Court File No. CV-25-00735458-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JORIKI TOPCO INC. AND JORIKI INC.

Applicants

NOTICE OF MOTION

(Returnable on a date to be fixed by the Court)

The Applicants will bring a motion under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 (the "**CCAA**") before a Justice of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on a date and time to be fixed by the Court or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING:

☐ In writing under subrule 37.12.1(1);
☐ In writing as an opposed motion under subrule 37.12.1(4);
☒ In person;
☐ By telephone conference;
☐ By video conference;

at 330 University Avenue, Toronto, Ontario, 8th Floor.

THIS MOTION IS FOR:

1. An Order:

(a) requiring HDI Global Specialty SE ("**HDI**") to pay $5,000,000 to Joriki Inc. ("**Joriki**") on account of the Recall Claim (as defined below) under the HDI Policies (as defined below) by no later than ten (10) days from the date of the Order;

(b) requiring Intact Insurance Company ("**Intact**") to pay $1,024,300.26 to Joriki on account of the Recall Claim under the Intact Policies (as defined below) by no later than ten (10) days from the date of the Order;

(c) for prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(d) for full indemnity costs of this motion against HDI, or, in the alternative, for the costs of this motion jointly and severally against HDI and Intact; and

2. Such further and other relief as counsel may advise, and this Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

Background

3. Joriki TopCo Inc., its Canadian operating subsidiary, Joriki, and its U.S. operating subsidiary, Joriki USA Inc. (collectively with Joriki TopCo and Joriki, the "**Company**") were in the business of manufacturing and packaging consumer beverages, including juices and plant-based beverages, for several large consumer packaged goods companies, and to a lesser extent, grocery retailers and independent brands. The Company operated its business from three production facilities in Canada and one in the United States.

4. In July 2024, Joriki's Pickering facility was implicated in a Canada-wide recall by the Canadian Food Inspection Agency of Silk® and Great Value® plant-based beverages produced

by Joriki as a result of a Listeria monocytogenes outbreak (the "**Recall**"). Joriki incurred significant losses and expenses in connection with the Recall, as detailed below.

5. On January 28, 2025, the Applicants sought and obtained an Initial Order providing relief under the CCAA and Alvarez & Marsal Canada Inc. was appointed as Monitor (the "**Monitor**") in the CCAA proceedings.

6. On February 26, 2025, the Court granted: (a) two Approval and Vesting Orders, among other things, approving separate turn-key transactions in respect of two of Joriki's Canadian production facilities (the "**Transactions**"); and (b) an Ancillary Relief Order, among other things, authorizing the Applicants to make certain distributions from the net proceeds from the Transactions, the liquidation of another Canadian facility not subject to the Transactions, and their remaining cash on hand to their senior secured lenders (the "**Senior Lenders**"). The Transactions closed on February 28, 2025, and on March 7, 2025, respectively.

7. Following the closing of the Transactions, in accordance with the Ancillary Relief Order, the Applicants made distributions to the agent for the Senior Lenders. Given the amounts still owing under the credit agreement with the Senior Lenders, they will incur a shortfall on their outstanding secured loans upon completion of the CCAA proceedings.

8. By Order of the Court dated March 27, 2025, the powers of the Monitor were expanded to, among other things, exercise any powers which may be properly exercised by the board of directors or any officer of each of the Applicants.

9. Subsequent to the closing of the Transactions, the Applicants, with the assistance of the Monitor, have worked to realize value from the Applicants' ancillary assets and otherwise wind-down these CCAA proceedings.

10. At this stage, the only remaining material activity left to complete in the CCAA Proceedings is to resolve the Recall Claim Joriki has asserted under the HDI Policies and the Intact Policies for losses it incurred in connection with the Recall, and to collect and distribute the insurance payments received in respect of the Recall Claim to the Senior Lenders (net of any costs).

The HDI Policies and the Recall Claim

11. HDI issued policy number MC0001823000 (the "**23/24 HDI Policy**") and policy number MC0001824000 (the "**24/25 HDI Policy**" and, with the 23/24 HDI Policy, the "**HDI Policies**") to Joriki. The 23/24 HDI Policy period was from July 1, 2023 to July 1, 2024, and covered up to $5,000,000 for losses for events covered thereunder. The 24/25 HDI Policy period was from July 1, 2024, to July 1, 2025, and provided for the same maximum coverage.

12. Pursuant to the HDI Policies, HDI agreed to reimburse Joriki for losses caused by or resulting from any Insured Event (as defined below) first discovered during the period of insurance and reported to HDI in accordance with the notice provisions of the Policies.

13. The HDI Policies provide coverage for, among others, the following events relevant to the Recall Claim (the "**Insured Events**"):

(a) Insured Event 1 – Accidental Contamination: any accidental or unintentional contamination, impairment or mislabelling, omission of ingredient from, or defect in design of Insured Products, which occurs during or as a result of the production, preparation, manufacture, packaging, co-packaging, storage or distribution, provided that, solely and directly as a result thereof, the use or consumption as intended of such Insured Products has resulted in or would result in Bodily Injury

to any person or animal, or physical damage to or destruction of tangible property; and

(b) Insured Event 5 – Government Recall: any Insured Product that has been deemed by a competent food safety authority to be unfit for human consumption by reason of being injurious to health and has resulted in a Recall by such authority in compliance with regulations on food safety; or has caused the Insured to initiate a voluntary Recall upon consultation with any food safety regulatory agency and determination by the Insured that Insured Products have caused or would cause serious adverse health consequences to any person or animal, or which has subsequently been classified as a Class I or Class II recall by Health Canada.

14. The HDI Policies provide coverage for the following categories of losses, provided they arise solely and directly from an Insured Event and are expenses or costs reasonably and necessarily incurred:

(a) Loss of Gross Profit (section 2.D): loss of gross profit incurred by the Insured as a result of an Insured Event leading solely and directly to a drop in sales for a period not exceeding 18 months from the date of first discovery of an Insured Event;

(b) Product Rehabilitation Expenses (section 2.E): marketing expenses and other media costs to rehabilitate or re-establish Insured Products to the verifiable level of sales or market share existing prior to the Insured Event, provided that such costs are incurred solely to reduce an insured Loss of Gross Profit;

(c) Increased Cost of Working (section 2.F): the excess cost over the ordinary costs of conducting business that would have been incurred had an Insured Event not

happened, which may include the cost of cleaning and/or repairing of machinery, additional expense to maintain the Insured's workforce, and additional expense of subcontracting or transferring manufacturing to another facility;

(d) Defence Costs (section 2.H): fees, costs and expenses incurred by or on behalf of the Insured, with the Insurer's prior consent, solely and directly in connection with the defence of any actual or anticipated claim or demand by a third party against the Insured for Third Party Recall, Replacement and Destruction Expenses, and Third Party Recall Liability Damages; and

(e) Third Party Recall Liability Damages (Third Party Recall Liability Endorsement, section 2.K): any sums that the Insured becomes legally obligated to pay to any third party as pure economic loss, resulting from the investigation, negotiation, settlement or defence of a Claim or Suit arising out of Product Recall Liability, other than fines or liquidated, punitive or penalty damages.

15. The combined single aggregate limit of liability under each of the HDI Policies is $5,000,000.00 during each respective policy period, irrespective of the number of Insured Events.

16. The HDI Policies, and Joriki's Recall Claim thereunder, are Joriki's most significant remaining asset.

17. On July 7, 2024, Jeff McLay, Joriki's then CFO, notified HDI of Joriki's loss in connection with the Recall. The next day, Mr. McLay followed up to provide further details of the Recall to HDI.

18. Following the completion of the Transactions, on May 16, 2025, Joriki provided extensive particulars of its Recall claim (the "**Recall Claim**") to HDI in a letter, spreadsheet and accompanying supporting documentation. Joriki's losses were itemized as follows:

Claim	Amount
1. Loss of Gross Profit	$17,570,275.76
2. Product Rehabilitation Expenses	$171,104.62
3. Increased Cost of Working	$3,601,077.15
4. Defence Costs	$766,035.76
5. Third Party Recall Liability Damages	Unknown

19. Joriki has also put HDI on notice of certain third party claims against it related to the Recall.

20. Joriki is entitled to payment of the policy limit of $5,000,000 under either of the HDI Policies on account of the Recall Claim, as its losses far exceed the respective policy limits. Joriki acknowledges that its claim is limited to a single policy limit of $5,000,000, and it is not entitled to recover the policy limits under both Policies. Its primary position is that the Insured Events were First Discovered (as defined in the Policies) during the period of the 24/25 Policy, and therefore are covered under that Policy. Alternatively, as set out below, HDI confirmed that coverage was available for the Recall Claim under the 23/24 Policy.

21. In response to certain requests from HDI received on or about June 9, 2025, Joriki and its broker provided additional particulars regarding the Recall Claim by emails dated June 10, 2025, and July 11, 2025. HDI has not requested any further information from Joriki in respect of the Recall Claim.

22. To date, no amounts have been paid to Joriki under the HDI Policies and, as detailed below, counsel and the Monitor's repeated attempts to obtain payment from HDI have not been successful.

HDI Confirms Coverage, but has still not made Payment

23. After persistent requests for HDI to provide a coverage position, including advising that Joriki intended to bring a motion to this Court, on February 12, 2026, HDI: (i) confirmed that coverage was available for the Recall Claim under the 23/24 HDI Policy; (ii) advised that it was advancing internal approvals to pay the policy limit of $5,000,000 to Joriki; and (iii) requested payment instructions from Joriki in order to expedite the payment process.

24. Following a request for an update on payment timing, on March 3, 2026, HDI indicated that it expected to receive an update from its head office that week and that once approval was granted, funds would be sent from HDI's German office to its Canadian office in order to make payment to Joriki.

25. As payment had still not been received from HDI, counsel to Joriki followed up with HDI again on March 17 and March 31, 2026. HDI did not respond to either of these emails. It was not until April 17, 2026, when counsel for Joriki advised HDI that Joriki was left with no choice but to proceed with scheduling a motion before this Court to obtain payment, that HDI finally provided a response—which was only that it had retained counsel in relation to this matter.

26. On April 21, 2026, when counsel for HDI reached out to ask whether a motion had been scheduled, counsel for Joriki sought clarification on whether the engagement of counsel meant that, contrary to HDI's prior representations, payment under the HDI Policies was no longer forthcoming. Counsel for HDI confirmed that HDI had not changed its coverage position and that bringing a motion would be unnecessary and premature. Counsel for HDI further advised it would obtain an update from HDI regarding the status and timing of its internal payment approval process and that it would provide an update the week of April 27, 2026. No such update was provided.

Counsel for Joriki (or counsel for the Monitor) followed up with counsel to HDI on May 1, May 8 and May 20, 2026. Still no substantive update on payment timing was provided.

27. On May 20, 2026, counsel for Joriki advised counsel to HDI that Joriki would proceed with its motion to the Court. In response, counsel for HDI requested further time for HDI to provide an update on payment timing. To facilitate this request, Joriki and HDI entered into a tolling agreement providing for a tolling period from May 29 through July 31, 2026. Notwithstanding a further two-plus months having elapsed (and further follow-ups by counsel to Joriki on May 29, June 1, June 2, June 4, June 10, June 24 and July 9), HDI has still not provided any update to Joriki on when payment will be made.

28. HDI has a duty to review and respond to the Recall Claim in good faith, including dealing with Joriki openly, honestly and without unreasonable delay in the handling of the Recall Claim. As of the date of this Notice of Motion, it has been over two years since HDI was put on notice of the Recall, more than 14 months since the detailed Recall Claim was submitted to HDI, over a year since Joriki responded to HDI's questions regarding the Recall Claim, and more than five months since HDI confirmed coverage was available for the Recall Claim and advised that it was advancing internal approvals to make payment of the policy limit. HDI's conduct in this matter, including the significant delay in providing a coverage position to Joriki and its failure to provide updates and make payment in a timely manner under the HDI Policies, is a breach of its good faith obligations as an insurer as well as the duty of good faith imposed under the CCAA.

29. The resolution of the Recall Claim and the distribution of insurance payments received by Joriki under the HDI Policies (and the Intact Policies) represent the last material step in these CCAA proceedings. HDI has had more than a reasonable period of time to investigate and make payment to Joriki on the Recall Claim. HDI's continuing failure to make payment to Joriki is a

breach of its duties described above and has caused and continues to cause unnecessary expense and delay in making final distributions, completing the CCAA proceedings and winding up Joriki's affairs.

The Intact Policies

30. Joriki contracted with Intact for insurance covering, *inter alia*, product recall expenses and commercial umbrella insurance coverage.

31. The first Intact policy's coverage period was from July 1, 2023 to July 1, 2024 (the "**23/24 Intact Policy**"). The second policy's coverage period was from July 1, 2024 to July 1, 2025 (the "**24/25 Intact Policy**" and, with the 23/24 Intact Policy, the "**Intact Policies**"). Both Intact Policies bear policy number 501283033. Each of the Intact Policies provides for coverage of $500,000 for product recall expenses and $1,000,000 under the commercial umbrella coverage.

32. On July 9, 2024, Joriki reported the Recall to its insurance broker for the purpose of notifying Intact. The following day, the broker advised Intact of Joriki's claim under the Intact Policies. On October 2, 2024, Joriki provided Intact with further details of the Recall. On or about May 26, 2025, Joriki's insurance broker provided a copy of the Recall Claim to Intact.

33. A portion of Joriki's loss in respect of the Recall Claim is covered by the Intact Policies. In particular, Joriki is entitled to payment of not less than $1,024,300.26 under the Intact Policies on account of certain recall expenses it incurred, including relating to communications, costs of hiring specialists, overtime pay, inspections and legal expenses.

34. In December 2025, Intact advised counsel for Joriki that it was waiting for HDI to provide a coverage position on the Recall Claim before Intact responded to it.

35. On April 29, 2026, following receipt of confirmation from HDI that there was coverage under the HDI Policies for the Recall Claim, counsel for Joriki so advised Intact.

36. On May 15, 2026, Intact advised that it had reached out to HDI to confirm the amount to be paid by HDI on the Recall Claim (and under what heads of claim) in order to confirm its final position. On June 2, 2026, Intact advised that it had not heard back from HDI despite numerous follow ups. Joriki and Intact subsequently entered into a tolling agreement providing for a tolling period from May 29 through July 31, 2026.

37. To date, no payment has been made to Joriki by Intact on account of the Recall Claim.

General

38. The provisions of the CCAA, including sections 11 and 18.6, and this Court's equitable and statutory jurisdiction thereunder.

39. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.

40. Such further and other grounds as counsel may advise and this Court may permit.

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

41. The Fourth Report of the Monitor and the appendices thereto, to be filed; and

42. Such further and other materials as counsel may advise and this Court may permit.

Date: July 30, 2026

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AND TO: **THE SERVICE LIST**

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

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