the Non-Union Employees in respect of pension plan contributions owing to them during the notice period and which pursuant to section 60(1.5) of the BIA, will be paid under the Proposal at 100 cents/dollar. This priority claim was not reflected in the initial Proposal;
- d) negotiating with the Proposal Trustee and Metroland to ensure the claims filed on behalf of the Non-Union Employees and Retirees were complete and accurate;
- e) preparing for and attending contested motions with respect to obtaining the application of WEPP for the employees, to approve the Proposal on January 18 and 22, 2024, and to support the Proposal Trustee on the motion for directions regarding the interpretation of WEPP subrogation provisions under sections 36 and 36.1 of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**");
- f) reviewing the Trustee Information Form prepared by the Proposal Trustee in support of the Non-Union Employees' application for a WEPP payment to ensure it is complete and accurate and so that the employees each receive the maximum amount available under WEPP; and
- g) communicating with the Non-Union Employees and Retirees throughout via their law firm webpage, a toll-free telephone number, and an email path, providing updates to the Non-Union Employees and Retirees, responding to over 670 individual inquiries to date, and interacting with other stakeholders throughout this proceeding.

Costs of the Non-Union Employees and Retirees

10. As a term of the Employee Representation Order dated October 13, 2023 (para. 16), the Court ordered that the costs of the Non-Union Employees be paid by Metroland as part of the Proposal in the initial amount of \$100,000 (plus taxes and disbursements).

11. In the Amended Representation Order dated December 7, 2023 (para. 13), the Court ordered a further amount of \$100,000 (plus taxes and disbursements) to be paid by Metroland as part of the Proposal, bringing the total costs ordered to be paid up to that time to \$200,000 (plus taxes and disbursements).

12. Representative Counsel, along with their Financial Advisor, have costs in excess of the amount approved by the Court on October 13, 2023 and December 7, 2023. A substantive portion of these fees arose from the above-mentioned Proposal Trustee's motion for directions regarding the interpretation of the subrogation provisions under WEPPA.

13. Representative Counsel requests the approval of the following additional and final cost amount in respect of representing the Non-Union Employees and Retirees in this matter, broken out as follows:

	KM:	\$149,067.04
	Ernst & Young:	\$27,686.00
	Total Taxes & Disbursements:	\$23,246.96
	TOTAL	\$200,000.00

14. This amount is to be paid out of upcoming distributions released by the Proposal Trustee to the Non-Union Employees and Retirees, not from the Proposal funds payable to all creditors.

15. The Proposal Trustee has advised that the payment of the additional costs from the upcoming distributions to the Non-Union Employees and Retirees, including any claims that have been subrogated, will only decrease their overall expected rate of distribution from 17 cents/dollar to 16 cents/dollar.

16. On August 22, 2024, Representative Counsel updated their firm web page to outline their request for additional costs to be deducted from distributions payable to the Non-Union Employees and Retirees. To date, Counsel has not received an objection to this request from any Non-Union Employee or Retiree.

17. The Employee Committee has received the account outlining the costs of Representative Counsel and their Financial Advisor and supports the request that the payment of these fees be approved by the Court.

18. There is no prejudice to other creditors with this court request.

19. Rules 10 and 12.07 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

20. Sections 126(2) and 183(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Affidavit of John Willems, sworn September 17, 2024, and the exhibits thereto; and
2. Such further and other material as counsel may advise and this Honourable Court Permit.

September 18, 2024

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Employees and Retirees

TO: THE SERVICE LIST

**IN 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 METROLAND MEDIA GROUP LTD. OF THE CITY
OF TORONTO, IN THE PROVINCE OF ONTARIO**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at **TORONTO**

NOTICE OF MOTION

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Representative Counsel for Non-Union
Employees and Retirees

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF JOHN WILLEMS
(sworn September 17, 2024)

I, John Willems, of the Town of East Gwillimbury, in the Province of Ontario, **MAKE OATH AND SAY:**

Overview

1. I am a former non-union employee of Metroland Media Group Ltd. ("**Metroland**"), a company based in Toronto in the business of publishing and distributing newspapers and flyers and digital advertising on newspaper platforms. Metroland was established in February 1981 and is a subsidiary of the Torstar Corporation. In 2020, the investment firm NordStar Capital LP acquired the Torstar Corporation and by extension, Metroland.

2. I worked with Metroland for 32 years and last held the position of a General Manager of various Metroland divisions.

3. On September 15, 2023, I, along with 605 other employees (501 non-union employees and 104 union employees) out of a total workforce of approximately 1000 employees, were

terminated *en masse* without prior notice nor pay in lieu of notice. That was the same day that Metroland filed a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"). Metroland initiated Proposal proceedings to downsize its newspaper and flyer business lines and related workforce and then continue to operate in a smaller form. The firm of Grant Thornton Ltd. is the Proposal Trustee.

4. The non-union terminated employees (collectively, the "**Non-Union Employees**" and individually, each a "**Non-Union Employee**") each have claims based on wrongful dismissal against Metroland. We are a major creditor group, with a total claim of \$23M, as described in greater detail below.

5. I am advised by Koskie Minsky LLP ("**KM**") and believe that 443 Retirees have a group claim of approximately \$1.4M in respect of terminated post-retirement benefits.

6. The Metroland Proposal proceedings were fast-paced and urgent. Following negotiations with employees, retirees, the union and other stakeholders, the Proposal Trustee and company presented a revised Proposal to creditors at the creditors meeting on December 11, 2023, which was approved by the requisite double majority vote of creditors.

7. On January 24, 2024, Justice Kimmel approved the revised Proposal. Metroland continues to operate in a downsized form to this day.

Representation orders and representation of the terminated Non-Union Employees and Retirees

8. I previously swore three affidavits in this matter:

- a) my Affidavit sworn on October 12, 2023 in support of the motion to appoint me as Representative and KM as Representative Counsel to all terminated Non-Union Employees, which accounted for over 80% of all employees (or 501 employees out of a total of 605) terminated by Metroland, and is attached hereto as **Exhibit "A"** (without exhibits). Attached hereto as **Exhibit "B"** is a copy of the Employee Representation Order, dated October 13, 2023;
 - b) my Affidavit sworn on December 6, 2023 in support of the motion to amend the mandate of the Employee Representation Order to include 443 Retirees who had claims in respect of post-retirement benefits, which is attached hereto as **Exhibit "C"** (without exhibits). Attached hereto as **Exhibit "D"** is a copy of the Amended Representation Order, dated December 7, 2023; and
 - c) my Affidavit sworn on March 5, 2024 in support of the motion brought by the Proposal Trustee for directions from the Court in respect of how the subrogation mechanism under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 ("**WEPPA**") applies to the distributions payable to the Non-Union Employees from the Proposal, which is attached hereto as **Exhibit "E"** (without exhibits).
9. Pursuant to the Employee Representation Order and the Amended Representation Order, KM was appointed as Representative Counsel to the Non-Union Employees (subject to any employee who wished to opt out, and only eight out of the 501 Non-Union Employees opted out) and Retirees. To assist with fulfilling their mandate as Representative Counsel, KM retained Gus Tertigas, a Senior Vice President at Ernst & Young Inc. and an experienced insolvency professional, to provide financial advice.

10. I am a member of the *ad hoc* Employee Committee that was formed in accordance with the Employee Representation Order along with six other Non-Union Employees: Jason Christie, Larry Demmings, Lisa Orpen, Lisa Taylor, Monique Lea, and Ronit White. Our Committee communicates with Representative Counsel and the terminated Non-Union Employee population since the outset of this proceeding relating to the terms of the Proposal, its development and amendments, negotiations, employee and other creditor claims, issues pertaining to the Wage Earner Protection Program ("WEPP"), court hearings, and the upcoming distributions to employees and other creditors.

11. This Affidavit is sworn in support of a motion for Court approval of additional and final costs to be paid to Representative Counsel in respect of the work for the Non-Union Employees and Retirees that exceed the amount that was authorized by the Court on December 7, 2023.

12. As explained in my previous affidavits that I swore in this proceeding, the terminated Non-Union Employees have claims based on wrongful dismissal law against Metroland in respect of the following:

- a) unpaid termination and severance pay;
- b) terminated employee and retirement health benefits;
- c) defined contribution pension plan contributions owing to employees during the notice period (under section 60(1.5) of the BIA, a Proposal cannot be approved by the Court unless those amounts are paid in full or a settlement is approved by the pension regulator);

- d) amounts owing under voluntary departure program packages provided by Metroland to 34 Non-Union Employees before Metroland filed its NOI on September 15, 2023; and
- e) amounts owing for VerticalScope shares (in 2021, Metroland granted its employees shares of the digital media company, VerticalScope Holdings Inc. under its Metroland Media Group Ltd. Employee Appreciation Gift Unit Plan).

13. I am advised by Representative Counsel and believe that 443 Retirees have a claim for terminated post-retirement benefits, including life insurance and health and dental benefits. These benefits were terminated by Metroland on September 30, 2023.

14. Representative Counsel provided valuable advice to the Committee, the Non-Union Employees, and the Retirees. We are vulnerable individuals and needed representation due to the legal and financial complexity of this matter, our inability to afford lawyers, our exposure to prejudicial outcomes, and interacting with all parties and stakeholders.

15. I am advised by Representative Counsel and believe that in order to accurately calculate the employees' claims, they reviewed the employment contracts between the Non-Union Employees and Metroland, the Metroland human resources policies, and applicable employment law.

16. In addition, Representative Counsel assisted the Non-Union Employees and Retirees, including as follows:

- a) revising the initial calculation of the Non-Union Employees' claim determined by the Proposal Trustee to be \$14.7M and increasing it to approximately \$23M by adding a common law severance claim of 2.2 weeks' pay for each year of employment service capped at 104 weeks (as opposed to only under employment standards legislation as was originally calculated). That amount is materially higher than the \$14.7M amount that was listed in the initial Proposal, dated October 16, 2023;
- b) negotiating numerous beneficial changes to the Proposal with the company and Proposal Trustee and other stakeholders, including pursuing the application of WEPP first and not only after the Proposal passed a vote and received court approval (as the initial Proposal had contemplated);
- c) identifying a pension priority claim of approximately \$1M for the Non-Union Employees in respect of pension plan contributions owing to them during the notice period and which pursuant to section 60(1.5) of the BIA, will be paid under the Proposal at 100 cents/dollar. This priority claim was not reflected in the initial Proposal;
- d) negotiating with the Proposal Trustee and Metroland to ensure the claims filed on behalf of the Non-Union Employees and Retirees were complete and accurate;
- e) preparing for and attending contested motions with respect to obtaining the application of WEPP for the employees, to approve the Proposal on January 18 and 22, 2024, and to support the Proposal Trustee on the motion for directions regarding WEPP subrogation (discussed below);

- f) reviewing the Trustee Information Form prepared by the Proposal Trustee in support of the Non-Union Employees' application for a WEPP payment to ensure it is complete and accurate and so that the employees receive the maximum amount available under WEPP; and,
- g) communicating with the Non-Union Employees and Retirees throughout via their law firm web page, a toll-free telephone number, and an email path, providing updates to the Non-Union Employees and Retirees, responding to over 670 individual inquiries to date, and interacting with other stakeholders throughout this proceeding.

Costs of the Non-Union Employees and Retirees

17. As a term of the Employee Representation Order dated October 13, 2023 (para. 16), the Court ordered that the costs of the Non-Union Employees be paid by Metroland as part of the Proposal in the initial amount of \$100,000 (plus taxes and disbursements).

18. In the Amended Representation Order dated December 7, 2023 (para. 13), the Court ordered a further amount of \$100,000 (plus taxes and disbursements) to be paid by Metroland as part of the Proposal, bringing the total costs ordered to be paid up to that time to \$200,000 (plus taxes and disbursements).

19. Representative Counsel has provided its account to the Proposal Trustee and Metroland in the above Court-approved amounts, which was accepted by the Proposal Trustee and paid.

20. Additional fees have been incurred by Representative Counsel, in particular with respect to the above-mentioned Proposal Trustee's motion for directions regarding the interpretation of

the WEPPA subrogation provisions. That involved a dispute over whether the subrogation provisions under sections 36 and 36.1 of WEPPA in respect of a Non-Union Employee's unsecured claim entitled the federal government to a 100% recovery for its WEPP payment out of the distribution paid to the Non-Union Employees in respect of their claim for severance pay, termination pay, and vacation pay or only a *pari passu* payment. The Proposal Trustee, Metroland, and Representative Counsel took the position that the federal government's subrogation right is limited to receive a *pari passu* distribution in respect of the Non-Union Employees' unsecured claim. The government took the position that it is entitled to a 100% refund of its WEPP payment.

21. Representative Counsel sent a reporting email to all Non-Union Employees on February 1, 2024 to inform them of the WEPP subrogation dispute, which is attached hereto as **Exhibit "F"** dated February 1, 2024.

22. Following a full-day motion hearing on April 8, 2024, Justice Conway released a decision holding that the federal government's subrogation right under WEPPA should be interpreted such that it be re-paid for all WEPP payments made at 100% from the distributions payable to the Non-Union Employees in respect of their unsecured claim for severance pay, termination pay, and vacation pay.

Additional Cost Request

23. The work required to represent and advise the Non-Union Employees and Retirees has exceeded the last fee amount authorized by the Court on December 7, 2023. Representative Counsel requests the approval of the following additional and final cost amount in respect of representing the Non-Union Employees and Retirees in this matter, broken out as follows:

KM:	\$149,067.04
Ernst & Young:	\$27,686.00
Total Taxes & Disbursements:	\$23,246.96
TOTAL	\$200,000.00

24. I am advised by Representative Counsel and believe that they, along with their financial advisor, have incurred the all-inclusive sum of \$200,000 in excess of the amount approved by the Court on October 13, 2023 and December 7, 2023. I am advised and believe that Representative Counsel has had discussions with the Proposal Trustee that this amount be paid out of upcoming distributions released by the Proposal Trustee to the Non-Union Employees and Retirees.

25. KM has updated their firm web page and outlined their request for additional costs to be deducted from distributions payable to the Non-Union Employees and Retirees. Attached hereto as **Exhibit "G"** is a copy of their web page update, dated August 22, 2024. I am advised and believe that KM has not received any objection from a Non-Union Employee or Retiree to the request.

26. I am advised by Representative Counsel and believe that the Proposal Trustee has advised them that payment of the additional costs from the total upcoming distributions to the Non-Union Employees and Retirees, including any claims that have been subrogated, will only decrease their overall expected rate of distribution from 17 cents/dollar to 16 cents/dollar.

27. I, along with the rest of the Employee Committee, have received KM's account for the additional costs and we support their request that the payment of these fees be approved by the Court.

28. As these costs would be paid from the distributions paid to Non-Union Employees and Retirees, I do not believe there is prejudice to other creditors.

29. I, along with the rest of the Employee Committee, do not believe the Non-Union Employees and Retirees will be materially prejudiced if the above-noted additional costs of our representation are paid from our upcoming distributions.

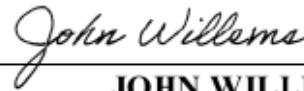
30. I swear this Affidavit in good faith in support of a motion to approve additional costs of the Non-Union Employees and Retirees.

SWORN REMOTELY by John Willems of the Town of East Gwillimbury, in the Province of Ontario, before me in the City of Mississauga, in the Province of Ontario, on September 17, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



LSO# 88251V

A Commissioner for Taking Affidavits, etc.



JOHN WILLEMS

This is **Exhibit "A"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN 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 METROLAND MEDIA GROUP LTD. OF THE CITY OF TORONTO, IN THE
PROVINCE OF ONTARIO**

**AFFIDAVIT OF JOHN WILLEMS
(sworn October 12, 2023)**

I, **JOHN WILLEMS** of the Town of East Gwillimbury, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am a former employee of Metroland Media Group Ltd. ("**Metroland**").
2. I started working with Metroland on January 11, 1991, as an Advertising Sales Representative. Between June 1996 and February 2008, I held various managerial and directorial roles pertaining to advertising and business development. In February 2008, I became the General Manager for Metroland's Eastern Ontario division. I remained a General Manager for various Metroland divisions until my employment was terminated on September 15, 2023.
3. Where the facts set out in this Affidavit are based on information provided to me by others, I have set out the source of the information and verily believe it to be true.

4. I worked for Metroland for 32 years until my employment was terminated on September 15, 2023, along with approximately 605 other Metroland employees, the same day that Metroland filed a Notice of Intention to Make a Proposal ("NOI") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"). Attached hereto as **Exhibit "A"** is a copy of the of the Creditor Package provided by Grant Thornton Limited (the "**Proposal Trustee**").

5. I, along with the other terminated employees, did not receive prior notice of termination, nor were we paid severance pay in lieu of notice and other amounts owing to us. Of the 605 terminated employees, 104 are unionized with Unifor, Local 87-M. I, along with approximately 501 terminated employees, are not unionized (collectively, the "**Non-Union Employees**" or individually, the "**Non-Union Employee**").

6. The Non-Union Employees are entitled to health and other benefits, and we accrue pension benefits from the *College of Applied Arts and Technology Pension Plan* ("**CAAT**"). Copies of the Sun Life Financial Group Benefit Plans provided to Senior Executive and all other full-time non-union plan members is attached hereto as **Exhibits "B"** and "**C"**, respectively. A copy of the CAAT webpage introducing the CAAT Pension Plan to Metroland members is attached hereto as **Exhibit "D"**.

7. In addition, some Non-Union Employees are owed amounts under Metroland's Voluntary Departure Program ("**VDP**").

8. The Proposal Trustee estimates in its Creditor Package that the terminated employees (both union and non-union) are owed a total of approximately \$16 million. I believe the amount may be higher than that.

9. As described herein, I am advised by my counsel and believe that since Metroland has filed a NOI, it is not at this time in bankruptcy or under receivership. In these circumstances, the Non-Union Employees are not eligible to obtain a payment from the Wage Earner Protection Program ("WEPP") unless a court first declares they are eligible for such on a motion brought before the court.¹ WEPP will only pay the Non-Union Employees up to \$8278.83 in respect of their unpaid wage and severance amounts. For many Non-Union Employees, this payment is expected to be lower than the unpaid wage and severance amounts owing by Metroland.

Background of Metroland and the filing of its Proposal

10. Metroland is headquartered in Toronto and is in the business of publishing and distributing 70 newspapers in Southern Ontario. Metroland was established in February 1981 after an amalgamation between Metrospan Community Newspapers and the Inland Publishing Company. At the time, Metroland was wholly owned by the mass media company, Torstar Corporation. In 2020, the investment firm, NordStar Capital LP, acquired Torstar Corporation and by extension, Metroland.

11. Metroland employed approximately 1000 individuals. Due to a loss of revenue from a lack of readership and print advertising, Metroland attempted to reduce its operational expenses by offering some employees a VDP. Under the VDP, employees were offered an optional termination in exchange for deferred salary payments for a period of time.

12. By September 2023, Metroland decided to restructure its newspaper business to an online only format and on September 15, 2023, it filed a NOI under the BIA and terminated the employment of 605 employees.

¹ *Wage Earner Protection Program Regulations*, SOR/2008-222, s 3.2.

The Mass Termination of Metroland Employees

13. On September 15, 2023, I received an email from Kristy Wedgewood, who I believe is a Human Resources Specialist at Metroland, enclosing a letter from Jordan Bitove, the Director of Metroland. In that letter, which I understand was given to all other terminated employees, Mr. Bitove announced that as a result of significant financial difficulties, Metroland would file a NOI and that my employment was immediately terminated. Attached hereto and marked as **Exhibit "E"** to this affidavit is a copy of the email sent to me dated September 15, 2023.

14. The letter from Mr. Bitove stated my last day of work was September 15, 2023, and that I would receive payment of all wages until that date, that my regular health benefits provided by Sun Life Financial would end on September 30, 2023, and that "Metroland is unable to provide payment of termination pay (in lieu of notice) or severance due to its financial circumstances."

15. I became concerned that I and my former fellow Non-Union Employees require legal representation in Metroland's insolvency proceeding in respect of our claims for unpaid severance pay and other amounts owing to us. In addition to severance pay, I believe that there are amounts owing to Non-Union Employees under the deferred salaries payable past September 15, 2023, through the VDP, the termination of our health benefits and the cessation of pension accrual under the CAAT Pension Plan.

16. Given that we have not been paid severance and are out of a job, many Non-Union Employees are experiencing financial hardship, and we require legal representation in Metroland's insolvency proceeding and that our legal costs to be covered.

17. I retained Andrew J. Hatnay of Koskie Minsky LLP ("**KM**") and instructed him to bring forward a motion to the court for a representation order for all Non-Union Employees.

I spoke with many other Non-Union Employees who also contacted Mr. Hatnay and also sought his legal representation. I am advised and believe that at this point approximately 150 Non-Union Employees have contacted KM requesting legal representation.

18. I believe KM is appropriate to represent the Non-Union Employees. I am advised and believe that KM has extensive experience representing employees and retirees in insolvency proceedings and has been appointed Representative Counsel by the courts in Ontario and other provinces in many insolvency cases, including *Sears Canada Inc.*, *U.S. Steel Canada Inc. (Stelco)*, *Nortel Networks Inc.*, *Target Canada Inc.*, *Wabush Mines (Quebec)*, *Eaton's*, *Shaw Group*, *Hollinger Canadian Publishing Co.*, *Catalyst Paper (B.C.)*, *Saan Stores*, and *Dylex*, and other insolvency proceedings

19. KM's proposed mandate as Representative Counsel to the Non-Union Employees in this matter would include:

- a) determining the amounts owing to the Non-Union Employees for severance pay, terminated benefits, and other amounts;
- b) organizing an ad hoc committee of Non-Union Employees to liaise with Representative Counsel;
- c) coordinating with the company and the Proposal Trustee to develop a consistent legal methodology for calculating all of the Non-Union Employees' claims;
- d) preparing a Non-Union Employees' omnibus Proof of Claim to be filed in the proceeding;

- e) streamlining the Non-Union Employees' claims in the proceeding, and acting as a single point of contact for all Non-Union Employee's claims to prevent a multiplicity of different Non-Union Employee claims with different legal methodologies, thereby generating overall cost-saving for the company, its estate and other creditors;
- f) settling claims as may be required in cases of individual Non-Union Employee disputes, or applying to the court for directions to settle such a dispute;
- g) if applicable, assisting Non-Union Employees with preparing documentation and applying for payments under WEPP;
- h) reviewing and responding to any motions and other Court proceedings as necessary brought by the company, the Proposal Trustee or other creditors to ensure that the Non-Union Employees have appropriate representation and their rights protected;
- i) communicating with the Non-Union Employees by:
 - i). establishing a toll-free telephone number and email address dedicated to the Non-Union Employees for any questions they have. KM has a bilingual Communications Department who have extensive experience in communicating with large numbers of individuals and responding promptly to all routine inquiries, tracking such inquiries in a database, and maintaining individual files for each Non-Union Employee;
 - ii). establishing a page on KM's website to provide information to Non-Union Employees regarding the insolvency proceeding, responses to commonly

asked questions, access to relevant documents, and posting correspondence and relevant court documents; and

- iii). if warranted, providing a webinar with a slide presentation to provide information to the Non-Union Employees regarding their severance and other claims, the insolvency proceeding, the role of Representative Counsel, and developments and matters relevant to the Non-Union Employees.

20. I am advised by Andrew J. Hatnay of KM and believe that if the court appoints KM as Representative Counsel, KM will send a notice to all Non-Union Employees explaining the terms of the appointment, including a process for opting out of representation by KM should an individual Non-Union Employee wish to do so.

21. I swear this Affidavit in good faith and in support of this motion to appoint me as Representative, and KM as Representative Counsel to the Non-Union Employees and for no improper purpose.

SWORN REMOTELY by John Willems of the Town of East Gwillimbury, in the Province of Ontario, before me in the City of Mississauga, in the Province of Ontario, on October 12, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits, etc.



JOHN WILLEMS

This is **Exhibit "B"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	FRIDAY, THE 13th
)	
JUSTICE OSBORNE)	DAY OF OCTOBER, 2023

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

**AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

O R D E R

THIS MOTION, made by John Willems was heard this day via video conference at, Toronto, Ontario.

ON READING the Affidavit of John Willems, sworn October 12, 2023, and on hearing the submissions of counsel to John Willems and other terminated non-union employees and counsel to Metroland Media Group Ltd. ("**Metroland**"),

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that the motion is properly returnable today and that further service is hereby dispensed with.
2. **THIS COURT ORDERS** that Koskie Minsky LLP ("**KM**") is appointed as Representative Counsel in accordance with section 126(2) of the *Bankruptcy and*

Insolvency Act, R.S.C. 1985, c. B-3 (“**BIA**”) to all non-unionized individuals who were employed by Metroland and who have been terminated as of 5:00 pm on the day prior to the Creditors Meeting and who are owed amounts for severance and termination pay, deferred salary payments under the Metroland Voluntary Departure Program or any other arrangements, (collectively, the "**Non-Union Employees**", or individually, "**Non-Union Employee**") in the Proposal proceedings or in any other insolvency proceeding which may be brought before this Honourable Court pertaining to Metroland (the "**Proceedings**"), including for the purpose of administering a settlement in respect of the claims of the Non-Union Employees (the "**Settlement**").

3. **THIS COURT ORDERS** that John Willems (the "**Non-Union Employee Representative**") is hereby appointed as the representative of all Non-Union Employees in the Proceedings, and to act in the overall best interests of the Non-Union Employees in respect of the Proceedings.
4. **THIS COURT ORDERS** that the Non-Union Employee Representative and Representative Counsel shall represent the Non-Union Employees in the Proceedings (other than for a Non-Union Employee who has opted out of representation by the Non-Union Employees' Representative and Representative Counsel pursuant to paragraph 11 hereof), and that the Non-Union Employees shall be bound by the actions of the Non-Union Employee Representative and Representative Counsel in the Proceedings.
5. **THIS COURT ORDERS** that Representative Counsel and the Non-Union Employee Representative may jointly appoint three to five Non-Union Employees to form an ad-hoc committee (the "**Committee**") to liaise with Representative Counsel and who will fairly

and diligently represent the interests of Non-Union Employees in respect of the Proceedings.

6. **THIS COURT ORDERS** that KM's mandate as Representative Counsel for the Non-Union Employees in respect of the Proceedings and/or a Settlement is specifically limited to advancing the interests of Non-Union Employees in the Proceedings, and shall include:

- (a) liaising with Grant Thornton Ltd. (the "**Proposal Trustee**") and Metroland in determining and/or settling the amounts of the Non-Union Employee claims (individually, a "**Claim**", as defined herein, or collectively, the "**Claims**") in relation to their employment contracts with Metroland;
- (b) advocating for the Non-Union Employees' interests with respect to a Proposal filed by Metroland in the Proceedings ("**Proposal**");
- (c) reviewing the findings and conclusions of the Proposal Trustee in respect of a Proposal;
- (d) responding to inquiries from Non-Union Employees regarding their Claims, the Proceedings and a Proposal;
- (e) providing a recommendation to the Non-Union Employees about whether to vote in favour of a Proposal;
- (f) filing the Claims on behalf of the Non-Union Employees with the Proposal Trustee and voting the Claims by letter by 12:00 pm Eastern time the day prior to the meeting of creditors in respect of a finalized Proposal of Metroland, or with a trustee in bankruptcy, as the case may be, in accordance with the direction of the Committee;
- (g) representing Non-Union Employees and taking a position on their behalf at any motions in the Proceedings relevant to the Non-Union Employees; and

7. **THIS COURT DECLARES** that a Claim is defined as any amount owing to a Non-Union Employee which has now arisen or may arise under (a) law or equity and/or (b) federal or provincial legislation or regulations thereunder, including but not limited to, employment standards legislation or any other provincial or federal legislation, or

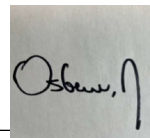
regulation applicable to the Non-Union Employees (collectively, "**Applicable Laws**"), including vacation pay and payments under the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1; and/or qualify as a secured claim under sections 81.3 and/or 81.4 of the BIA, as applicable.

8. **THIS COURT ORDERS** that Representative Counsel shall have access to and be provided with copies of all records and data with respect to the Non-Union Employees relevant for the purpose of the mandate herein and as agreed to by the Proposal Trustee and which are kept by Metroland under Applicable Laws, whether on paper, electronic or any other form.
9. **THIS COURT ORDERS** that Representative Counsel may rely upon the information and directions received from the Committee and/or the Non-Union Employee Representative in carrying out the mandate of Representative Counsel in accordance with this Order, and shall not be required to communicate with or accept instructions from individual Non-Union Employees, unless so directed by further order of the Court.
10. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Proposal Trustee and Metroland are authorized and permitted to disclose personal information of individuals who are believed to be Non-Union Employees to Representative Counsel, and Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel in the Proceedings.

11. **THIS COURT DECLARES** that any individual Non-Union Employee who does not wish to be represented by KM in the Proceedings shall, within seven business days of the issuance of this Order, notify KM and the Proposal Trustee in writing that he or she is opting out of representation by KM and shall thereafter not be bound by the actions of KM and is free to represent himself or herself, or be represented by any other counsel that he or she may retain at his or her own expense.
12. **THIS COURT ORDERS** that KM shall forthwith from the date of issuance of this Order, send a notice (“**Notice**”) substantially in the form attached hereto as **Schedule “A”** by email to all of the Non-Union Employees for which email contact information is available and shall post the Notice on the Proposal Trustee’s and KM’s websites in respect of the Proceedings.
13. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of this Order, including dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.
14. **THIS COURT ORDERS** that KM, as Representative Counsel, shall be at liberty to appoint, employ, or retain a professional or expert advisor (an "**Agent**") from time to time as KM, as Representative Counsel, may consider necessary or desirable to carry out the provisions of the Order, acting reasonably.
15. **THIS COURT ORDERS** that KM, and any Agent retained by KM shall not have any liability as a result of KM's appointment as Representative Counsel or the fulfilment of

its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.

16. **THE COURT ORDERS** that the reasonable professional costs incurred by Representative Counsel on behalf of the Non-Union Employees in respect of the Proceedings, both before and after the date of this Order, shall be paid by Metroland as part of the Proposal, or from the estate of Metroland in the event of its bankruptcy, in either case on the provision of accounts by KM, which may be redacted for confidentiality, provided such fees do not exceed \$100,000 plus taxes and disbursements, and are subject to further order of the Court.
17. **THIS COURT ORDERS** that KM shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge or variation of its powers and duties as Representative Counsel in respect of the Proceedings.
18. **THIS COURT ORDERS** that this Order is subject to any further order of the Court in respect of these matters.



2023.10.13

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JUSTICE OSBORNE

SCHEDULE “A”

Court File No.: BK-23-02986886-0031

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)****IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, c. B-3, AS AMENDED****AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO****NOTICE OF APPOINTMENT OF REPRESENTATION COUNSEL TO NON-UNION
EMPLOYEES**

On September 15, 2023, Metroland Media Group Ltd. ("**Metroland**") filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and terminated its employees without paying severance pay and other amounts owing to the employees. The firm of Grant Thornton Limited ("**GTL**") is the proposal trustee in Metroland's NOI proceedings.

TAKE NOTICE THAT, pursuant to the Order of the Ontario Superior Court dated October 13, 2023, the law firm of Koskie Minsky LLP ("**KM**") was appointed as Representative Counsel to all non-union employees who were terminated by Metroland or who are owed deferred salary payments under the Voluntary Departure Program or other amounts as of September 15, 2023. A copy of the Order is enclosed for your reference. Contact Information for Representative Counsel is below:

Website: kmlaw.ca/cases/metroland-media-group-ltd/
Email: metrolandemployees@kmlaw.ca
Toll-free Hotline: 1-833-786-0017

IF YOU DO NOT WISH TO BE REPRESENTED in the proceeding by KM as Representative Counsel and wish to represent yourself or be represented by another lawyer at your own cost, you must, before ●, 2023, provide notice in writing (by letter or email) to both KM and GTL indicating that you wish to opt-out of such representation:

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Attention: Metroland Media Group Ltd.
Employee Representative Counsel

E-mail: metrolandemployees@kmlaw.ca

Grant Thornton Limited
200 King Street West, 11th Floor
Toronto, Ontario, M5H 3T4

Attention: Jonathan Krieger
Proposal Trustee

E-mail: metroland@ca.gt.com

**IN 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 METROLAND MEDIA GROUP LTD. OF THE CITY
OF TORONTO, IN THE PROVINCE OF ONTARIO**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER

KOSKIE MINSKY LLP

20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay (LSO# 31885W)

(T) 416-595-2083

(E) ahatnay@kmlaw.ca

Martin Ejidra (LSO# 80597Q)

(T) 416-884-7528

(E) mejidra@kmlaw.ca

Abir Shamim (LSO# 88251V)

(T) 416-354-7758

(E) ashamim@kmlaw.ca

Proposed Representative Counsel for Non-Union
Employees

This is **Exhibit "C"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF JOHN WILLEMS
(sworn December 6, 2023)

I, John Willems, of the Town of East Gwillimbury, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a former employee of Metroland Media Group Ltd. ("**Metroland**"), a company based in Toronto that is in the business of publishing and distributing 70 newspapers and flyers and digital advertising on newspaper platforms. Metroland was established in February 1981, and is a subsidiary of Torstar Inc.

2. I began working with Metroland on January 11, 1991 as an Advertising Sales Representative. In February 2008, I became the General Manager of Metroland's Eastern Ontario division. I remained a General Manager for various Metroland divisions until my employment was terminated on September 15, 2023, as part of the mass termination of 605 employees on that date.

3. On that day, September 15, 2023, Metroland employees received a letter from Jordan Bitove, the Director of Metroland, which announced that as a result of significant financial difficulties, Metroland would be filing a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), and that the employment of 605 Metroland employees who worked in the business of print weeklies, flyers, parcel deliveries and daily newspapers were immediately terminated without being paid severance pay and other amounts owing to them.

4. Of the terminated employees, 104 are members of Unifor, Local 87-M which is represented by the law firm, Dewart Gleason LLP. The balance of over 500 employees are non-unionized and did not have representation at the time.

5. I previously swore an affidavit which is attached hereto as **Exhibit "A"** (without exhibits) on October 12, 2023, in support of a motion requesting the Court to appoint the firm of Koskie Minsky LLP as Representative Counsel to the terminated non-union employees. Justice Osborne issued a Representation Order on October 13, 2023. Pursuant to that order, I was appointed a representative of the non-unionized employees (collectively, the "**Non-Union Employees**" or individually, "**Non-Union Employee**"). His Honour's Endorsement stated:

[25.] Proposed Representative Counsel has extensive experience representing employees and retirees in insolvency and bankruptcy matters and I am satisfied that the firm is an appropriate Representative Counsel here. No other Representative Counsel [has] already been appointed, [and] the appointment sought here is supported by the Proposal Trustee as well as the Debtor.

6. I am a member of the Employee Committee that was formed in accordance with the Representation Order along six other Non-Union Employees. Our committee speaks with many terminated Metroland employees who have told us they have been unemployed since September

15, 2023, and are in a precarious financial situation in a difficult and inflationary economic climate.

Proposal of Metroland

7. On October 17, 2023, Metroland released its initial Proposal. For the Non-Union Employees, its main terms are:

- i. the company will fund \$8.3M for the Proposal, from which \$600,000 is to pay professional costs, leaving \$7.7M for all creditors on total claims of \$78,158,569.48 thus generating potential distributions for unsecured creditors of 13 cents on the dollar of claims. Metroland calculated the Non-Union Employees' termination claim at \$14.7M. There was no mention that the unpaid pension contributions are to be paid in full pursuant to section 60(1.5)¹ of the BIA; and
- ii. another term of the Proposal was that if it passed a vote at a creditors' meeting, the company would then apply to Court for a declaration that the Wage Earner Protection Program ("WEPP") applies to this case, which if granted, would enable the Non-Union Employees to apply for a WEPP payment from the federal government (currently \$8,278.83/employee). Without WEPP, Non-Union Employees would only receive cents-on-the-dollar of their claims from the Proposal.

¹Proposals by employers – prescribed pension plans

60(1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

- (a) The proposal provides for payment of amounts that are unpaid to the fund established for the purpose of the pension plan; and
- (b) The court is satisfied that the employer can and will make the payments as require under paragraph (a).

WEPP is a valuable and important payment to obtain for the employees as soon as possible

8. I am advised by Representative Counsel and believe that in order for WEPP to be available for employees who have been terminated during the Proposal proceedings without being paid wages and severance pay by their employer, a court must declare, on an application brought by any person, pursuant to section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 and section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222, "whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations."

9. Representative Counsel negotiated with the company and the Proposal Trustee to bring a motion for a declaration that WEPP applies *before* a vote on the Proposal, who eventually agreed. The creditors' meeting on November 14, 2023 was adjourned to December 11, 2023 and the WEPP motion was scheduled for Tuesday, November 28, 2023. On Monday November 27, 2023, Representative Counsel was advised by Metroland counsel that the Department of Justice Canada would oppose the motion, and the WEPP motion was adjourned to December 7, 2023. Given the opposition from the Department of Justice and as per the recommendation of Representative Counsel, Metroland arranged for a receiver (also Grant Thornton Limited, the current Proposal Trustee) to be appointed over a Metroland account to create a receivership and thereby make WEPP automatically applicable to this case. On December 7, 2023, Metroland will bring a revised motion for an order confirming that the terminated Metroland employees can apply for WEPP.

Severance claim and section 60(1.5) pension contribution claim

10. I am advised by Representative Counsel that the Non-Union Employees have claims against Metroland in respect of the following:

- a) Unpaid termination and severance pay;
- b) Terminated employee and retirement health benefits;
- c) Pension plan contributions owing during the notice period which are amounts under section 60(1.5) of the BIA and for which, a Proposal cannot be approved by the Court unless those amounts are paid;
- d) Amounts owing under the Voluntary Departure Program; and
- e) Amounts owing for VerticalScope shares (in 2021, Metroland gifted its employees shares of the digital media company, VerticalScope Holdings Inc. as per its Metroland Media Group Ltd. Employee Appreciation Gift Unit Plan).

11. I am advised by Representative Counsel and believe that after they reviewed employment contracts provided by employees, company policies and applicable employment laws, they calculated the Non-Union Employees claim to be approximately \$23M, significantly higher than the \$14.7M amount in the initial Proposal. In addition, the section 60(1.5) claim for unpaid pension contributions which are to be paid in full is currently calculated at \$1.05M, also a significant increase.

12. On December 1, 2023, Metroland filed a Second Amended Proposal which, among other items, revised the claims of the Non-Union Employees and applied a common law severance

claim of 2.2 weeks' pay for each year of employment service capped at 104 weeks and the section 60(1.5) pension contribution claim. Further amendments were made to the initial Proposal and changes to other creditor claim amounts are under discussion between Representative Counsel, Metroland counsel and the Proposal Trustee.

13. At this stage, the amount of distributions payable to unsecured creditors is not yet known with precision.

The Retirees were not included in the Representation Order

14. I am advised by Representative Counsel and believe that at the time of the motion for a Representation Order on October 13, 2023, Representative Counsel was not informed, nor was there any mention in the Proposal Trustee's Report dated October 17, 2023, that on September 30, 2023, Metroland also terminated the post-retirement benefits for Non-Union Employees, and that there are approximately 443 Retirees who have claims in respect of these benefits.

15. Many Retirees have contacted Representative Counsel requesting advice and assistance to advance their claims, which Representative Counsel is prepared to do.

16. The Retirees are not currently represented in these Proceedings and require representation to prepare and advance their claims and be able to vote at the creditors' meeting scheduled for December 11, 2023.

17. Metroland had initially proposed to apply a uniform post-retirement benefits claim of \$1,000 to each Retiree and eligible Non-Union Employee.

18. Representative Counsel requested recent post-retirement benefit claims data from Metroland to assess the present day value of this benefit for the purpose of determining a claim amount, which was provided on November 29, 2023. In reviewing this data, Representative Counsel estimates that the Retirees have a total group claim for approximately \$1.4M. Of this total, 343 Retirees have a claim for terminated life insurance amounting of \$496,000 and 100 Retirees have claims for health and dental benefits amounting of \$909,000. The Proposal Trustee could not send Representative Counsel the personal contact information for the Retirees as the Representation Order does not currently include retirees.

19. I therefore believe that the Representation Order should be amended to include Retirees so that the Retirees' claims can be properly advanced in these Proceedings and the Retirees' claims can be voted.

Costs of Representative Counsel

20. Justice Osborne ordered the payment of the costs of the Representative Counsel in the Representation Order in the amount of \$100,000, subject to further order of the Court. He stated in his Endorsement:

[27]. I am satisfied that the reasonable legal costs of Representative Counsel should be borne by Metroland. Again, and while not determinative, I observe that both Metroland and the Proposal Trustee support this term.

21. I am advised and believe that the work performed by Representative Counsel to date in has been significant and has considerably assisted the Non-Union Employees, in particular:

- a) Addressing the WEPP motion timing and pivoting to a receivership;
- b) Recalculating and increasing the employee severance claim; and

- c) Identifying and recalculating the section 60(1.5) unpaid pension plan claim, which is to be paid in full.

22. The work of Representative Counsel has involved adversarial negotiations on very short deadlines and the initial \$100,000 has been utilized. I am advised that Representative Counsel is in discussions with Metroland counsel for additional funding for the legal costs of the Non-Union Employees (and if the order is issued, for the Retirees as well) but the issue has not yet been resolved.

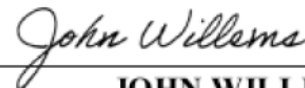
23. I swear this Affidavit in good faith and for no improper purpose.

SWORN REMOTELY by John Willems of the Town of East Gwillimbury, in the Province of Ontario, before me in the City of Mississauga, in the Province of Ontario, on December 6, 2023, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



LSO# 88251V

A Commissioner for Taking Affidavits, etc.



JOHN WILLEMS

This is **Exhibit "D"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Court File No.: BK-23-02986886-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	THURSDAY, THE 7th
)	
JUSTICE CONWAY)	DAY OF DECEMBER, 2023

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

AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

RETIREE REPRESENTATION ORDER

THIS MOTION, made by John Willems was heard this day via video conference at Toronto, Ontario.

ON READING the (i) Affidavit of John Willems, sworn December 6, 2023 and (ii) on hearing the submissions of counsel to John Willems and other terminated non-union employees and counsel to Metroland Media Group Ltd. (“**Metroland**”),

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that the motion is properly returnable today and that further service is hereby dispensed with.

2. **THIS COURT ORDERS** that Koskie Minsky LLP ("**KM**") is appointed as Representative Counsel in accordance with section 126(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**") to all non-unionized individuals who are owed amounts in respect of post-retirement benefits (collectively, the "**Retirees**", or individually, "**Retiree**"), in the Proposal proceedings or in any other insolvency proceeding which may be brought before this Honourable Court pertaining to Metroland (the "**Proceedings**"), including for the purpose of administering a settlement in respect of the claims of the Retirees (the "**Settlement**").
3. **THIS COURT ORDERS** that Representative Counsel shall represent the Retirees in the Proceedings and that the Retirees shall be bound by the actions of Representative Counsel in the Proceedings.
4. **THIS COURT ORDERS** that Representative Counsel may appoint one to two Retirees to an ad-hoc committee (the "**Committee**") to liaise with Representative Counsel and who will fairly and diligently represent the interests of Retirees in respect of the Proceedings.
5. **THIS COURT ORDERS** that KM's mandate as Representative Counsel for the Retirees in respect of the Proceedings and/or a Settlement is specifically limited to advancing the interests of Retirees in the Proceedings, and shall include:
 - (a) liaising with Grant Thornton Ltd. (the "**Proposal Trustee**") and Metroland in determining and/or settling the amounts of the Retiree claims (individually, a

"**Claim**", as defined herein, or collectively, the "**Claims**") in relation to their employment contracts with Metroland;

- (b) advocating for the Retirees' interests with respect to a Proposal filed by Metroland in the Proceedings ("**Proposal**");
 - (c) reviewing the findings and conclusions of the Proposal Trustee in respect of a Proposal;
 - (d) responding to inquiries from Retirees regarding their Claims, the Proceedings and a Proposal;
 - (e) providing a recommendation to the Retirees about whether to vote in favour of a Proposal; and
 - (f) filing the Claims on behalf of the Retirees with the Proposal Trustee and voting the Claims by letter by 12:00 pm Eastern time the day prior to the meeting of creditors in respect of a finalized Proposal of Metroland, or with a trustee in bankruptcy, as the case may be, in accordance with the direction of the Committee.
6. **THIS COURT DECLARES** that a Claim is defined as any amount owing to a Retiree which has now arisen or may arise under (a) law or equity and/or (b) federal or provincial legislation or regulations thereunder, including but not limited to, employment standards legislation or any other provincial or federal legislation, or regulation applicable to the

Retiree (collectively, "**Applicable Laws**"); and/or qualify as a secured claim under sections 81.3 and/or 81.4 of the BIA, as applicable.

7. **THIS COURT ORDERS** that Representative Counsel shall have access to and be provided with copies of all reasonably available records and data with respect to the Retirees relevant for the purpose of the mandate herein and as agreed to by the Proposal Trustee and which are kept by Metroland under Applicable Laws, whether on paper, electronic or any other form.
8. **THIS COURT ORDERS** that Representative Counsel may rely upon the information and directions received from the Committee in carrying out the mandate of Representative Counsel in accordance with this Order, and shall not be required to communicate with or accept instructions from individual Retirees, unless so directed by further order of the Court.
9. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Proposal Trustee and Metroland are authorized and permitted to disclose personal information of individuals who are believed to be Retirees to Representative Counsel, and Representative Counsel shall maintain and protect the privacy of such information and shall limit the use of such information to its role as Representative Counsel in the Proceedings.
10. **THIS COURT ORDERS** that Representative Counsel is authorized to take all steps and to do all necessary or desirable acts in carrying out the terms of this Order, including

dealing with any regulatory body and any other government or ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

11. **THIS COURT ORDERS** that KM, as Representative Counsel, shall be at liberty to appoint, employ, or retain a professional or expert advisor (an "**Agent**") from time to time as KM, as Representative Counsel, may consider necessary or desirable to carry out the provisions of the Order, acting reasonably.
12. **THIS COURT ORDERS** that KM, and any Agent retained by KM shall not have any liability as a result of KM's appointment as Representative Counsel or the fulfilment of its duties in carrying out the provisions of this Order, except for claims based on gross negligence or wilful misconduct on their part.
13. **THE COURT ORDERS** that the reasonable professional costs incurred by KM in its capacity as Representative Counsel on behalf of the Retirees pursuant to this Order and for the Non-Union Employees under the Representation Order of October 13, 2023, both in respect of the Proceedings, and both before and after the date of this Order, shall be paid by Metroland as part of the Proposal, or from the estate of Metroland in the event of its bankruptcy, in either case on the provision of accounts by KM and approval by the Court, which may be redacted for confidentiality, provided such fees do not exceed \$200,000 plus taxes and disbursements.
14. **THIS COURT ORDERS** that KM shall be at liberty and is authorized at any time to apply to this Court for advice and directions in the discharge or variation of its powers and duties as Representative Counsel in respect of the Proceedings.

15. **THIS COURT ORDERS** that this Order is subject to any further order of the Court in respect of these matters.



JUSTICE CONWAY

**IN 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 METROLAND MEDIA GROUP LTD. OF THE
CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

RETIREE REPRESENTATION ORDER

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Representative Counsel for Non-Union Employees

This is **Exhibit "E"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF JOHN WILLEMS
(sworn March 5, 2024)

I, John Willems, of the Town of East Gwillimbury, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a former employee of Metroland Media Group Ltd. ("**Metroland**"), a company based in Toronto that is in the business of publishing and distributing 70 newspapers and flyers and digital advertising on newspaper platforms. Metroland was established in February 1981, and is a subsidiary of Torstar Inc.

2. I began working with Metroland on January 11, 1991 as an Advertising Sales Representative. In February 2008, I became the General Manager of Metroland's Eastern Ontario division. I remained a General Manager for various Metroland divisions until my employment was terminated on September 15, 2023, as part of the mass termination of 605 employees on that date.

3. On that day, September 15, 2023, Metroland employees received a letter from Jordan Bitove, the Director of Metroland, which announced that as a result of significant financial difficulties, Metroland would be filing a Notice of Intention to Make a Proposal ("**NOI**") under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("**BIA**"), and that the employment of 605 Metroland employees who worked in the business of print weeklies, flyers, parcel deliveries and daily newspapers were immediately terminated without being paid severance pay and other amounts owing to them.

4. Of the terminated employees, 104 are members of Unifor, Local 87-M which is represented by the law firm, Dewart Gleason LLP. The balance of over 500 employees are non-unionized and did not have representation at the time.

5. I previously swore an affidavit which is attached hereto as **Exhibit "A"** (without exhibits) on October 12, 2023, in support of a motion requesting the Court to appoint the firm of Koskie Minsky LLP as Representative Counsel to the terminated non-union employees. Justice Osborne issued a Representation Order on October 13, 2023. Pursuant to that order, I was appointed a representative of the non-unionized employees (collectively, the "**Non-Union Employees**" or individually, "**Non-Union Employee**").

6. I am a member of the Employee Committee that was formed in accordance with the Representation Order along six other Non-Union Employees. Our committee speaks with many terminated Metroland employees who have told us they have been unemployed since September 15, 2023, and are in a precarious financial situation in a difficult and inflationary economic climate.

Proposal of Metroland

7. On October 17, 2023, Metroland released its initial Proposal. I am advised by Representative Counsel and believe that the terms of the initial Proposal were such that if the Proposal passed a vote of creditors, Metroland would then bring a motion pursuant to section 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1 (the "**Act**") and section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "**Regulations**"), for a declaration that the terminated employees can apply for a payment under the Wage Earner Protection Program ("**WEPP**").

8. The Proposal was amended on November 3, 2023, to address procedural matters raised by Metroland regarding the claims of unionized employees and included a provisional claim amount for retirees and any former or current employee whose post-retirement benefits were terminated.

9. I am advised by Representative Counsel and believe that following their discussions with Metroland, the company filed a Second Amended Proposal on December 1, 2023, which among other items, revised the claims of the Non-Union Employees and applied a common law severance claim of 2.2 weeks' pay for each year of employment service capped at 104 weeks (as opposed to just under employment standards legislation) and recognized the defined benefit pension contributions owing to former employees as priority claims under section 60(1.5) of the BIA.¹

¹ **Proposals by employers – prescribed pension plans**

60(1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

10. On November 27, 2023, Representative Counsel was advised by Metroland counsel that the Department of Justice Canada (the "**DOJ**") would oppose the motion for a declaration that former employees can apply for a WEPP payment.

11. On December 7, 2023, counsel for Metroland brought a motion before Justice Conway for an order declaring Metroland satisfies the criteria under section 5(1)(b)(iii) of the Act and that the Act thus applies to Metroland's terminated employees. I am advised by Representative Counsel and believe that during the course of the hearing, counsel noted a court declaration is not required for former employees to apply for WEPP in a receivership. Counsel for Metroland advised they do not require the assistance of the Court and requested the motion be adjourned *sine die*. Justice Conway adjourned the motion.

12. I am advised by Representative Counsel and believe that on December 8, 2023, the Canadian Imperial Bank of Commerce, a secured creditor of Metroland, appointed Grant Thornton Limited as a receiver (the "**Receiver**") over the inventory of Metroland pursuant to its general security agreement. With the receivership, pursuant to section 5(1)(b)(ii) of the Act, the appointment of the Receiver meant that former employees could apply for a WEPP payment.

13. I am advised by Representative Counsel and believe that on December 11, 2023, Service Canada sent an email to the Proposal Trustee and confirmed former Metroland employees can apply for a WEPP payment. Attached hereto as **Exhibit "B"** is a copy of the email from Service Canada, dated December 11, 2023.

-
- (a) The proposal provides for payment of amounts that are unpaid to the fund established for the purpose of the pension plan; and
 - (b) The court is satisfied that the employer can and will make the payments as require under paragraph (a).

14. The Proposal Trustee released a Third Amended Proposal on December 11, 2023, to address procedural matters relating to WEPP and clarified the expanded role of Representative Counsel. Attached hereto as **Exhibit "C"** is a copy of the Third Amended Proposal, dated December 11, 2023.

15. For the Non-Union Employees, the main terms under the Third Amended Proposal are:

- i. the company will fund \$8.3M for the Proposal, from which \$720,000 is to pay professional costs, leaving \$7.58M for all creditors on total claims approximately \$40M; and
- ii. another term of the Proposal was that if it was approved by the Court, Metroland would remit approximately \$4.6M (the "**WEPP Equivalent Amount**") – the sum of all payments that former employees would be entitled to receive if they applied for a WEPP payment – to the Trustee. If Service Canada determined former employees were not eligible for a WEPP payment, the WEPP Equivalent Amount would be available for distribution to the employees under the Third Amended Proposal. However, if Service Canada provides former employees with a WEPP payment, an amount equal to the sum of all WEPP payments made to former employees would be reduced from the WEPP Equivalent Amount and added to the funds available to all unsecured creditors. This would generate potential distributions for unsecured creditors of 17 cents on the dollar of their claims.

16. I am advised by Representative Counsel that the Non-Union Employees have claims against Metroland in respect of the following:

- a) Unpaid termination and severance pay;
- b) Terminated employee and retirement health benefits;
- c) Pension plan contributions owing during the notice period which are amounts under section 60(1.5) of the BIA and for which, a Proposal cannot be approved by the Court unless those amounts are paid;
- d) Amounts owing under the voluntary departure packages provided to 33 Non-Union Employees before Metroland filed an NOI on September 15, 2023 ; and
- e) Amounts owing for VerticalScope shares (in 2021, Metroland gifted its employees shares of the digital media company, VerticalScope Holdings Inc. as per its Metroland Media Group Ltd. Employee Appreciation Gift Unit Plan).

17. I am advised by Representative Counsel and believe that after they reviewed employment contracts provided by employees, company policies and applicable employment laws, they calculated the Non-Union Employees claim to be approximately \$23M, significantly higher than the \$14.7M amount listed in the initial Proposal. In addition, the section 60(1.5) claim for unpaid pension contributions which are to be paid in full is currently calculated at \$1.05M.

18. On December 11, 2023, the creditors attending the Meeting of Creditors and voted to approve the Third Amended Proposal. On January 24, 2024, Justice Kimmel approved the Third Amended Proposal.

There is a dispute over the amount that Service Canada can claw back from employee distribution

19. There is a dispute over the amount that His Majesty in the right of Canada ("**Service Canada**") can claw back from employee distributions in respect of the WEPP payments made. Service Canada says it can claw back the distribution former employees receive from the Metroland estate, up to the entire amount of the WEPP payment made. As per the interpretation of the DOJ, Service Canada will claw back approximately \$2.8M from a \$10.8M estimated recovery from the Metroland estate, leaving former employees with only \$8M in respect of their unsecured distributions.

20. The Proposal Trustee and Representative Counsel say that Service Canada can only claw back approximately \$817,000, leaving the former employees with \$10M from the estate in respect of their unsecured distributions.

21. The difference for the employees is significant.

22. I am advised by Representative Counsel and believe that on December 21, 2023, the DOJ wrote to the Proposal Trustee suggesting that the offset provision provided pursuant to section 6 of the Regulations may be triggered if former employees receive a distribution under the Third Amended Proposal after they receive a WEPP payment (the "**Offset Provision**"). The DOJ further claimed that under sections 36 and 36.1 of the Act (the "**Subrogation Provision**"), the Proposal Trustee is required to remit to Service Canada up to the full extent of any payments made under WEPP before making any payment to former employees in respect their unsecured

claim against Metroland. Attached hereto as **Exhibit "D"** is a letter from the DOJ to the Proposal Trustee, dated December 21, 2023.

23. I am advised by Representative Counsel and believe that in consultation with them, the Proposal Trustee sent a letter to the DOJ on January 5, 2024, stating that their understanding of the Subrogation Provision was incorrect. The Proposal Trustee took the position that the subrogation claim of Service Canada under the Proposal would rank *pari passu* with all other unsecured creditors. As such, in respect of its subrogation claim, Service Canada would not receive the full extent of any WEPP payment made to former employees before former employees receive a distribution under the Third Amended Proposal. Instead, Service Canada would receive a pro-rata distribution. Attached hereto as **Exhibit "E"** is a copy of the letter from the Proposal Trustee to the DOJ, dated January 5, 2024.

24. I am advised by Representative Counsel and believe that on January 16, 2024, the DOJ maintained that Service Canada is entitled to a distribution from the estate of Metroland up to the full extent of any WEPP payments made to former employees. Attached hereto as **Exhibit "F"** is a copy of the letter from the DOJ to Counsel for the Proposal Trustee, dated January 16, 2024.

25. Representative Counsel wrote to the DOJ on January 17, 2024, attached hereto as **Exhibit "G"**, advising them that they agreed with the interpretation of the Proposal Trustee. I am advised by Representative Counsel and believe that the interpretation of the DOJ was inaccurate and would result in a substantial shortfall on the payment of the unsecured claims of the former employees.

26. If the DOJ's interpretation of the Offset Provision and the Subrogation Provision were to apply, any WEPP payments made to former employees would be reduced by the amount of the

distribution they receive from the Metroland estate. I am advised by Representative Counsel and believe that Non-Union Employees with an unsecured claim amount between \$8278.83 and \$48,699.00 will all receive a final payout of \$8278.83. This is inequitable and subjects 59% of all Non-Union Employees to the same final payout from these insolvency proceedings, despite their distinct employment histories and vastly different claim amounts.

27. I am also advised by Representative Counsel and believe that Non-Union Employees with an unsecured claim amount above \$48,699.00 will not receive any economic benefit from applying for WEPP because any WEPP payment they receive will be entirely offset by the amount of any distributions received from the estate.

28. I swear this Affidavit in good faith and for no improper purpose.

SWORN REMOTELY by John Willems of the Town of East Gwillimbury, in the Province of Ontario, before me in the City of Mississauga, in the Province of Ontario, on March 5, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



LSO# 88251V

A Commissioner for Taking Affidavits, etc.



JOHN WILLEMS

This is **Exhibit "F"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Abir Shamim

From: Abir Shamim
Sent: February 1, 2024 4:24 AM
To: Metroland Employees
Subject: Metroland Media Group Ltd. - Update
Attachments: Metroland Media.Proposal.Approval.Order.2024-01-24(7538259.1).pdf; Metroland Media Group Ltd. (Re).BK-23-02986886-0031.Endorsement.Proposal.Approval.Motion.Jan.18.and.22.2024(7538258.1).pdf; Metroland - Letter to DOJ - Jan 5 2024.pdf; BK-23-02986886-0031 Letter from Rep Counsel for Non-Union Employees to DOJ_Jan 17 2024.pdf

Hello,

We are writing to report on a number of aspects of the Metroland Proposal proceedings.

1. Court Approves the Third Amended Proposal

As you probably aware from media reports, Metroland's Proposal in Bankruptcy was approved by the court in a decision released on January 24, 2024. The Endorsement of the Court and the court order are attached to this email.

As we previously reported, the Proposal was accepted by the required double-majority of creditors at the creditors meeting on December 11, 2023. However, it also needs to be approved by the court before it can be implemented. On January 18, 2024, the Proposal Trustee brought a motion before Justice Kimmel of the Ontario Superior Court of Justice (Commercial List) to approve the Proposal. We supported the approval of the Proposal.

At the first motion hearing for the approval of the Proposal on January 18, 2024, the lawyers for former unionized employees (Unifor Local 87-M) had sought an adjournment of the approval motion. This request was opposed by counsel for Metroland and the Proposal Trustee, who cited the risk of bankruptcy if Metroland's proceedings were delayed. Justice Kimmel requested further submissions from union counsel, Metroland and the Proposal Trustee, and the motion was adjourned to January 22, 2024, at which time counsel for the union advised it was no longer seeking an adjournment.

However, counsel for the union also raised objections regarding certain of the releases in the Proposal for directors, officers and affiliates of Metroland, and Justice Kimmel directed the company to provide additional submissions regarding the releases as well as narrowing the release language in the court order to parallel the language of the Proposal. At that stage, Her Honour indicated that she would approve the Proposal upon receiving the additional materials from the company.

The supplementary materials were provided by the Proposal Trustee on January 23, 2024, the court released its written decision approving the Proposal on January 24, 2024.

2. "Administrative Hold" on the Wage Earner Protection Program applications

As stated in our previous update, the appointment of the receiver over certain of Metroland's assets makes the Wage Earner Protection Program ("WEPP") applicable to Metroland and its former employees. WEPP involves a two stage process: the receiver of Metroland (also Grant Thornton) will process the employee claims that we have

submitted on behalf of the non-union employee and notify Service Canada of those accepted claims. The terminated employees can then apply for a WEPP payment.

Applications can be completed online [here](#) and the deadline to apply is **Friday, February 2, 2024**.

Service Canada has advised us that it placed a hold on processing Metroland WEPP applications for internal administrative reasons. The hold is expected to be lifted when the Proposal Trustee files the relevant WEPP Trustee Information Forms. We are in frequent contact with the Proposal Trustee to ensure these documents are filed as soon as possible and we will inform you of any updates.

3. **Correspondence from the Department of Justice Regarding their Subrogated Claim**

On December 21, 2023, the Department of Justice wrote to the Proposal Trustee and informed them that Service Canada expects to be re-paid the *full amount* of all WEPP payments made to former employees before the employees receive any distribution on their unsecured severance claims under the Proposal, but not the unpaid pension contribution claim we submitted which is still to be paid at 100%. Given the limited funds available for distribution on unsecured claims, this approach would have a material impact on the total amounts recovered by former employees. We currently estimate that this position would reduce net recoveries to employees by approximately \$2M out of a total of \$7.3M (including the amounts received from WEPP).

Under section 36(1) of the *Wage Earner Protection Program Act*, Service Canada has a *subrogated* unsecured claim for the amounts paid to former employees under WEPP. In the Proposal Trustee's opinion and ours, this subrogated claim entitles Service Canada to recover its pro-rata share of distributions made from the Proposal at the same rate the employee would, but it does not entitle Service Canada to a full recovery. The recovery estimates were previously provided are based on this interpretation.

The Proposal Trustee wrote to the Department of Justice and asserted our collective opinion of Service Canada's subrogated claim, and that Service Canada would only be entitled to a pro-rata distribution of 17 cents on the dollar for the amount it pays to employees for WEPP in respect of their unsecured severance claims. This letter dated January 5, 2024, is attached.

On January 16, 2024, the Department of Justice replied to the Proposal Trustee stating Service Canada is to receive the amount of all WEPP payments made to former employees from the estate of Metroland before employees receive any distribution.

We wrote to the Department of Justice advising them of such on January 17, 2024, which is attached.

Given the dispute, we requested that the Proposal Trustee bring a motion for the court to rule on the correct interpretation. This motion is set to be heard on February 14, 2024. Given the amount at stake for the non-union employees (approximately \$2M), we plan to participate in this motion and make a submission for the employees.

Regards,

Koskie Minsky LLP



Abir Shamim (she/her)

Associate

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Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON.. M5H 3R3
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This is **Exhibit "G"**

referred to in the Affidavit of John Willems

sworn before me this 17th day of September, 2024.



LSO# 88251V

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

JUSTICE MATTERS

PRACTICE AREAS ▾ LAWYERS CASES ABOUT NEWS & EVENTS
CONTACT



Metroland Media Group Ltd.

On September 15, 2023, Metroland Media Group Ltd. (“Metroland”) filed a Notice of Intention to Make a Proposal under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3. That same day, Metroland terminated the employment of approximately 605 employees without paying severance, termination pay and other amounts owing to employees. Of these employees, approximately 104 are union members with Unifor Local 87-M.

Koskie Minsky LLP has been retained by a large group former non-union Metroland employees to represent them in Metroland’s bankruptcy proceeding and pursue recoveries of amounts owing to the employees. We are in a dialogue with the Proposal Trustee (Grant Thornton Ltd.) and the company’s lawyers about next steps in the company’s Proposal proceeding.

We will post further information as it becomes available.

If you are a former Metroland employee and have questions, please contact us by email at metrolandemployees@kmlaw.ca or call 1-833-786-0017.

LATEST DEVELOPMENTS



- August 22, 2024

The Proposal Trustee is in the process of finalizing claim calculations to determine the amount of each non-union employee and retiree's distribution payment from the Proposal funds

On July 26, 2024, the Proposal Trustee (Grant Thornton Ltd.) held a meeting with the inspectors to provide an update on future distributions to creditors. Inspectors are creditors who were appointed to oversee the proposal proceeding at the Reconvened Meeting of Creditors on December 11, 2023. Andrew J. Hatnay of our firm is an inspector. At the meeting of inspectors, the Proposal Trustee advised they will be sending approximately 1,500 cheques to all creditors, including former non-union employees and retirees, as a one-time distribution payment.

There are three components to the non-unionized employee distributions:

1. As noted in our previous updates, the non-union employees have an omnibus priority claim of approximately \$1M in respect of unpaid pension contributions that will be paid at 100 cents/dollar (subject to a small levy paid to the superintendent of bankruptcy).
2. The amount of each non-union employee or retiree's claim in respect of other unsecured amounts (e.g., severance pay, termination pay, vacation pay, unpaid benefit contributions, and/or post-retirement benefits) will be paid at a distribution rate of approximately 17 cents/dollar (note: this amount may change slightly as claims of other creditors are finalized).
 - The total estimated distributable amount in respect of the non-union employee unsecured claims is approximately \$3.64M. To date, non-unionized employees have received approximately \$3.15M from Service

Canada in respect of WEPP payments. Of this \$3.15M, Service Canada is entitled to subrogation rights in the amount of approximately \$2.3M, which reduces the distributable amount to the non-unionized employees to approximately \$1.34M. For certainty, \$1.34M represents the total funds to be distributed to all former non-union employees over and above the aforementioned pension amounts and the previously collected WEPP amounts.

- Non-unionized retirees have a claim of approximately \$1.4M. These creditors will also receive approximately 17 cents/dollar, resulting in a distribution of \$238K.

Aggregate Unsecured Distribution payments to former non-union employees and retirees to be reduced from approximately 17% to 16% on account of additional legal and financial advisory fees (not accounting for WEPP subrogation)

On October 13, 2023, our firm was appointed representative counsel to all former non-union Metroland employees. As per the appointment order, the Ontario Superior Court of Justice authorized \$100,000 in legal costs (plus disbursements and HST) to be paid to our firm from the proposal funds. On December 7, 2023, the Court expanded our firm's mandate to include non-union retirees and authorized an additional \$100,000 (plus disbursements and HST) to be paid to our firm from the proposal funds.

Since our appointment as representative counsel, we have calculated and revised the claim calculations of all former non-union employees and retirees, identified a pension priority amount owing to the employees in the amount of \$1 million which is required to be paid at 100 cents/dollar, prepared for and attended court hearings to approve the Proposal, reviewed former non-union employee claims for a WEPP payment, and prepared materials and argued in court in support of the Proposal Trustee's motion to limit Service Canada's

WEPP subrogation claim where the government sought to recover funds from the employee distributions as a refund for all WEPP payments. During this process, we obtained confirmation that Service Canada will not require a refund from the \$1 million pension claim and that amount is scheduled to be released to the employees without reduction from Service Canada.

As a result of these activities, our firm, and the financial advisor retained by our firm to assist in negotiations on behalf of the employees and retirees (E&Y Parthenon), have incurred additional costs. We will be requesting the court to approve further \$238.11 (+ \$30.95 for HST) in respect of disbursements, \$149,067.04 (+\$19,378.72 for HST) for our firm and \$27,686.00 (+\$3,599.18 for HST) for the financial advisor for a total of \$200,000. These fees will be paid as a deduction from the distribution payments to be made to former non-union employees and retirees. As a result of this deduction, distribution payments in respect of the non-union employees and retirees' unsecured claims (e.g., severance pay, termination pay, vacation pay, benefits – including, post-retirement benefits, and VerticalScope shares) will be reduced from approximately 17 cents/dollar to 16 cents/dollar.

- May 19, 2024

We are writing to provide you with the latest news on the Metroland proceeding, specifically regarding the dispute concerning Service Canada's 'subrogation' claim. We understand the importance of clarity during these times, and the following breaks down the recent developments for you.

Decision of Justice Conway on Subrogation Claim

On May 17, 2024, Justice Conway of the Ontario Superior Court of Justice released her decision, and while it may not be the news we hoped for, it's essential to understand its implications. Service Canada is entitled to recover the full amount of any WEPP payment made from unsecured distributions provided to employees from Metroland proposal funds.

**IN 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 METROLAND MEDIA GROUP LTD. OF THE CITY
OF TORONTO, IN THE PROVINCE OF ONTARIO**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at **TORONTO**

AFFIDAVIT OF JOHN WILLEMS
(sworn September 17, 2024)

KOSKIE MINSKY LLP

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Representative Counsel for Non-Union Employees and Retirees

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	FRIDAY, THE 4th
)	
JUSTICE OSBORNE)	DAY OF OCTOBER, 2024

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

**AND IN THE MATTER OF THE PROPOSAL OF METROLAND MEDIA GROUP LTD.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER

THIS MOTION, made by the court-appointed Representative Counsel to Non-Union Employees and Retirees of Metroland Media Group Ltd. ("**Metroland**") was heard this day via video conference at, Toronto, Ontario.

ON READING the Affidavit of John Willems, sworn September 17, 2024, and on hearing the submissions of court-appointed Representative Counsel to Non-Union Employees and Retirees,

1. **THIS COURT ORDERS** that the additional costs of the Non-Union Employees and Retirees incurred by Representative Counsel in the all-inclusive amount of \$200,000, comprising of legal fees, costs of a financial advisor, and taxes and disbursements, is approved and shall be paid from distributions made to the Non-Union Employees and

Retirees from proposal funds in respect of their claim for severance pay, terminated health benefits, pension contributions, post-retirement health benefits, and other amounts.

2. **THIS COURT ORDERS** that this Order is subject to any further order of the Court in respect of these matters.

JUSTICE OSBORNE

DRAFT

**IN 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 METROLAND MEDIA GROUP LTD. OF THE CITY
OF TORONTO, IN THE PROVINCE OF ONTARIO**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

ORDER

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MOTION RECORD
(MOTION RETURNABLE OCTOBER 4, 2024)

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