

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

**In the Matter of the Notice of Intention to Make a Proposal of
Gateway Market Canada Inc. of the city of Toronto
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Tobmar Investments Inc. of the city of Toronto
in the Province of Ontario**

**And In the Matter of the Notice of Intention to Make a Proposal of
Tobmar Investments International Inc. of the city of Toronto
in the Province of Ontario**

**FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE**

(Dated May 4, 2022)

I. INTRODUCTION

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as proposal trustee (the "**Proposal Trustee**") in connection with a Notice of Intention to Make a Proposal ("**NOI**") filed by each of Gateway Market Canada Inc. ("**Gateway Market**"), Tobmar Investments Inc. ("**Tobmar Investments**") and Tobmar Investments International Inc. ("**Tobmar International**" and, together with Gateway Market and Tobmar Investments, the "**Gateway Group**") on April 19, 2022 under Section 50.4(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**" or the "**Act**"). Attached hereto at **Appendix "A"** are copies of the NOI and Certificates of Appointment issued by the Office of the Superintendent of Bankruptcy for each the corporations making up the Gateway Group.

2. The Gateway Group are making a motion to the Court returnable May 10, 2022 (the "**May 10 Motion**") seeking various relief including:

- a. administratively consolidating the Gateway Group's proposal proceedings under one title of proceeding;

- b. extending the time within which each of the three corporations comprising the Gateway Group may file a proposal to their creditors, by a period of 45 days to July 3, 2022 (the “**Stay Extension**”); and,
 - c. granting a first priority charge on all of Gateway Market’s assets, property and undertaking in the amount of \$200,000, in favour of Albert Gelman Inc., in its capacity as Proposal Trustee and Trustee in Bankruptcy, inclusive of its legal costs (the “**Administrative Charge**”).
3. The Gateway Group have filed with their May 10 Motion the affidavit of Mary Kelly sworn May 2, 2022 (the “**Kelly Affidavit**”), in support of the relief being sought.

II. PURPOSE OF THIS REPORT

4. The purpose of this First Report is to:
 - a. provide the Court with relevant information pertaining to the Gateway Group which is not otherwise described in the Kelly Affidavit;
 - b. provide information to the Court regarding the actions and activities of both the Proposal Trustee and the Gateway Group subsequent to the filing of the NOI’s; and,
 - c. provide the Court with the Proposal Trustee’s recommendations in respect of the relief sought by the Gateway Group.

III. SCOPE AND TERMS OF REFERENCE

5. In preparing this First Report, the Proposal Trustee has relied upon certain unaudited financial information, the Gateway Group’s books and records, discussions with Mary Kelly, CEO of each of the Gateway Group companies, discussions with Kevin Farrell, the Gateway Group’s internal accountant and discussions with the Gateway Group’s legal counsel, Dale & Lessmann LLP.

6. While the Proposal Trustee has reviewed various documents provided by Mary Kelly, Kevin Farrell and others, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles (“**GAAP**”) or International Financial Reporting Standards (“**IFRS**”) or otherwise. Accordingly, the Proposal Trustee expresses no opinion or other form of assurance pursuant to GAAP or IFRS or otherwise with respect to such information except as expressly stated herein.

7. This First Report has been prepared for the use of this Court and the Gateway Group’s stakeholders as general information relating to the Gateway Group and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.

8. All monetary amounts referenced are in Canadian dollars.

IV. BACKGROUND INFORMATION

9. Gateway Market, along with two affiliated corporations, Tobmar Investments and Tobmar International filed Notices of Intention to Make a Proposal on April 19, 2022.

10. The Gateway Group is a franchisor of newsstand convenience stores, bakeries and lottery booths across Canada. The franchised stores are located at public transit locations with the TTC and at GO Transit stations in the Greater Toronto Area, as well as in various malls and office buildings. Most of the franchised stores are in Ontario and operate under the "Gateway Newstands" brand.

11. The Gateway Group, along with its franchisees, have been adversely affected by the Covid-19 pandemic, starting in April 2020. Management's analysis shows that the gross revenues of the franchisees have declined by roughly two thirds since the beginning of the pandemic. The Gateway Group's royalty revenues from franchisees have declined by a corresponding amount. In addition, franchise fees from new store openings have also declined significantly, with no new store openings since the beginning of the pandemic.

12. Of the Gateway Group's approximately one hundred and fifty franchised locations, 22 have permanently closed and a further 19 remain partially or temporarily closed since the commencement of the pandemic.

13. The Gateway Group have accumulated significant arrears under the head leases with its landlords, resulting from the inability of many franchisees to pay their corresponding sub-lease rents.

14. In addition to the accumulated arrears, the long-term viability of the Gateway Group is also contingent on negotiating viable rent concessions with many of the landlords going forward, for the benefit of Gateway Group and its franchisees.

15. Since filing the NOI's, head leases for six locations that had closed prior to the NOI have been disclaimed pursuant to subsection 65.2(1) of the BIA. In addition, Gateway Group's head office lease has also been disclaimed. The head office will be re-located shortly to smaller premises at a reduced rent.

Gateway Market Canada Inc:

16. Gateway Market is the franchisor for all franchised locations. It is also holds the head lease for four TTC locations.

17. Gateway Market employs all head office staff of the Gateway Group. Three head office employees were terminated by Gateway Market just prior to the NOI filing.

18. The principal assets of Gateway Market consist of office furniture and equipment having a book value of approximately \$80,000 and accounts receivable due from franchisees for royalty and franchise fees of approximately \$500,000. Management believes that most of the accounts receivable are unlikely to be collected from the franchisees.

19. In addition to the above noted assets, Gateway Market's intangible assets consists of various trademarks and other intangible property, including operation methods and know how, which it licenses to the franchisees under their respective franchise agreements.

20. Gateway's Market's material unsecured liability consists of approximately \$500,000 owing to the TTC under head lease obligations, resulting from non-payment of sub-lease rent by the respective franchisees/subtenants. Although Gateway Market has a corresponding amount due from the subtenants, management believes that the majority of the amounts are unlikely to be collected.

Tobmar Investments Inc.

21. Tobmar Investments holds head leases with various landlords of commercial and office buildings. It sublets these locations to individual franchisees which operate franchised Gateway stores.

22. Tobmar Investments has no material assets other than the benefit of the above-noted leases.

23. Its material unsecured liabilities consist of approximately \$1.3 million owing to various landlords under head lease obligations, resulting from non-payment of sub-lease rent by the respective franchisee/subtenants.

24. Although Tobmar Investments has a corresponding amount due from the subtenants, management believes that the majority of the amounts are unlikely to be collected.

Tobmar Investments International Inc.

25. Tobmar International holds the head lease with the Toronto Transit Commission ("TTC") for approximately 75 TTC locations. Tobmar International sublets each of the locations under separate sub-leases with various franchisees.

26. Tobmar International has no material assets other than the benefit of the above-noted leases.

27. Its material unsecured liability consists of approximately \$4.8 million owing under the head lease with the TTC, resulting from non-payment of sub-lease rent by the respective franchisee/subtenants.

28. Although Tobmar International has a corresponding amount due from the subtenants, management believes that the majority of amounts are unlikely to be collected.

V. SECURED CREDITORS

Gateway Market Canada Inc.

29. Pursuant to a PPSA search conducted by the Proposal Trustee on April 29, 2022 (with a file currency date of April 28, 2022), the following creditors have registered financing statements against Gateway Market:

Registration Date	Creditor	Collateral Classification
January 11, 2016	The Toronto-Dominion Bank	Inventory, Equipment, Accounts, Other, Motor Vehicle
January 15, 2016	The Peninsula Fund VI Limited Partnership	Inventory, Equipment, Accounts, Other, Motor Vehicle
April 13, 2022	The Peninsula Fund VI Limited Partnership	Inventory, Equipment, Accounts, Other, Motor Vehicle

30. A copy of the PPSA search is attached as Exhibit “F” to the Kelly Affidavit.

The Toronto-Dominion Bank

31. Gateway Market’s senior secured creditor is The Toronto-Dominion Bank (“**TD Bank**”). TD Bank are owed approximately \$4 million pursuant to a term loan facility (the “**TD Bank Debt**”). Gateway Market provided a general security agreement in favour of TD Bank as security for the TD Bank Debt. Both Tobmar Investments and Tobmar International guaranteed the TD Bank Debt and, as security for the guarantees, provided general security agreements in favour of TD Bank.

Peninsula Fund VI Limited Partnership

32. Peninsula Fund VI LP (“**Peninsula**”), are the single largest creditor of Gateway Market and have registered their security interest under the PPSA. Pursuant to the NOI, Peninsula are owed approximately \$18.4 million (the “**Peninsula Debt**”). As set out in the Kelly Affidavit, Peninsula also holds an indirect shareholding interest in the Gateway Group.

Tobmar Investments Inc.

33. Pursuant to a PPSA search conducted by the Proposal Trustee on April 29, 2022 (with a file currency date of April 28, 2022), the following creditors have registered financing statements against Tobmar Investments:

Registration Date	Creditor	Collateral Classification
January 11, 2016	The Toronto-Dominion Bank	Inventory, Equipment, Accounts, Other, Motor Vehicle
January 15, 2016	The Peninsula Fund VI Limited Partnership	Inventory, Equipment, Accounts, Other, Motor Vehicle
October 10, 2018	BCIMC Realty Corporation	Inventory, Equipment, Accounts, Other, Motor Vehicle

34. A copy of the PPSA search is attached as Exhibit “F” to the Kelly Affidavit.

The Toronto-Dominion Bank

35. As noted above, Tobmar Investments guaranteed the TD Bank Debt of Gateway Market and, as security for the guarantee, provided a general security agreement in favour of TD Bank.

Peninsula Fund VI Limited Partnership

36. Tobmar Investments have guaranteed the Peninsula Debt.

BCIMC Realty Corporation

37. BCIMC Realty Corporation (“**BCIMC**”) is a landlord pursuant to a head lease between BCIMC as landlord and Tobmar Investments as head tenant. We are advised by management that no amounts are owing under this head lease.

Tobmar Investments International Inc.

38. Pursuant to a PPSA search conducted by the Proposal Trustee on April 29, 2022 (with a file currency date of April 28, 2022), the following creditor has registered a financing statement against Tobmar International:

Registration Date	Creditor	Collateral Classification
January 15, 2016	The Peninsula Fund VI Limited Partnership	Inventory, Equipment, Accounts, Other, Motor Vehicle

39. A copy of the PPSA search is attached as Exhibit "F" to the Kelly Affidavit.

The Toronto-Dominion Bank

40. As noted above, Tobmar International guaranteed the TD Bank Debt of Gateway Market and, as security for the guarantee, provided a general security agreement in favour of TD Bank. The Proposal Trustee notes that the TD Bank security does not appear to be registered under the PPSA.

Peninsula Fund VI Limited Partnership

41. Tobmar International have guaranteed the Peninsula Debt.

VI. UNSECURED CREDITORS

Gateway Market Canada Inc.

42. Gateway Market listed \$637,481 of arm's length unsecured claims in its NOI.

43. Gateway Market's largest unsecured creditor is the TTC, listed on the NOI in the amount of \$510,718. This amount represents amounts owing to the TTC under head lease obligations, resulting from non-payment of sub-lease rent by the respective franchisees/subtenants.

Tobmar Investments Inc.

44. Tobmar Investments listed approximately \$1.3 million of arm's length unsecured claims in its NOI.

45. Its material unsecured liabilities are amounts owing to various landlords under head lease obligations, resulting from non-payment of sub-lease rent by the respective franchisee/subtenants.

Tobmar Investments International Inc.

46. Tobmar International listed approximately \$4.9 million of arm's length unsecured claims in its NOI.

47. Its material unsecured liability consists of approximately \$4.8 million owing under a head lease with the TTC, resulting from non-payment of sub-lease rent by the respective franchisee/subtenants.

VII. ACTIVITIES OF THE GATEWAY GROUP

48. Since the filing of the NOI, the Gateway Group have undertaken, among other things, the following activities:

- a. advised various stakeholders, including management, relevant employees, various franchisees and various landlords, of these restructuring proceedings;
- b. pursuant to section 65.2(1) of the Act Tobmar Investments disclaimed six (6) commercial lease agreements for franchise locations where the franchisee had abandoned the location and was no longer operating. Copies of the commercial lease disclaimer notices are attached hereto as **Appendix “B”**;
- c. pursuant to section 65.11 of the Act Gateway Market disclaimed two (2) agreements for office equipment which was no longer required for its ongoing operations. Copies of the agreement disclaimer notices are attached hereto as **Appendix “C”**;
- d. pursuant to section 65.2(1) of the Act Gateway Market disclaimed its head office commercial lease agreement with Kachin Property Limited (the **“Former Landlord”**). A copy of the head office commercial lease disclaimer notice is attached hereto as **Appendix “D”**;
- e. had informal discussions with various secured and unsecured creditors in respect of the restructuring proceedings, including TD Bank, Peninsula, the TTC and other landlords;
- f. attended meetings with the Proposal Trustee to discuss its objectives and options in respect of these restructuring proceedings;
- g. prepared its Cash Flow Forecast (defined below) with the assistance of the Proposal Trustee; and
- h. provided the Proposal Trustee, on an ongoing basis, with financial and other information in order to allow the Proposal Trustee to monitor its cash receipts and disbursements.

49. The Gateway Group are requesting an extension of time to file their proposals so that they may, among other things: (a) stabilize operations and cash flows; (b) make a determination of which franchise locations are viable and, for those which are not viable, disclaim the commercial lease and terminate the franchise agreement; (c) continue discussions with creditors, including the TTC and TD Bank, regarding the potential terms of a proposal; and then, (d) to formulate the terms of a proposal to creditors.

50. As further discussed below, the Proposal Trustee supports the Gateway Group’s request for the Stay Extension.

VIII. ACTIVITIES OF THE PROPOSAL TRUSTEE

51. Since the filing of the NOI the Proposal Trustee has undertaken, among other things, the following activities:

- a. on April 25, 2022 the Proposal Trustee mailed to every known creditor a copy of the NOI as required under subsection 50.4(6) of the BIA. A copy of the affidavits of mailing are collectively attached hereto as **Appendix “E”**;

- b. corresponded with and attended virtual meetings with TD Bank representatives as well as their legal counsel;
- c. attended virtual meetings with representatives of the TTC and City of Toronto;
- d. engaged Chaitons LLP as its independent legal counsel;
- e. assisted the company with the preparation and sending of the lease disclaimers described above;
- f. assisted the Gateway Group with the preparation of the Cash Flow Forecast (defined below);
- g. implemented procedures with the Gateway Group's management to allow the Proposal Trustee to carry out its monitoring duties;
- h. communicated extensively with management of the Gateway Group, the Gateway Group's internal accountant and the Gateway Group's legal counsel to discuss, among other things, the following:
 - i. the business, financial affairs and future prospects of the Gateway Group; and,
 - ii. the options available to the Gateway Group in relation to the NOI proceedings.
- i. communicated with several creditors and other stakeholders who contacted the Proposal Trustee directly regarding the status of these restructuring proceedings; and,
- j. established a Case Webpage to post the Court materials related to these restructuring proceedings, located at www.albertgelman.com/corporate-solutions/other-engagements/.

IX. CASH FLOW FORECASTS

52. On April 28, 2022 the Gateway Group each filed with the Proposal Trustee a statement of projected cash flows prepared on a weekly basis for the period of April 18 to July 31, 2022 ("**Cash Flow Forecasts**"), along with management's report on the reasonableness of the Cash Flow Forecast, in accordance with subsection 50.4(2) of the BIA. Attached hereto as **Appendix "F"** are copies of the Cash Flow Forecast along with management's and the Proposal Trustee's report thereon.

53. In the Proposal Trustee's opinion, the Cash Flow Forecasts demonstrate that the Gateway Group can continue to operate during the forecast period without material prejudice to any of the Gateway Group's creditors. The accuracy of the Cash Flow Forecasts is subject to the assumptions contained within the forecasts and set out in the forecast notes.

X. ADMINISTRATIVE CHARGE

54. The Gateway Group are seeking an Order of the Court charging the property of the Gateway Group in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors,

statutory or otherwise pursuant to section 64.2(1) of the BIA in an amount not to exceed \$200,000 to secure the fees and disbursements of the Proposal Trustee, the Proposal Trustee's legal counsel and AGI in its capacity in Trustee in bankruptcy of the Gateway Group companies, if necessary (defined above as the Administrative Charge). As a result of the Gateway Group's limited cash flows (as evidenced in the Cash Flow Forecasts), they are unable to provide the Proposal Trustee with sufficient funds to cover the Proposal Trustee's ongoing fees and disbursements in these restructuring proceedings. Therefore, the Administration Charge is necessary to secure the fees and disbursements of the restructuring professionals.

55. Administrative charges are common in proceedings such as this and are necessary to secure the fees and disbursements of the professionals involved to enable Gateway Group to successfully complete restructuring proceedings.

56. The Proposal Trustee recommends that the Court grant an order approving the Administrative Charge being sought by the Gateway Group.

XI. REQUEST FOR EXTENSION

57. The Gateway Group are seeking the Stay Extension pursuant to subsection 50.4(9) of the BIA.

58. The Proposal Trustee supports the Stay Extension as it is of the opinion that:

- a. the Gateway Group have acted, and are acting, in good faith and with due diligence;
- b. the Gateway Group would likely be able to make a viable Proposal if the extension being applied for were granted; and,
- c. no creditor would be materially prejudiced if the extension being applied for were granted.

59. The reasons for the extension are set out above and included in the Kelly Affidavit at paragraphs 33 through 36. The Proposal Trustee believes these reasons are valid and reasonable in the circumstances.

XII. ADMINISTRATIVE CONSOLIDATION

60. For the reasons set out in the Kelly Affidavit, the Proposal Trustee support the administrative consolidation of the Gateway Group estates.

XIII. PROPOSAL TRUSTEE'S RECOMMENDATION

61. For the reasons explained herein, the Proposal Trustee respectfully recommends that this Honourable Court make an Order or Orders approving:

- a. the administrative consolidation of the Gateway Group's proposal proceedings under one title of proceeding;
- b. the Stay Extension;
- c. the Administrative Charge; and,

- d. the actions and activities of the Proposal Trustee as described in this First Report.

All of which is respectfully submitted this 4th day of May 2022

**ALBERT GELMAN INC., solely in its
capacity as Trustee of re the Notice of
Intention to Make a Proposal of Gateway
Market Canada Inc., Tobmar Investments Inc.
and Tobmar Investments International Inc.
and not its Personal or any other Capacity**

Per:



Joe Albert, CPA, CA, DIFA, CIRP, LIT