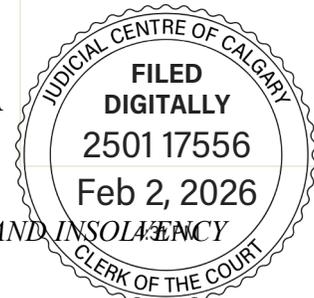


Clerk's Stamp

COURT FILE NUMBER 2501-17556
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY



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

AND IN THE MATTER OF THE RECEIVERSHIP OF EXRO TECHNOLOGIES INC., DPM TECHNOLOGIES INC., AND CELLEX ENERGY INC.

DOCUMENT **BENCH BRIEF OF LAW**

ADDRESS FOR SERVICE
AND CONTACT
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**APPLICATION BEFORE THE HONOURABLE JUSTICE FEASBY
FEBRUARY 9, 2026 AT 2:00 PM ON THE CALGARY COMMERCIAL LIST**

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PART 1 INTRODUCTION

1. Exro Technologies Inc. (“**Exro Canada**”), DPM Technologies Inc. (“**DPM**”), and Cellex Energy Inc. (“**Cellex**” and together with Exro Canada and DPM, collectively, the “**Debtors**” and each individually, a “**Debtor**”) are part of a international group of clean-technology companies developing power-control electronics pertaining to electric motors and batteries and that support stationary energy storage for commercial and industrial applications.¹

2. Exro Canada operated its business from two leased facilities at the following locations:
 - (a) a manufacturing facility located at 7450-64 Street SE, Calgary AB (the “**64th Street Facility**”); and
 - (b) a research and development facility located at 21 Highfield Circle SE, Calgary AB, (the “**Highfield Facility**”).²

3. Since 2024, the Debtors have experienced financial and legal difficulties:
 - (a) While the Debtors began commercial sales in 2024, due to the softening of electric vehicle market demand, was not self-sustaining and remained heavily dependent on external financing;
 - (b) The end of US federal tax credits for new and used electric vehicles for vehicles acquired after September 30, 2025 caused negative impacts to the US electric vehicle market. The Debtors estimated that the end of the tax credit would cause a 27% reduction in electric vehicle demand;
 - (c) With the decrease in demand and increased input costs due to higher tariffs, several major automakers (Honda, General Motors, Nissan, Stellantis, Volkswagen and Ford) announced the discontinuation or delay production of one or more electric vehicle models; and
 - (d) Various lawsuits commenced against the Debtors, including a class action lawsuit filed on November 27, 2024 against Exro Canada and its directors.

¹ First Report, para 14.

² First Report, para 16.

4. The Debtors engaged multiple financial advisors between November 2024 and November 2025 in the hope of securing either debt financing or to affect a sale transaction which did not materialize.
5. NBIMC Quantitative Strategies Fund - Class N (“**NBIMC**” or the “**Lender**”) is a secured creditor of the Debtors and a shareholder of Exro Canada who advanced several lending facilities to the Debtors between December 2022 and May 15, 2025. That total cumulative debt owed by the Debtors to NBIMC pursuant to a USD\$30,000,000 interim facility advanced in 2025 is approximately USD\$17.1 million (the “**Interim Lending Facility**”).
6. The Lender filed an application on November 4, 2025 to place the Debtors into receivership upon various defaults and failure of the Debtors to respond to demands. Per the order of Associate Chief Justice Nielsen dated November 14, 2025 (the “**Receivership Order**”), the Debtors were placed into receivership with FTI Consulting Canada Inc. (“**FTI**”) appointed as receiver and manager over all current and future assets, undertakings and properties (the “**Property**”) the Debtors (in such capacity the “**Receiver**”).
7. This Bench Brief is submitted on behalf of the Receiver in support of an application (the “**Application**”) for the following Orders:
 - (a) an Order (the “**SAVO**”) substantially in the form set out in **Schedule “A”**:
 - (i) approving the asset purchase agreement dated February 2, 2026 (the “**Credit Bid APA**”) between the Receiver and NBIMC Quantitative Strategies Fund – Class N as credit bidding lender, and 773948 N.B. Inc. and 773951 N.B. Inc. as purchasers (collectively the “**Purchasers**”) which permits the Purchasers to take title to the assets subject to the Credit Bid APA;
 - (ii) declaring that upon the Receiver delivering to the Purchasers a certificate in the form attached to the SAVO stating that all the conditions precedent to completing the purchase and sale transaction contemplated by the Credit Bid APA (the “**Transaction**”) have been satisfied or waived, the Transaction shall become effective (the “**Closing Certificate**”);
 - (iii) vesting all of the right, title and interest of the Debtors in and to the Property sold pursuant to the Credit Bid APA to the Purchasers, free and clear of any and all caveats, security interests, hypothecs, pledges, mortgages, liens, trusts or deemed trusts, reservations of ownership, royalties, options, rights of pre-emption,

privileges, interests, assignments, actions, judgements, executions, levies, taxes, writs of enforcement, charges, or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Encumbrances**”), effective upon the Receiver delivering the Closing Certificate to the Purchasers;

- (iv) declaring that upon delivery of the Closing Certificate from the Receiver to the Purchasers, all rights and obligations of the Receiver and Exro Canada arising or accruing from and after the Closing Date (as defined in the APA) (“**Closing Date**”) under the agreements listed at **Schedule “E”** of the SAVO (the “**Assigned Agreements**”), are to be assigned, conveyed, and transferred to the Purchasers and shall be binding upon all counterparties to the Assigned Agreements notwithstanding any restriction, condition or prohibition in the Assigned Agreements relating to the assignment thereof;
 - (v) declaring that no party to any of the Assigned Agreements may rely on any breach or default thereunder in existence prior to the Closing Date or as a result of the SAVO, including any provision requiring the consent of any party to an assignment, to terminate any of the Assigned Agreements or otherwise make any claim or exercise any rights or remedies as against the Receiver or Purchasers, and deeming such parties to waive any defaults relating thereto, subject to all monetary defaults accrued under or in respect of the Assigned Agreements prior to the Closing Date being paid by the Purchasers;
 - (vi) declaring that any restriction, condition, requirement or prohibition contained in the Assigned Agreements relating to the assignment thereof are hereby deemed waived; and
 - (vii) declaring that Prior to the Closing Date, the Purchasers shall pay the aggregate amount of any monetary defaults accrued in respect of the Assigned Agreements to the counterparties to the Assigned Agreements.
- (b) An Order substantially in the form set out in **Schedule “B”**:

- (i) increasing the Receiver's Borrowings Charge set out in the Consent Receivership Order of the Honourable Justice Nielsen in this proceeding dated November 14, 2025 (the "**Receivership Order**") from \$500,000 to \$1,200,000;
 - (ii) approving of the First Report of the Receiver, to be filed, and the actions, conduct and activities of the Receiver set out therein;
 - (iii) sealing the confidential appendix (the "**Confidential Appendix**") to the First Report; and
- (c) Such other relief as this Honourable Court deems appropriate.
8. This Application is supported by the First Report of the Receiver, sworn on February 2, 2026 and the Confidential Appendix to the First Report. The further facts with respect to the Application are more fully set out in the First Report, and this Brief will rely upon the First Report.
9. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated. Capitalized terms not defined herein have the meanings given to them in the First Report.

Background to the Application

Sales Processes and Credit Bid APA Approval

10. In or around November 11, 2024, the Debtors engaged Rothschild & Co Us Inc. ("**Rothschild**") as their financial advisor to lead a debt financing initiative or effect a sales transaction.³ As part of this process, a teaser was distributed to more than 100 counterparties. A non-disclosure agreement ("**NDA**") was signed by one asset-based lender, six (6) special situation lenders, and three (3) equity-oriented parties.⁴ Rothschild could not secure any party to offer either a debt financing or sales transaction and their engagement was terminated by the Debtors.⁵
11. On June 3, 2025, the Debtors engaged Cantor Fitzgerald & Co. ("**Cantor**") as their financial advisor to seek equity, debt or a sale of their operations and assets.⁶ A teaser for the process was distributed to 61 parties with 13 NDA's signed. Twelve (12) parties received proposal materials

³ First Report, para 31.

⁴ First Report, para 32.

⁵ First Report, para 32.

⁶ First Report, para 33.

and six (6) parties accessed the virtual data room.⁷ While several offers were received for certain subsets of the Debtors' assets and operations, ultimately no transactions were finalized.⁸

12. Given the Debtors' prior efforts through the engagement of Rothschild and Cantor, the Receiver evaluated the administration costs for the Receivership proceedings and the fairness and transparency of a sale process in formulating a realization strategy for the Property.⁹ The Receiver's conclusion was that the most efficient and effective way to maximize the recoveries of the Debtors' creditors and stakeholders in the circumstance was to administer a new sale solicitation process (the "SSP") for the Debtors' assets and/or business.¹⁰ The SSP provided a chance to previously interests parties and other potential counterparties made aware of the SSP through the Receivership Proceedings to review and evaluate the opportunity to acquire the Debtor's assets.¹¹
13. The Receivership Order authorized the Receiver to market any or all of the Debtors' Property, including advertising and soliciting offers in respect of the Property. In order to maximize potential recoveries and minimize continuing carrying costs, the Receiver initiated the SSP on December 5, 2025.¹²
14. The steps taken by the Receiver to administer the SSP include the following:
 - (a) on December 5, 2025, the Receiver posted a "SSP Teaser" to the Receiver's website, Exro Canada's website, and distributed it via email to approximately 47 parties. The teaser set out the timelines and parameters pursuant to which the Receiver would market and solicit offers to purchase the Property.
 - (b) placing public advertisement in "Charged Electric Vehicles Magazine" and the Insolvency Insider to reach industry participants outside the direct outreach list;
 - (c) providing potential purchasers that contacted the Receiver and executed an NDA access to a virtual data room ("VDR");

⁷ First Report, para 33.

⁸ First Report, para 34.

⁹ First Report, para 61.

¹⁰ First Report, para 62.

¹¹ First Report, para 62.

¹² First Report, para 64.

- (d) providing a bid instruction letter and template asset purchase agreement that were made available in the VDR;
 - (e) offering meetings with the Receiver and Exro Canada's former CFO and CTO to parties interested in discussing the SSP and detailed asset information;
 - (f) coordinating site visits for any parties wishing to physically inspect the assets and facilities; and
 - (g) setting the deadline for submission of offers to January 16, 2026.¹³
15. Under the SSP, the Receiver received a total of seven (7) bids, six (6) of which were cash offers for various packages of the Debtor's assets.¹⁴ One (1) bid was a credit bid from NBIMC as the credit bidding lender with the Purchasers to purchase all Property of the Debtors for approximately \$17.1 million, representing the amount currently owing to NBIMC under the Interim Lending Facility.¹⁵ The six (6) cash offers were all for less than the amount outstanding under the Interim Lending Facility and the credit bid from NBIMC was eventually selected as the winning bid.¹⁶ NBIMC and the Purchasers executed the Credit Bid APA on February 2, 2026.
16. A condition for the closing of the Credit Bid APA is the approval of a SAVO by this Court.¹⁷

PART 2 ISSUES

17. The issues to be determined by this Honourable Court are as follows:
- (a) Should this Honourable Court approve the SAVO?
 - (b) Should certain assumed contracts, being the Debtors real property leases, be assigned to the Purchasers?
 - (c) Should the Receiver's Borrowings Charge be increased from a maximum of \$500,000 to a maximum of \$1,200,000?

¹³ First Report, para 66.

¹⁴ First Report, para 67.

¹⁵ First Report, para 67.

¹⁶ First Report, paras 68, 73.

¹⁷ First Report, para 74.

- (d) Should the First Report of FTI in its capacity and Receiver and manager, be approved, and the activities and conduct of the Receiver referenced therein be approved?
- (e) Should the Confidential Appendix to the First Report be sealed?

PART 3 LAW AND ARGUMENT

A. Approval of the SAVO

18. The Transaction contemplated by the Credit Bid APA is described in detail in the First Report.
19. The Receiver respectfully submits that the Transaction should be approved, as the Transaction is in the best interest of the Debtors' estates and its stakeholders, and satisfies the common law test for approving sale transactions set out in the decision of the Ontario Court of Appeal in *Royal Bank v Soundair Corp* ("**Soundair**").¹⁸
20. The criteria for approving a sales process as set out in *Soundair* requires the court to assess:
 - (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
 - (b) the interests of all parties;
 - (c) the efficacy and integrity of the process by which offers have been obtained; and
 - (d) whether there has been unfairness in the working out of the process.¹⁹
21. In *Soundair*, the Court noted that (a) the court officer's expertise in arranging a sale is far removed from the Court's own expertise, (b) the court must place a great deal of confidence in the court officer's actions and opinions formed by the receiver, (c) the court should assume that the court officer is acting properly unless the contrary is clearly shown, (d) the court should be reluctant to second-guess, with the benefit of hindsight, the considered business decisions made by the court officer, and (e) the conduct of the court officer should be reviewed in the light of the specific mandate given to it by the Court.²⁰ Courts have observed that in applying these principles, the Court is not engaged in a perfunctory, rubberstamp exercise, nor should it reject a court officer's

¹⁸ *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA) [**Soundair**] [Tab 1]

¹⁹ *Soundair* at [para 16](#) [Tab 1].

²⁰ *Soundair* at [para 14](#) [Tab 1].

recommendation on a sale absent special circumstances, but rather that advice should be given significant weight.²¹ The *Soundair* principles have been applied by courts in Alberta.²²

22. Courts also give effect to the business judgment rule, which affords deference to the exercise of the commercial and business judgment of debtor companies in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient.²³

Application of *Soundair*

23. For the reasons set out below, the Receiver submits that the Transaction satisfies the criteria set out in *Soundair*.
24. All parties with an interest in the Property subject to the Credit Bid APA were provided with notice of the Application and the relief being sought.²⁴ The Receiver has kept the Debtors' principal secured creditors advised of the progress of the Transaction, and none of them have objected.²⁵
25. Both the Receiver and Lender, who is the Debtors fulcrum creditor, participated in the preparation and execution of the SSP and in the First Report, the Receiver states that it believes the implementation of the SSP was appropriate in the circumstances.²⁶ The SSP provided for a fair and transparent process which was conducted in such a manner as to give prospective bidders equal opportunity to express their interest in making a bid. The SSP further provided for an approximate 43-day marketing process to sufficiently expose the opportunity to the market.²⁷ The Receiver communicated with bidders during the SSP within receivership in order to maximize the sale values for Property.²⁸
26. The Receiver states in the First Report that in its opinion, the Transaction pursuant to the Credit Bid APA is more beneficial to the creditors than sales or dispositions under a bankruptcy or any of the cash bids received under the SSP.²⁹

²¹ [1705221 Alberta Ltd. v Three M Mortgages Inc.](#), 2021 ABCA 144 at para 22 [Tab 2] [*Three M*].

²² [PricewaterhouseCoopers Inc v 1905393 Alberta Ltd.](#), 2019 ABCA 433 at paras 10-12 [Tab 3]; *Three M* at para 2 [Tab 2].

²³ [Re Bloom Lake](#), 2015 QCCS 1920 at para 28 [Tab 4]

²⁴ First Report, paras 27, 36, 84.

²⁵ First Report, para 27.

²⁶ First Report, para 72.

²⁷ First Report, para 72.

²⁸ First Report, para 66.

²⁹ First Report, paras 77, 78.

27. The marketing and sale of the assets subject to the Transaction has been carried out in accordance with the SSP and the SSP has been professionally administered by the Receiver in a commercially reasonable manner.³⁰ The marketing of the Properties was carried out over a six-week period, during which the Receiver distributed the teaser to interested parties.³¹ The VDR was available throughout the SSP to parties who executed an NDA.³² The Receiver and management of the Debtors were available to answer questions arising from interested parties performing their due diligence.³³ There is no evidence before the Court of any unfairness in how the SSP was conducted. The Receiver submits the SSP was comprehensive and has broadly canvassed a wide network of potential purchasers. It further follows two prior unsuccessful out-of-court sales processes starting in November 2024 and taking place over approximately one year and two months.
28. The First Report confirms that the consideration to be received under the Credit Bid APA is reasonable and fair in the circumstances, taking into account marketing efforts undertaken by the Receiver, and the limited number of interested parties.³⁴ As the consideration to be received under the Credit Bid APA is reasonable, the highest available realization for the assets subject thereto in the circumstances, and the fulcrum secured creditor is supportive of the Transaction,³⁵ the Receiver respectfully submits that the Transaction is in the best interests of the creditors and other stakeholders.

Assignment of Agreements under SAVO

29. In *Re Urbancorp Cumberland I GP Inc.* (“*Urbancorp*”), the Ontario Superior Court of Justice determined that an assignment order may be made in a receivership proceeding by relying upon section 243(1)(c) of the *Bankruptcy and Insolvency Act* (“*BIA*”) which allows a court appointed receiver to take any action that the court considers advisable.³⁶ The Court in *Urbancorp* further found that although there is no specific reference in the *BIA* regarding a court appointed receiver assigning over a contract as part of a sales process, given that both a trustee in bankruptcy and monitor in a CCAA have the powers of assignment, the only purposive interpretation which

³⁰ First Report, paras 71, 72, 77.

³¹ First Report, paras 66, 72.

³² First Report, para 66.

³³ First Report, para 66.

³⁴ First Report, paras 77, 78.

³⁵ First Report, paras 77.

³⁶ *Re Urbancorp Cumberland I GP Inc.*, 2020 ONSC 7920, at paras 30-34 [*Urbancorp*] [Tab 5]; *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, at section 243(1)(c) [Tab 6] [*BIA*”]

harmonizes the Canadian insolvency regime is to apply the *BIA* provisions, namely section 84.1 of the *BIA*, to receiverships.³⁷

30. *Urbancorp* confirms that when an assignment order is contemplated, the Court will look at the factors for an assignment under sections 84.1(4) of the *BIA*.³⁸ Accordingly, the criteria which informs this Honourable Court's analysis for an assignment in a receivership is as follows:
- (a) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and
 - (b) whether it would be appropriate to assign the rights and obligations to that person.³⁹
31. Exro Canada has two (2) lease agreements in relation to the 64th Street Facility and 2 lease agreements in relation to the Highfield Facility, as noted at **Schedule "E"** of the SAVO, which collectively make up the Assigned Agreements. The Receiver has reviewed the Assigned Agreements and surrounding circumstances and is of the opinion that the Assigned Agreements should be assigned to the Purchasers.
32. In applying the relevant criteria:
- (a) the Receiver is of the view that the Purchasers have the ability to meet Exro Canada's obligations under the Assigned Agreements; and⁴⁰
 - (b) the Receiver believes it is appropriate to assign the Assigned Agreements.⁴¹
33. The Receiver believes it is appropriate to assign the rights and obligations of the Assigned Agreements to the Purchasers for the following reasons:
- (a) The Lender has incorporated the Purchasers for the purpose of the Credit Bid APA and the Lender has demonstrated its financial capability and willingness to support the Receivership Proceedings by providing \$500,000 in financing under the Receiver's

³⁷ *Urbancorp* at [paras 23](#) and [29](#) [Tab 5].

³⁸ *Ibid* at [para 35](#).

³⁹ *Ibid*.

⁴⁰ First Report, para 84.

⁴¹ First Report, para 84.

Borrowing Charge. It will further provide an additional \$700,000 to the Receiver prior to the closing of the Transaction.⁴²

- (b) the Credit Bid APA identifies the Assigned Agreements to be essential to the Purchasers' ownership of the assets subject to the Credit Bid APA and the inability to assign the subject leases would have a negative effect on the ability to complete the Transaction;⁴³
 - (c) the Receiver is not aware of any prejudice to the counterparties to the Assigned Agreements if such leases are assigned;⁴⁴ and
 - (d) the Assigned Agreements are current with no outstanding lease payments.⁴⁵
34. The Receiver is further not aware of any counterparties to the Assigned Agreements objecting to the assignment of such agreements and the counterparties have been served with notice of this application.⁴⁶

Credit Bids are Permitted

35. Credit bids submitted by secured creditors, as in this instance by NBIMC under the Credit Bid APAP, are common in receivership proceedings. It is well established in insolvency law that a secured creditor is permitted to bid its debt in lieu of providing cash consideration.⁴⁷ The Credit Bid APA is not an unusual transaction in an insolvency context and is supported by the Receiver.

Approval of the Form of SAVO

36. One condition under the Credit Bid APA is the approval of the SAVO by this Court.⁴⁸ For the reasons noted herein and in the First Report, the Receiver respectfully submits that the SAVO should be approved in the form provided.

⁴² First Report, para 80.

⁴³ First Report, paras 79, 81.

⁴⁴ First Report, para 81.

⁴⁵ First Report, para 83.

⁴⁶ First Report, para 84.

⁴⁷ [8527504 Canada Inc. v. Liquibrands Inc., 2015 ONSC 5912](#) at [para 20](#) [**Tab 7**], citing [Elleway Acquisitions Ltd. v. 4358376 Canada Inc., 2013 ONSC 7009](#) at [para 38](#) [**Tab 8**].

⁴⁸ First Report, para 74.

B. Increase to the Quantum of the Receiver's Borrowings Charge

37. Pursuant to the Receivership Order, FTI was granted the Receiver's Borrowings Charge in the maximum amount of \$500,000.
38. The Receiver will require additional funds from the Lender to close the Transaction and complete its administration of the Debtors' receivership estates.⁴⁹ The Receiver will require an increase of the Receiver's Borrowings Charge from \$500,000 to \$1,200,000 in accordance with its cash flows.⁵⁰
39. It is a condition precedent to the closing of the Transaction that the borrowing charge be increased by the Court and the Lender funds the additional \$700,000 in borrowing to the Receiver. The additional funding will need to be provided prior to closing because the Receiver's charge attaches to the Property, and following the sale of the Property, the charge will have no further assets to attach against.⁵¹ The Receiver's and its counsel's fees are currently unpaid.⁵²
40. The Lender supports the proposed increase to the Receiver's Borrowings Charge.⁵³

C. Approval of the First Report and Activities of the Receiver

41. In connection with this application, FTI, in its capacity as the Receiver, has filed the First Report. The First Report will describe the actions, activities and conduct of the Receiver in detail.
42. The Receiver is seeking the approval of the First Report, and the actions, activities and conduct of the Receiver as set out therein. The Receiver has acted honestly, in good faith, and in accordance with its Court-ordered and statutory duties prior to, and throughout the duration of these receivership proceedings to date.

D. Sealing Order

43. The Receiver requests a sealing order with respect to the Confidential Appendix, until the filing by the Receiver of the Receiver's Closing Certificate appended to the SAVO confirming that the Transaction has closed or further order of the court.

⁴⁹ First Report, paras 89, 90.

⁵⁰ First Report, paras 89, 90.

⁵¹ First Report, para 90.

⁵² First Report, para 85.

⁵³ First Report, para 91.

44. The notice to the media that the Receiver was seeking the sealing order was given on February 2, 2026.
45. Part 6 of Division 4 of the *Alberta Rules of Court* and in particular Rules 6.28 to 6.30, provide that the Court may order that a document filed in a civil proceeding is confidential, may seal and not form part of the public record of the proceedings.⁵⁴
46. The test to obtain a sealing order was set out by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*⁵⁵ and revised by the Supreme Court in *Sherman Estate v Donovan*:

“The test for discretionary limits on presumptive court openness has been expressed as a two-step inquiry involving the necessity and proportionality of the proposed order (*Sierra Club*, at para. 53). Upon examination, however, this test rests upon three core prerequisites that a person seeking such a limit must show. Recasting the test around these three prerequisites, without altering its essence, helps to clarify the burden on an applicant seeking an exception to the open court principle. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:

- (1) court openness poses a serious risk to an important public interest;
- (2) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- (3) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Only where all three of these prerequisites have been met can a discretionary limit on openness — for example, a sealing order, a publication ban, an order excluding the public from a hearing, or a redaction order — properly be ordered. This test applies to all discretionary limits on court openness, subject only to valid legislative enactments.”⁵⁶

47. The Confidential Appendix attaches a summary of the bids received through the SSP and contains commercial sensitive information with respect to the Debtors’ Property that could be detrimental to the SSP if disclosed and the Transaction is not completed.
48. If the Confidential Appendix was publicly available and if the Transaction fails to close, efforts to re-market the Debtors’ Property would be prejudiced. This poses a serious risk to an important

⁵⁴ [Alberta Rules of Court, Alta Reg 124/2010, Rule 6.28, Rule 6.30](#) [Tab 9].

⁵⁵ [Sierra Club of Canada v Canada \(Minister of Finance\), 2002 SCC 41](#), at [para 53](#) [Tab 10].

⁵⁶ [Sherman Estate v Donovan, 2021 SCC 25](#), at [para 38](#) [Tab 11].

public interest, namely maintaining the integrity of the public interest, and the sealing order is necessary to prevent this risk. The benefits of the order outweigh its negative effects and there are no reasonable alternative measures that would protect these interests.

49. It is submitted that the integrity of the SSP is an important public interest which is put at risk by the Confidential Appendix being on the public record. Further, the only reasonable way to protect that interest is pursuant to a sealing order.
50. There are no reasonable alternative measures that would protect these sensitive commercial interests of the Debtors and their stakeholders, and yet still permit the Confidential Appendix to be available to this Honourable Court for its review in connection with the Application for the SAVO. Further, during insolvency proceedings, similar limits on sensitive economic data is typically subject to time limited sealing orders while sale processes play out.
51. Once the Transaction contemplated by the Credit Bid APA is completed, or a further Order of this Honourable Court is made, the Confidential Appendix will no longer be sealed. Hence, the limit on the open court principle posed by the sealing order is limited in duration.
52. The Receiver submits that the salutary effects of sealing the Confidential Appendix outweigh any negative of the temporary limits on any public access to that information pursuant to the open court principle.

PART 4 CONCLUSION AND RELIEF SOUGHT

53. For the reasons above, the Receiver requests the Orders sought be granted as they are fair, necessary and reasonable in the circumstances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of February 2026.

GOWLING WLG (CANADA) LLP

Per: 

Sam Gabor / Asim Iqbal / Cameron Brunet
Counsel for FTI Consulting Canada Inc.

TABLE OF AUTHORITIES

Tab	Authority
1.	<u>Royal Bank of Canada v. Soundair Corp., 1991 CanLII 2727 (ON CA)</u>
2.	<u>1705221 Alberta Ltd v Three M Mortgages Inc, 2021 ABCA 144</u>
3.	<u>Pricewaterhousecoopers Inc. v 1905393 Alberta Ltd., 2019 ABCA 433</u>
4.	<u>Re Bloom Lake, 2015 QCCS 1920</u>
5.	<u>Re Urbancorp Cumberland I GP Inc., 2020 ONSC 7920</u>
6.	<u>Bankruptcy and Insolvency Act, RSC 1985, c B-3</u>
7.	<u>8527504 Canada Inc. v. Liquibrands Inc., 2015 ONSC 5912</u>
8.	<u>Elleway Acquisitions Ltd. v. 4358376 Canada Inc., 2013 ONSC 7009</u>
9.	<u>Alberta Rules of Court, Alta Reg 124/2010.</u>
10.	<u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41</u>
11.	<u>Sherman Estate v Donovan, 2021 SCC 25</u>