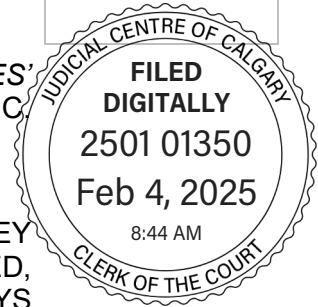


COURT FILE NUMBER 2501 01350  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

Clerk's stamp

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 PEAVEY  
INDUSTRIES GENERAL PARTNER LIMITED,  
TSC STORES GP INC., GUYS FREIGHTWAYS  
LTD., and PEAVEY INDUSTRIES LIMITED

APPLICANTS PEAVEY INDUSTRIES GENERAL PARTNER  
LIMITED, TSC STORES GP INC., GUYS  
FREIGHTWAYS LTD., and PEAVEY  
INDUSTRIES LIMITED

DOCUMENT **SUPPLEMENTAL BRIEF OF LAW  
(ARIO)**

ADDRESS FOR  
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CONTACT  
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## INTRODUCTION

1. The Applicants continue to rely on their Brief of Law, filed on January 27, 2025, in support of the Initial Order.
2. Capitalized terms not defined herein are as defined in the Affidavits of Douglas Anderson, sworn January 27 and January 31, 2025 (**Anderson Affidavit #1** and **Anderson Affidavit #2**, respectively).
3. This Supplemental Brief of Law addresses the following issues that are addressed in the proposed Amended and Restated Initial Order (**ARIO**) but were not addressed in the Initial July 27, 2025 Application:
  - i. Key Employee Retention Plan / Key Employee Incentive Plan (the **KERP**, the **KEIP** and, together, the **KERP / KEIP**).
  - ii. Declaration of the eligibility of terminated Peavey Group employees under the *Wage Earner Protection Program Act*<sup>1</sup> and the *Wage Earner Protection Program Regulations*<sup>2</sup> (the **WEPPA Declaration**); and
  - iii. A proposed Restricted Court Access Order in respect of the Confidential Supplement to the Monitor's First Report.
4. A short factual update on developments in the four days between January 27 and January 31, 2025 is available in Anderson Affidavit #2.

## LAW AND ARGUMENT

### a. **KERP / KEIP**

5. The Peavey Group has certain key employees who perform roles critical to advancing its liquidation and store closing, and who would be critical to the survival of any parts of the business as a going concern. At the head office level, the key employees have institutional knowledge of the Peavey Group and its business, and specialized knowledge of supply chains, vendor relationships, logistics and transportation, and store operations. At the store and distribution centre level, the key employees are those who are critical to the success of the ongoing liquidation and 92 store closing strategy.
6. The Peavey Group's financial circumstances are such that key employees would reasonably seek alternative employment elsewhere if not properly incentivized to remain in their current employment. It would be very difficult for the Peavey Group to replace the key employees because of their unique knowledge and skill sets, but also because replacement workers with similar skill sets (if any could be found) would not be inclined to accept employment with the Peavey Group in the midst of its store closing liquidation sale. The Peavey Group and the Monitor therefore share the belief that it is critical to provide an incentive to key employees to remain in their employment.<sup>3</sup>

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<sup>1</sup> *Wage Earner Protection Program Act*, [SC 2005, c 47](#) (**WEPPA**).

<sup>2</sup> *Wage Earner Protection Plan Regulations*, [SOR/2008-222](#) (**WEPP Regulations**).

<sup>3</sup> Anderson Affidavit #2 at para 14; First Report of the Monitor at paras 42, 44.

7. The Peavey Group has worked with the Monitor and the Interim Lender to develop the proposed KERP / KEIP. The full terms of the KERP / KEIP are included in the Confidential Supplement to the First Report of the Monitor because it reflects confidential personal information about employee remuneration.<sup>4</sup> In general terms, the KERP contemplates aggregate retention payments of \$187,000 to 32 head office employees and aggregate retention payments of \$764,470 to 231 store and distribution centre employees,<sup>5</sup> such retention payments being contingent on key employees retaining their employment in accordance with the KERP terms.
8. The KEIP consists of a pool of \$250,000, which is allocable among five senior Peavey Group employees and executives if net receipts in these CCAA proceedings exceed \$75,000,000 after repayment of post-filing advances.<sup>6</sup> The KEIP-eligible senior Peavey Group employees and executives must remain employed with the Peavey Group until the net receipt target is met to be entitled to any KEIP payment.
9. Doug Anderson is not entitled to any retention or incentive payments under the KERP / KEIP even though he is continuing to work diligently in furtherance of the Peavey Group's efforts to maximize value and attempt to reorganize.<sup>7</sup>
10. The ARIO contemplates that entitlements under the KERP / KEIP would be secured by a fourth-ranking priority charge (behind the Administration Charge, the Interim Lender's Charge, and the D&O Charge) against the Peavey Group's property (**KERP / KEIP Charge**).
11. The purpose of a KERP / KEIP is properly to incentivize important employees to retain their employment during CCAA proceedings, instead of departing.<sup>8</sup> The Court has discretion under s. 11 of the CCAA and its inherent jurisdiction to approve a KERP / KEIP with the support of a priority charge.<sup>9</sup> A supporting charge is a court-ordered priority charge in favour of the beneficiaries under the KERP / KEIP to secure the entitlements of the beneficiaries thereunder.
12. There is no definitive set of factors that apply to the approval of a KERP / KEIP; however, the following factors might reasonably be seen as influential:
  - i. whether the Monitor supports the KERP / KEIP and the associated priority charge, to which great weight is attributed;
  - ii. whether the beneficiaries of the KERP / KEIP are likely to consider other employment opportunities if the KERP / KEIP and the associated priority charge are not approved;
  - iii. whether the continued employment of the beneficiaries of the KERP / KEIP and their continued diligent efforts are important to enhance value;

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<sup>4</sup> Anderson Affidavit #2 at para 16.

<sup>5</sup> Anderson Affidavit #2 at para 14(a).

<sup>6</sup> Anderson Affidavit #2 at para 14(b).

<sup>7</sup> Anderson Affidavit #2 at para 15.

<sup>8</sup> *Re Cinram International Inc.*, 2012 ONSC 3767, at [para 92](#) [**Cinram**]; *Re Aralez Pharmaceuticals Inc.*, 2018 ONSC 6980 at [para 25](#) [**Aralez**]; *Re Grant Forest Products Inc.*, (2009) 57 CBR (5th) 128 at [paras 8-9](#) (Ont SCJ [Commercial List]) [**Grant Forest Products**].

<sup>9</sup> CCAA, [s. 11](#); *Cinram*, supra at [para 91](#). See also: *Grant Forest Products*, supra.

- iv. the institutional knowledge and specialized skills of key employees under the KERP / KEIP;
- v. whether replacements for the key employees could readily be found;
- vi. whether the KERP / KEIP and the associated priority charge are supported by the secured creditors; and
- vii. whether the KERP / KEIP is structured to facilitate key employee retention for long enough to enhance value.<sup>10</sup>

13. As Koehnen J. recently held in *Just Energy*, a KERP / KEIP is not a tool to deny value to creditors but is instead one to maximize value. If the investment in a KERP / KEIP is successful, there will be more to distribute to creditors at the end of the day.<sup>11</sup>

14. KERP / KEIP should be approved for the following reasons:

- i. It was developed in consultation with the Monitor and the Agent, and both the Agent and the Monitor support the KERP/KEIP as proposed and the associated priority charge;<sup>12</sup>
- ii. The continued employment and incentivization of the beneficiaries of the KERP / KEIP are important to enhance value;<sup>13</sup> and
- iii. The key employees, in particular under the KEIP, have important institutional knowledge and specialized skills.<sup>14</sup>

15. The Applicants therefore submit that the proposed KERP and KEIP, and associated KERP/KEIP Charge, are appropriate and should be approved by the Court.

### **WEPPA Declaration**

16. The Applicant seeks a declaration under the WEPPA that it, and its collective former employees, meet the criteria prescribed by section 3.2 of the WEPP Regulation and are individuals to whom the WEPPA applies as of the date of this Order.

17. Sections 5(1) and (5) of WEPPA provide:

#### **Conditions of eligibility**

- (1) An individual is eligible to receive a payment if

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<sup>10</sup> *Aralez*, at [para 29](#); *Just Energy Group Inc*, 2021 ONSC 7630, at [para 7](#) [***Just Energy***]; *Re Mountain Equipment Co-operative*, 2020 BCSC 1586 at [para 68](#); *Walter Energy Canada Holdings, Inc.*, 2016 BCSC 107 at [para 59](#); *Re US Steel Canada Inc.*, 2014 ONSC 6145 at [paras 28-33](#).

<sup>11</sup> *Just Energy* at [paras 19-20](#).

<sup>12</sup> Monitor's First Report, paras 42(c) and (d), and 44(c) and (d).

<sup>13</sup> Monitor's First Report, paras 42(b) and 44(a).

<sup>14</sup> Monitor's First Report, para 44(a) and (d).

(a) the individual's employment ended for a reason prescribed by regulation;

(b) one of the following applies:

...

(iv) the former employer is the subject of proceedings under Division I of Part III of the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act and a court determines under subsection (5) that the criteria prescribed by regulation are met; and

(c) the individual is owed eligible wages by the former employer.

...

### **Prescribed criteria — other proceedings**

(5) On application by any person, a court may, in proceedings under Division I of Part III of the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act*, determine that the former employer meets the criteria prescribed by regulation.<sup>15</sup>

18. Section 3.2 of the WEPP Regulation provides:

3.2 For the purposes of subsection 5(5) of the Act, a court may determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.<sup>16</sup>

19. Within CCAA proceedings, debtor companies have sought and been granted declarations under WEPPA for the purpose of qualifying terminated employees for federal government payment programs under WEPPA.<sup>17</sup>

20. The Peavey Group is in the midst of liquidation and store closing sales.<sup>18</sup> Sales volumes are high and inventory levels are depleting.<sup>19</sup> The Peavey Group's business operations are winding down.

21. The Peavey Group had approximately 1,900 employees as at January 27, 2025, being the date of the Initial Order.<sup>20</sup> In consultation with the Monitor, the Peavey Group terminated the employment of 116 employees (approximately 6% of employees) on January 31, all of whom

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<sup>15</sup> WEPPA, [s. 1, 5\(5\)](#).

<sup>16</sup> WEPP Regulations, [s. 3.2](#).

<sup>17</sup> *Bron Media Corp (Re)*, 2023 BCSC 1906 at [paras 15-18](#); *DCL Corporation*, [2023 ONSC 4475](#) at [paras 12-14](#); *In the Matter of The Body Shop Canada Limited*, 2024 ONSC 7052 at [paras 40-43](#); *Fiera Private Debt Fund v SaltWire Network Inc*, 2024 NSSC 89 at [paras 10-14](#).

<sup>18</sup> Anderson Affidavit #1 at paras 52 and 65(e), (h); Anderson Affidavit #2 at paras 9-10.

<sup>19</sup> Anderson Affidavit #2 at para 11.

<sup>20</sup> Anderson Affidavit #1 at paras 7, 36 and 65(a).

were head office staff, because they were not required for the winding down of business operations. Severance payments to those terminated employees were not made.<sup>21</sup>

22. The Peavey Group's remaining employees were retained to facilitate the winding down of business operations. However, the unfortunate reality is that additional employees will be terminated as liquidation sales continue, inventory levels deplete, and stores close.
23. The Peavey Group and its former employees meet the eligibility criteria under WEPPA and the WEPP Regulations. The WEPPA Declaration should be made accordingly, in the following form that was proposed by Service Canada to the Monitor as "recommended wording" on February 3, 2025:

Pursuant to subsection 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1, Peavey Industries General Partner Limited, TSC Stores GP Inc., Guys Freightways Ltd., Peavey Industries Limited, Peavey Industries LP and Peavey Industries Mutual Fund Trust meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222.

24. A similar WEPPA declaration was recently ordered by this Court in the CCAA proceedings of KMC Mining on January 20, 2025.<sup>22</sup>
25. This proposed form of WEPPA Declaration differs in language (but not in substance) from the form of ARIO that was appended to the Application, filed January 31, 2025.

### **RESTRICTED COURT ACCESS ORDER**

26. The Applicants seek a Restricted Court Access Order in respect of the Confidential Supplement, which contains sensitive information about the beneficiaries to the KERP and KEIP.
27. The leading authority for restricted court access orders is *Sierra Club*,<sup>23</sup> which focused on the confidentiality of commercially sensitive information, and *Sherman Estate*,<sup>24</sup> which focused on sensitive personal information. The two-fold test set out by the Court is as follows:
  - i. such an order is necessary to prevent a serious risk to an important interest in the context of litigation because reasonably alternative measures will not prevent the risk; and
  - ii. the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible court proceedings.<sup>25</sup>

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<sup>21</sup> Anderson Affidavit #2 at para 13.

<sup>22</sup> Order of J.T. Neilson, January 20, 2025, and filed January 28, 2025.

<sup>23</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#) [*Sierra Club*].

<sup>24</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) [*Sherman Estate*].

<sup>25</sup> *Sierra Club* at [para 53](#); *Sherman Estate* at [para 38](#).

28. With respect to the first branch of the test, the following elements are to be considered:

- i. the risk must be real and substantial, well grounded in evidence, posing a serious threat to the commercial interest in question; the important commercial interest must be one which can be expressed in terms of a public interest in confidentiality, where there is a general principle at stake; and
- ii. the judge is required to consider not only whether reasonable alternatives are available to such an order but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.<sup>26</sup>

29. The dissemination of the information in the Confidential Supplement into the public domain would cause irreparable harm to the Applicants and the beneficiaries to the KERP and KEIP. The Restricted Court Access Order as proposed is limited only to the specific names and amounts in respect of the plan beneficiaries.

30. In these circumstances, the Applicants submit that the Restricted Court Access Order as proposed is reasonable and appropriate, and ought to be granted.

## CONCLUSION

31. In conclusion, and in consideration of the foregoing, the Applicants respectfully request that this Honourable Court grant the ARIO in the form attached to the Application, subject to the revision reflected in paragraph 23 immediately above.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF FEBRUARY 2025:**

**Norton Rose Fulbright Canada LLP**

Per: \_\_\_\_\_

Howard A. Gorman, KC, D. Aaron Stephenson  
and Meghan L. Parker  
Counsel for the Applicants

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<sup>26</sup> *Sierra Club* at [paras 54-57](#) [Tab 11].

## TABLE OF AUTHORITIES

1. *Wage Earner Protection Program Act*, [SC 2005, c 47](#)
2. *Wage Earner Protection Plan Regulations*, [SOR/2008-222](#)
3. *Re Cinram International Inc.*, [2012 ONSC 3767](#)
4. *Re Aralez Pharmaceuticals Inc.*, [2018 ONSC 6980](#)
5. *Re Grant Forest Products Inc.*, [\(2009\) 57 CBR \(5th\) 128](#)
6. *Companies' Creditors Arrangement Act*, [RSC 1985, c C-36](#)
7. *Just Energy Group Inc.*, [2021 ONSC 7630](#)
8. *Re Mountain Equipment Co-operative*, [2020 BCSC 1586](#)
9. *Walter Energy Canada Holdings, Inc.*, [2016 BCSC 107](#)
10. *Re US Steel Canada Inc.*, [2014 ONSC 6145](#)
11. *Bron Media Corp (Re)*, [2023 BCSC 1906](#)
12. *DCL Corporation*, [2023 ONSC 4475](#)
13. *In the Matter of The Body Shop Canada Limited*, [2024 ONSC 7052](#)
14. *Fiera Private Debt Fund v SaltWire Network Inc.*, [2024 NSSC 89](#)
15. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#)
16. *Sherman Estate v. Donovan*, [2021 SCC 25](#)