Court File No. CV-21-00658423-00CL

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 JUST ENERGY GROUP INC., JUST ENERGY CORP., ONTARIO ENERGY COMMODITIES INC., UNIVERSAL ENERGY CORPORATION, JUST ENERGY FINANCE CANADA ULC, HUDSON ENERGY CANADA CORP., JUST MANAGEMENT CORP., JUST ENERGY FINANCE HOLDING INC., 11929747 CANADA INC., 12175592 CANADA INC., JE SERVICES HOLDCO I INC., JE SERVICES HOLDCO II INC., 8704104 CANADA INC., JUST ENERGY ADVANCED SOLUTIONS CORP., JUST ENERGY (U.S.) CORP., JUST ENERGY ILLINOIS CORP., JUST ENERGY INDIANA CORP., JUST ENERGY MASSACHUSETTS CORP., JUST ENERGY NEW YORK CORP., JUST ENERGY TEXAS I CORP., JUST ENERGY, LLC, JUST ENERGY PENNSYLVANIA CORP., JUST ENERGY MICHIGAN CORP., JUST ENERGY SOLUTIONS INC., HUDSON ENERGY SERVICES LLC, HUDSON ENERGY CORP., INTERACTIVE ENERGY GROUP LLC, HUDSON PARENT HOLDINGS LLC, DRAG MARKETING LLC, JUST ENERGY ADVANCED SOLUTIONS LLC, FULCRUM RETAIL ENERGY LLC, FULCRUM RETAIL HOLDINGS LLC, TARA ENERGY, LLC, JUST ENERGY MARKETING CORP., JUST ENERGY CONNECTICUT CORP., JUST ENERGY LIMITED, JUST SOLAR HOLDINGS CORP. AND JUST ENERGY (FINANCE) HUNGARY ZRT.

APPLICANTS

FACTUM OF THE DIP LENDERS

MOTION AND CROSS-MOTION FOR ADVICE AND DIRECTIONS RETURNABLE FEBRUARY 9, 2022

February 7, 2022

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Alan Merskey LSO #: 413771
Tel: 416.860.2948
amerskey@cassels.com

John M. Picone LSO #: 58406N
Tel: 416.640.6041
jpicone@cassels.com

Christopher Selby LSO #: 65702T
Tel: 416.860.5223
cselby@cassels.com

Lawyers for the DIP Lenders

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PART I - OVERVIEW

1. The Applicants have been operating under CCAA protection for almost a year. They are now on the verge of presenting a restructuring plan, sponsored by the DIP Lenders, which would allow them to exit this proceeding, as a viable operating business.

2. Donin and Jordet have a different plan.[1] In the wake of significant stakeholder support for the Applicants, they have emerged with grossly inflated contingent claims with a view to hijack

[1] These are the individual plaintiffs in the uncertified class actions: *Donin v. Just Energy Group Inc. et al.* and *Trevor Jordet v. Just Energy Solutions, Inc.*

the restructuring. They seek relief designed to secure an outcome for themselves far better than any legal entitlement they may have, to the detriment of the Applicants and their stakeholders, including the DIP Lenders.

3. After filing proofs of claim pursuant to the Court-ordered claims process – which were then disallowed – Donin and Jordet ***now*** ask the Court to permit them to avoid the implications of this restructuring altogether by declaring that they will be "unaffected" creditors. That relief contradicts the very purpose of the CCAA: compromise and a fresh start.

4. If that relief is granted, the DIP Lenders will have no interest in providing the necessary financing to support a plan and it is unlikely that any plan will emerge at all. No debtor could attract new investment without addressing contingent claims of that nature.

5. Donin and Jordet seek, in the alternative, to hold the restructuring process hostage by enjoining the Applicants and creditors from pursuing and voting on a plan until their speculative years-old claims (on behalf of an uncertified class) are fully and finally resolved. That relief is equally egregious and ignores the serious prejudice to the Applicants and their stakeholders, including the DIP Lenders.

6. The adjudication schedule Donin and Jordet seek to impose, including direction by this Court of a fixed outside date by which their claims must be finally decided, is an end-run around this Court's claims procedure order and entirely unrealistic. That order vests a claims officer with authority to determine a procedurally fair process and timetable for adjudication. The contingent claimants' effort to handcuff the claims officer from making those critical determinations based on complete information and argument by the parties should be rejected.

7. Donin and Jordet also ignore that final adjudication of their claims will very likely involve appeals. The Applicants' ability to restructure cannot be tied to an adjudication process designed for the sole benefit of contingent creditors with speculative claims.

8. The fairness issues raised by Donin and Jordet, if legitimate, are appropriately dealt with at the sanction hearing. They cannot be tactically deployed now to block the Applicants' path to that hearing. This motion should be dismissed.

PART II - THE FACTS

A. The DIP Lenders Provided Substantial Support to Facilitate the Restructuring

9. The DIP Lenders have been longstanding stakeholders and supporters of the Applicants' business. They hold significant secured claims, a majority of the obligations under the pre-filing senior unsecured term loan and a material portion of the Applicants' existing equity.[2]

10. When the Applicants needed emergency DIP financing, the DIP Lenders stepped up in short order and provided USD$125 million. The Court agreed that the DIP facility was necessary for the Applicants to make time-sensitive payments to stabilize their business.[3] The DIP facility is now fully drawn.[4]

11. The DIP facility was advanced on the basis of a restructuring timetable acceptable to the DIP Lenders. This was a key term of the loan.

12. The early stages of this proceeding were mired in potential litigation of a serious intercreditor dispute among the Applicants' lenders and certain of its significant secured creditors.

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[2] Affidavit of Michael Carter, sworn February 2, 2022 ("**Carter Affidavit**"), para 11, Motion Record of the Applicants dated February 2, 2022 ("**Applicants' MR**"), p 12, Compendium of the Applicants and DIP Lenders dated February 7, 2022 ("**Compendium**"), Tab 14, p 246.
[3] Endorsement of Justice Koehnen, issued March 9, 2021, paras 6-7 and 63, Book of Authorities of the DIP Lenders dated February 7, 2022 ("**BOA**"), Tab 5.
[4] Carter Affidavit, Exhibit J, Applicants' MR, p 302 (paragraph (c)); Second Report of the Monitor, dated May 21, 2021, para 40, Compendium, Tab 12, p 234.

That litigation threatened to seriously delay or prevent the Applicants' successful restructuring. In response, the DIP Lenders' acquired over USD$200 million of that secured debt, which allowed the Applicants to turn their focus to completing a successful restructuring.[5]

13. The DIP Lenders are now working with the Applicants and key creditors to finalize a restructuring plan where the DIP Lenders will provide exit financing to sufficiently capitalize the business.[6] The plan will provide that all contingent litigation creditors are "affected creditors".

B. Claims by Donin and Jordet Have Been Disallowed

14. On September 15, 2021, this Court issued a claims procedure order to identify and determine all claims against the Applicants.[7]

15. On November 1, 2021, Donin and Jordet filed proofs of claim based on years-old uncertified US class actions.[8] Those claims were far broader than the existing actions that were permitted by the US Courts to proceed past pleadings. The only claims that survived summary dismissal were limited claims of breach of contract and the implied duty of good faith;[9] other claims – including statutory claims relating to alleged deceptive practices, fraud-based claims, and unjust enrichment – were dismissed.

16. It is clear on the face of the claims themselves, regardless of their dubious merits, that the potential class is actually composed of a tiny fraction of the millions of customers repeatedly cited, without any evidence whatsoever, by their US counsel, Mr. Wittels.[10]

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[5] Carter Affidavit, paras 11 and 62, Applicants' MR, pp 12 and 36, Compendium, Tab 14, pp 246 and 270; Third Report of the Monitor, dated September 8, 2021, paras 34 and 37, Compendium, Tab 13, pp 238-239.
[6] Carter Affidavit, para 11, Applicants' MR, p 12, Compendium, Tab 14, p 246.
[7] Carter Affidavit, para 9 and Exhibit A, Applicants' MR, pp 11 and 39-112, Compendium, Tab 14, p 245 and Tab 1, p 3.
[8] Carter Affidavit, para 31, Applicants' MR, p 20, Compendium, Tab 14, 254; Affidavit of Robert Tannor sworn January 17, 2022 (the "**Tannor Affidavit**") Exhibits F, G, and H, Motion Record of the Moving Parties dated January 19, 2022 ("**Moving MR**"), pp 196-253, Compendium, Tab 6, pp 101-146.
[9] Fifth Report of the Monitor dated February 4, 2022, para 49, Compendium, Tab 11, pp 188-189.
[10] Tannor Affidavit, Exhibit I, Moving MR, p 254. Moreover, the Applicants' total current customer base under any form of contract is 950,000: Carter Affidavit, para 12, Applicants' MR, p 12, Compendium, Tab 14, pp 246.

17. Pursuant to paragraph 36 of the claims procedure order, the claims were disallowed on the basis that the proposed class actions:

(a) are contingent, uncertified, speculative, and remote;

(b) attempt to impermissibly expand the scope of the actual claims to add new defendants, new customer groups, and extended class periods; and

(c) inflate damages calculations based on flawed assumptions, including by assuming that 50% of natural gas and electricity usage of the Applicants' customer base is attributable to customers that are parties to variable rate contracts when only 2.1% and 0.04%, respectively, of natural gas and electricity usage is attributable to customers who are parties to variable rate contracts with the Applicants.[11]

18. Disallowance of those claims has not yet been contested. As a result, the adjudication process provided for by the claims procedure order has not been triggered.[12]

19. Under the claims procedure order, following receipt of a dispute, the Applicants and the Monitor may seek the appointment of a claims officer who determines their own procedure and timetable for adjudication.[13] That is what should happen here.

20. These two contingent claimants should not receive special treatment simply because they assert a grossly inflated claim.[14] That would open the door to any contingent claimant abusing the claims process for leverage in any restructuring.

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[11] Carter Affidavit, paras 32-33 and 37(c), Applicants' MR, pp 21 and 24, Compendium, Tab 14, pp 255, 257-258; Tannor Affidavit, Exhibits Q and R, Moving MR, pp 303-312, Compendium, Tabs 8 and 9, pp 149-168.
[12] Carter Affidavit, Exhibit A, para 37, Applicants' MR, p 67, Compendium, Tab 1, p 5.
[13] Carter Affidavit, Exhibit A, para 39, Applicants' MR, pp 67-68, Compendium, Tab 1, pp 5-6.
[14] Fifth Report of the Monitor, dated February 4, 2022, paras 37 and 46, Compendium, Tab 11, pp 188 and 190.

C. Donin and Jordet Seek Special Treatment

21. Donin and Jordet initially demanded final adjudication of the proposed class actions ***this month***.[15] Now, recognizing the illusory nature of that proposal, they have shifted to a slightly extended timetable, which remains entirely unrealistic.

22. Their latest proposal continues to completely disregard that, before adjudication, the proposed class actions require: (i) discovery in the case of one of the claims; (ii) the exchange of expert reports; (iii) a judicial determination on summary judgement; and (iv) a judicial determination on certification.[16] It also completely ignores judicial appeals, which are all but certain, after a claims officer's decision.

23. Under any realistic adjudication schedule, the parties would not reach final determination of the claims for a lengthy period of time. It would be highly prejudicial to the Applicants and their stakeholders if the restructuring process were held in abeyance for that entire duration. As noted by the Monitor in its fifth report, "it is unreasonable to delay the entire restructuring process of the Just Energy Entities to resolve one outstanding contingent litigation claim".[17]

24. Timely exit from CCAA protection is critical to the Applicants and their stakeholders given the length of time the Applicants have already spent in this CCAA proceeding, the volatility of the energy market, the threat of additional weather events, the need for additional liquidity, and the risk that the Applicants will lose the support of their key creditors.[18]

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[15] Notice of Motion and Cross-Motion dated January 19, 2022, para 3(a), Moving MR, p 3, Compendium, Tab 2, p 9; Tannor Affidavit, Exhibit S, Moving MR, pp 325-326, Compendium, Tab 10, pp 169-171.
[16] Carter Affidavit, paras 56-57 and Exhibit M, Applicants' MR, pp 34 and 367-368; Compendium, Tabs 14 and 15, pp 267-268, 272-274.
[17] Fifth Report of the Monitor dated February 4, 2022, para 58, Compendium, Tab 11, p 193.
[18] Carter Affidavit, para 14, Applicants' MR, p 13, Compendium, Tab 14, p 247.

PART III - LAW & ARGUMENT

25. The DIP Lenders focus on and emphasize the following:

(a) Donin and Jordet (and the uncertified classes) cannot, on their own motion, be declared "unaffected" by a future plan; and

(b) Donin and Jordet cannot sidestep the Court-approved claims process or use their speculative and contingent claims to prevent a timely creditor vote and obstruct the Applicants' restructuring.

A. No Basis to Declare the Claimants Unaffected Creditors

26. This Court should not permit uncertified unsecured contingent creditors to avoid the implications of this restructuring by declaring that they will be unaffected by this CCAA proceeding. The fundamental purpose of the CCAA is the compromise of claims to permit debtors a fresh start, unencumbered by prior obligations.[19] It is well-settled law and practice that the debtor, not a contingent claimant, has discretion to determine how to deal with creditors in a proposed plan, which is then subject to a creditor vote.[20]

27. From a practical perspective, if Donin and Jordet (and their ostensible classes) are allowed to evade compromise as they propose, neither the DIP Lenders nor likely anyone else will have any interest in funding a plan. Without a plan sponsor, the Applicants' restructuring – the very purpose of this proceeding – will fail.

B. No Special Treatment or Delay to Creditor Vote

28. The Court has already issued a claims procedure order.[21] That order mandates how claims are to be addressed. It is a final order that was not appealed. In the absence of fraud or

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[19] *North American Tungsten Corp. v Global Tungsten and Powders Corp.,* 2015 BCCA 426, para 37, BOA Tab 8.
[20] See for example: *Campeau v Olympia & York Developments Ltd.,* [1992] OJ No 1946 (SC), para 25(2), BOA Tab 3.
[21] Carter Affidavit, Exhibit A, Applicants' MR, pp 39-112, Compendium, Tab 1, p 3.

facts discovered after the claims procedure order was issued, there is no legal justification to vary that order now.[22]

29. Donin and Jordet have conceded the obvious in their factum: that their claims should be determined by claims officers, who should set their own schedule. They have yet to explain – because they cannot – their demand to select their own claims officers or how such claims officers can control their own (procedurally fair) process if a fixed outside date for their decision is directed by this Court.

30. Donin and Jordet also insist that an "expedited" adjudication framework is "consistent with orders made by the Court in other cases". Obviously, this Court can expedite litigation generally – the relevant question is whether doing so is appropriate and fair.

31. The claims procedure order confers jurisdiction on the claims officer to set and manage the process and schedule for adjudication of claims referred to him or her. It is unlikely that Donin's and Jordet's claims, including completion of all appeals, can be adjudicated before a creditor vote without abrogating substantive rights and defenses. Abrogation of those rights and defenses is not what the CCAA calls for, as observed by Justice Farley:

> A determination on a timely basis does not mean that matters be dealt with at breakneck speed with all manner of corners cut. Nor does it mean the glacial pace to a secondary starting point, after which there will be a further hearing/case conference to decide where to go from there on.[23]

32. After four years, the contingent claimants have not taken the most fundamental procedural step in a class proceeding: certification.[24] According to Justice Farley in *Re Air Canada*:

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[22] *Rules of Civil Procedure,* RRO 1990, Reg 194, r 59.06(2)(a).
[23] *Stelco Inc., Re,* 2006 CanLII 7526 (ONSC), para 3, BOA Tab 12.
[24] Carter Affidavit, para 56, Applicants' MR, p 33, Compendium, Tab 14, pp 267-268.

> The certification aspect of the plaintiffs' suit will be of substantial significance as to their claim, a claim as discussed above being of material magnitude (if substantiated). If the plaintiffs lose the certification aspect, then their claim will be restricted to themselves and so be of a much, much lower amount (if substantiated); other travel agents may of course proceed to file individual claims in the claims process while some may not participate at all. In my view the amount of resources involved in terms of money and executive, operation and legal staff time will not be that substantial in relation to the overall context of these CCAA proceedings, but perhaps more importantly, the claims process itself will require that the certification aspect be dealt with in some way — either by negotiation or adjudication.[25]

33. The two authorities offered by Donin and Jordet do not support the proposition that a creditor vote and therefore a timely restructuring should effectively be delayed until their claims are finally resolved.

34. In the *Essar* decisions, the debtor could not effectively undertake the SISP needed for its restructuring without resolving the ownership of the assets involved in the oppression dispute, or the labour disputes at issue in the grievance procedures. Accordingly, directing the debtor and courts resources to rapid adjudication ***facilitated*** the restructuring. The opposite is the case here.

35. In *Covia Canada Partnership* (which was not even a CCAA proceeding) it was only the initial liability stage of the litigation, on consent and without regard to appeals, that took place within six months – the proceedings had been bifurcated.

36. Success in the proposed class actions is, put generously, far from certain. As will be addressed – in context – at the meeting order hearing, the appropriate approach to deal with these claims is to value or disallow them for voting purposes, record the disputed portion, and consider the fairness of that treatment at the sanction hearing.

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[25] *Air Canada, Re,* 2003 CarswellOnt 9106 (SC), para 11, BOA Tab 1.

37. The Court is not being asked to grant that relief today. However, that is the approach consistently adopted in CCAA proceedings at the meeting order and sanction order stage, and makes clear that Donin's and Jordet's motion is ill-founded. For example, in *Re Target Co*., Justice Morawetz ordered:

> [T]hat the Canada Revenue Agency shall have one vote in respect of its Disputed Claims, the dollar value of which shall be equal to $1, without prejudice to the determination of the dollar value of such Disputed Claims for distribution purposes in accordance with the Claims Procedure Order.[26]

38. In the context of an order sanctioning a CCAA plan in *Re Clover on Yonge Inc.*, Justice Hainey was confronted with similar circumstances. Notwithstanding the prior disallowance for voting purposes of a material contingent claim, Justice Hainey sanctioned a plan as fair and reasonable. In doing so, consistent with section 20(1)(a)(iii) of the CCAA,[27] the Court adopted "strikingly similar" law from *Nalcor Energy v Grant Thornton* in the proposal context of the *BIA*.[28]

39. In *Nalcor Energy*, the New Brunswick Court of Queen's Bench rejected a claim for voting purposes on the basis that the validity of the claim, as well as the assessment of damages, was completely dependent on the outcome of the litigation.[29] In *Re Port Chevrolet Oldsmobile Ltd.*, the Court upheld the disallowance for voting purposes of a contingent and unproven claim, which was based on an unresolved appeal of the *Excise Tax Act*.[30] In *Re Canadian Triton International Ltd.,* Justice Farley determined that a claimant could not vote on a proposal as a result of the

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[26] *Target Canada Co., Re*, 2016 CarswellOnt 8815 (SC), Schedule "C", s 30, BOA Tab 14. See also *T. Eaton Company Limited, Amended and Restated Plan of Compromise*, (I.I.C. Ct. Filing 44993447021) (WL), Schedule "A" – Claims Procedure for Voting and Distribution Purposes, s 3 and Order of Justice Farley dated November 23, 1999 (I.I.C. Ct. Filing 44993495001), BOA Tab 15; *Sem Canada Crude Company*, (Action No. 0801-008510) (WL), Schedule "A" – Canadian Creditors' Meetings Order, para 35(b) and Reasons for Decision of the Honourable Madam Justice B.E. Romaine dated August 24, 2009 (Filing 341079516004), BOA Tab 13.

[27] *Re Clover on Yonge Inc.* (CV-20-00642928-00CL), Endorsement of Justice Hainey dated January 8, 2021 (unreported), BOA Tab 10.

[28] Section 20(1)(a)(iii) of the CCAA prescribes that the amount of an unsecured claim is the amount of the claim which might be proven under the *Bankruptcy and Insolvency Act,* RSC 1985, c B-3.

[29] *Nalcor Energy v Grant Thornton*, 2015 NBQB 20, paras 45-46 and 51-52, BOA Tab 7.

[30] *Re Port Chevrolet Oldsmobile Ltd*., 2002 BCSC 1874, paras 41 and 45-46; 2004 BCCA 37 (appeal denied), BOA Tab 11.

contingent nature of its claim, which was disputed by the insolvent entity with respect to liability and damages.[31]

40. There is no compelling rationale to treat contingent claimants in this case differently. A claimant's concerns regarding the classification of creditors for the purposes of voting at the meeting order stage are appropriately considered as part of the assessment of the overall fairness of the plan at the sanction hearing:

> even if the plan is accepted by the various classes of creditors, it must still come to the court for approval. The court is clearly entitled to reject the plan and if necessary the court can and will deal with any alleged unfairness or inequity at that time. At the application to approve the plan, the court will determine whether the appropriate majority approved the plan at a meeting held in accordance with the Act and the court's orders and whether the plan is fair and reasonable.[32]

41. Similarly, concerns regarding the allocation of votes to contingent creditors are appropriately addressed at the sanction hearing. Consistent with *Clover on Yonge*, Justice Farley's reasons in *Algoma Steel Corp. v Royal Bank* – in the context of a motion for a declaration that a debt guaranteed by the CCAA debtor was not subject to compromise as part of a plan on the basis that the claimant was not a "creditor" within the meaning of the CCAA – are also instructive:

> Whether a plan is fair and reasonable must take into consideration the impact of same upon all interested parties (in this situation all creditors and shareholders). What might appear on the surface to be unfair to one party when viewed in relation to all other parties may be considered to be quite appropriate, particularly in light of the wholly owned subsidiary scenario. The whole scheme of C.C.A.A. proceedings is to see whether a compromise or arrangement can be effected among the creditors and shareholders of a company with a view to see if the company can be made viable,

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[31] *Re Canadian Triton International Ltd.,* 1997 CanLII 12412 (ONSC), para 9, BOA Tab 9.
[32] *Fairview Industries Ltd. et al. (Re)*, 1991 CanLII 4266 (NSSC), BOA Tab 6.

> assuming certain changes are made. See Doherty J.A.'s comments, supra, in *Nova Metal Products Inc.* […]
>
> (c) it would be premature and inappropriate to rule on whether the write-down of the C.I.O.C. receivable to one dollar was fair and reasonable; such should be determined in the context of considering the sanction of the plan as it affects all interested parties.[33]

42. The relief sought by Donin and Jordet is highly prejudicial to the Applicants and their stakeholders. It threatens timely completion of a restructuring and could jeopardize the Applicants' ability to emerge from CCAA at all – indeed, it could frustrate a timely restructuring in any case featuring disputed claims asserted to be in material amounts. As demonstrated by the jurisprudence on voter classification, no creditor should have an illegitimate veto.[34]

43. These contingent claimants will be fairly and appropriately dealt with pursuant to the claims procedures already approved by this Court. No substantive rights will be lost.

44. The Court can consider and address any actual fairness issues at the appropriate time and forum – the sanction hearing.

PART IV - ORDER REQUESTED

45. The DIP Lenders respectfully request that the motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of February, 2022.

Cassels

CASSELS BROCK & BLACKWELL LLP

[33] *Algoma Steel Corp. v Royal Bank,* 1992 CarswellOnt 162 (SC), paras 30 and 34, BOA Tab 2.
[34] *Canadian Airlines Corp. (Re),* 2000 ABQB 442, paras 31 and 38-41, BOA Tab 4.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Air Canada, Re,* 2003 CarswellOnt 9106 (SC)
2. *Algoma Steel Corp. v Royal Bank,* 1992 CarswellOnt 162 (SC)
3. *Campeau v Olympia & York Developments Ltd.,* [1992] OJ No 1946 (SC)
4. *Canadian Airlines Corp. (Re)*, 2000 CanLII 28185 (ABQB)
5. Endorsement of Justice Koehnen, issued March 9, 2021
6. *Fairview Industries Ltd. et al. (Re)*, 1991 CanLII 4266 (NSSC)
7. *Nalcor Energy v Grant Thornton*, 2015 NBQB 20
8. *North American Tungsten Corp. v Global Tungsten and Powders Corp.,* 2015 BCCA 426
9. *Re Canadian Triton International Ltd.,* 1997 CanLII 12412 (ONSC)
10. *Re Clover on Yonge Inc.* (CV-20-00642928-00CL), Endorsement of Justice Hainey dated January 8, 2021 (unreported)
11. *Re Port Chevrolet Oldsmobile Ltd*., 2002 BCSC 1874; 2004 BCCA 37
12. *Stelco Inc., Re,* 2006 CanLII 7526 (SC)
13. *Sem Canada Crude Company*, (Action No. 0801-008510) (WL)
14. *Target Canada Co., Re*, 2016 CarswellOnt 8815 (SC)
15. *T. Eaton Company Limited, Amended and Restated Plan of Compromise*, (I.I.C. Ct. Filing 44993447021) (WL)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Companies' Creditors Arrangement Act, RSC 1985, c C-36

Determination of amount of claims

20 (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted. R.S., 1985, c. C-36, s. 20 2005, c. 47, s. 131 2007, c. 36, s. 70

***Rules of Civil Procedure*, RRO 1990, Reg 194**

Amending, Setting Aside or Varying Order

Amending

59.06 (1) An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding. R.R.O. 1990, Reg. 194, r. 59.06 (1).

Setting Aside or Varying

(2) A party who seeks to,

(a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;

(b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed. R.R.O. 1990, Reg. 194, r. 59.06 (2).

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF JUST ENERGY GROUP INC. *et al.*

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE DIP LENDERS
MOTION AND CROSS-MOTION FOR ADVICE AND DIRECTIONS RETURNABLE FEBRUARY 9, 2022

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Alan Merskey LSO #: 413771
Tel: 416.860.2948
amerskey@cassels.com

John M. Picone LSO #: 58406N
Tel: 416.640.6041
jpicone@cassels.com

Christopher Selby LSO #: 65702T
Tel: 416.860.5223
cselby@cassels.com

Lawyers for the DIP Lenders