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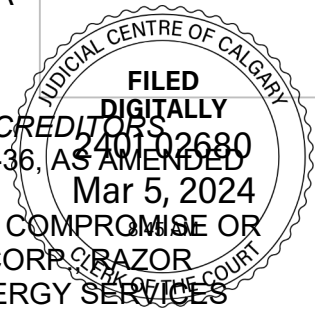
COURT COURT OF KING'S BENCH OF ALBERTA

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 THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.



DOCUMENT **BENCH BRIEF OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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**BENCH BRIEF OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP.,  
AND BLADE ENERGY SERVICES CORP.  
WITH RESPECT TO THE APPLICATION  
TO BE HEARD BY  
THE HONOURABLE JUSTICE M.E. BURNS**

**March 6, 2024 at 3:00 p.m.**

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## I. INTRODUCTION

1. This bench brief is submitted by Razor Energy Corp. ("**Razor Energy**"), Razor Holdings GP Corp. ("**Razor Holdings**"), and Blade Energy Services Corp. ("**Blade**", and collectively with Razor Energy and Razor Holdings, the "**Applicants**"), in support of the Applicants' Application (the "**Comeback Application**"), seeking:
  - (a) an Amended and Restated Initial Order (the "**ARIO**") under the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36 (the "**CCAA**"), amending and restating the Initial Order granted by the Honourable Justice N.J. Whitling on February 28, 2024 (the "**Initial Order**") and granting, among things, the following relief:
    - (i) extending the Stay Period (as defined below), in respect of the Applicants and Razor Royalties Limited Partnership ("**Razor Royalties LP**", the Applicants and Razor Royalties LP are collectively referred to as, the "**Razor Entities**"), up to March 29, 2024;
    - (ii) confirming the \$100,000 Administration Charge (as defined in the Initial Order) and the \$335,000 Directors' Charge (as defined in the Initial Order);
    - (iii) authorizing the Applicants to limit further expenses during the Stay Period, by relieving certain ongoing securities or capital markets reporting obligations;
    - (iv) relieving Razor Energy of any obligations to call or hold its next annual general meeting of shareholders ("**AGM**") until further Order of this Court;
  - (b) a sealing order (the "**Sealing Order**"), sealing the confidential exhibit (the "**Confidential Exhibit**") to Affidavit #2 of Doug Bailey, sworn on March 4, 2024 (the "**Bailey #2 Affidavit**"), on the Court file, until further order of the Court.
2. The primary purpose of the requested extension of the Stay Period is to enable the Applicants to review and assess any bid(s) received in connection with the sale and investment solicitation process (the "**SISP**"), as approved by this Honourable Court pursuant to the Initial Order. Specifically, the SISP contemplates that proposals will be due on March 12, 2024 (the "**Bid Deadline**"). The Applicants are seeking an extension of

the Stay Period to enable them to: (i) obtain and review any and all bids, offers, proposals, and other submissions made (collectively, the “**Offers**” and the parties or persons providing such Offers, being the “**Offerors**”); (ii) assess their position and proposed path forward, and what further relief may be appropriate in the circumstances, following the review of the Offers and discussions and negotiations with the Offerors and affected creditors and stakeholders; and, (iii) continuing negotiations and discussions, following the review of any Offers, for interim financing required to fund the completion of these proceedings (the “**CCAA Proceedings**”) and the pursuit of the applicable Offers.

**Affidavit of Doug Bailey, sworn on March 4, 2024 (“Bailey #2 Affidavit”), at para. 6.**

3. The SISP is a critical component of the Applicants’ restructuring plan, and is broadly structured to solicit *en bloc* asset sales or going concern offers, or offers for individual assets. The purpose of the SISP is to maximize the value of the Applicants’ business and Property, for all stakeholders. The Stay is critical to the Applicants’ ability to conduct the SISP and complete a transaction thereunder as, without the benefit of CCAA protection, there could be an immediate and significant erosion of value to the detriment of all stakeholders.

**Affidavit of Doug Bailey, sworn on February 20, 2024 (“Initial Affidavit”), at paras. 11 - 13, 74 - 75.**

4. The Applicants have made material progress in their restructuring during the initial ten (10) day Stay Period and additional time is required to determine the Applicants’ next steps and, in particular, carry out the SISP. The Applicants have acted, and are continuing to act, in good faith and with due diligence, and the relief sought by the Applicants is necessary, appropriate, and to the benefit of the Applicants’ creditors and stakeholders.
5. All references to monetary amounts referenced herein are in Canadian dollars, unless otherwise stated. Capitalized terms used in this bench brief and not otherwise defined have the same meaning as is ascribed to such terms in the Affidavit of Doug Bailey, sworn on February 20, 2024 (the “**Initial Affidavit**”).

## **II. FACTS**

### **A. Background**

6. The structure of the Razor Entities’ operations may be summarized as follows:

- (a) Razor Energy owns all of the Razor Entities' operating and non-operating petroleum and natural gas assets, with the exception of certain related royalty interests held by Razor Royalties LP, as further described below;
- (b) Blade is an oilfield services company, which provides services, such as fluid handling, earthworks, and general labour;
- (c) Razor Holdings is a holding corporation, which was incorporated for the purpose of acting as the general partner of Razor Royalties LP and holding the general partner units in Razor Royalties LP; and,
- (d) Razor Royalties LP is a partnership, formed in connection with a loan transaction, to hold certain gross overriding royalty interests, secured in favour of 405 Dolomite LLC, as administrative agent.

**Initial Affidavit at para. 19.**

7. The Razor Entities' insolvency results from, among other causes (as described in further detail in the Initial Affidavit), the following:
- (a) operational challenges related to the petroleum and natural gas assets held by Razor Energy. These issues include: (i) insufficient cash flow from Razor Energy's producing assets, which, combined with the carrying costs of legacy and non-producing assets, has led to a long-term working capital deficit which increased over time; and, (ii) an ongoing dispute between Razor Energy and Conifer Energy Inc. ("**Conifer**"), which culminated in Conifer locking Razor Energy out of the Judy Creek Gas Conservation Plant and ceasing to process Razor Energy's gas and provide fuel gas to Razor Energy, on or around December 24, 2023, with significant and immediate effects on Razor Energy's cash flows; and,
  - (b) as a result of Razor Energy's working capital deficit and constrained liquidity position, Razor Energy was unable to remain current on numerous trade payables and other obligations, and faces increasing amounts of creditor actions; which resulted in certain trade creditors tightening payment terms, and various municipalities asserting claims in respect of tax arrears. These actions further constrain the Razor Entities' already-limited liquidity and, in combination with the

operational challenges, led to an untenable financial situation for the Razor Entities in late 2023 and early 2024.

**Initial Affidavit at para. 10. Further details regarding the causes of the Razor Entities' insolvency, and their financial circumstances, are set out in the Initial Affidavit at paras. 66 - 70.**

8. On January 30, 2024 (the "**NOI Filing Date**"), each of the Razor Entities filed Notices of Intention to Make a Proposal under and pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**", and such proceedings, the "**NOI Proceedings**"). FTI Consulting Canada Inc. ("**FTI**") was the proposal trustee in respect of the NOIs.

**Initial Affidavit at para. 3.**

9. On February 28, 2024, the Honourable Justice Whitting granted the Initial Order. Among other relief, the Initial Order:
  - (a) declared that the Applicants are companies to which the CCAA applies;
  - (b) (i) declared that the NOI Proceedings are taken up and continued under the CCAA, pursuant to section 11.6(a) of the CCAA; (ii) declared that Division I of Part III of the BIA has no further application to the Razor Entities; (iii) terminated the NOI Proceedings; and (iv) deemed the NOIs filed by the Razor Entities to be withdrawn;
  - (c) authorized the Applicants to carry on business in a manner consistent with the preservation of their business and property;
  - (d) authorized the Applicants to pay the reasonable expenses incurred by the Applicants in carrying out their business in the ordinary course, including certain expenses incurred prior to the date of the Initial Order;
  - (e) stayed all proceedings, rights, and remedies, against or in respect of the Applicants and their business or property, except as otherwise set forth in the Initial Order (the "**Stay**"), for an initial ten day period (as may be amended or extended from time to time, the "**Stay Period**");
  - (f) granted a Stay, against Razor Royalties LP, and declared that the Monitor (as defined below) shall be authorized and directed to monitor and report to the Court

with respect to Razor Royalties LP, in each case, for the duration of the Stay Period;

- (g) appointed FTI as the monitor (the “**Monitor**”) of the Applicants in these proceedings;
- (h) authorized the Razor Entities to pay all reasonable fees and disbursements of the Monitor, the Monitor’s legal counsel, and the Razor Entities’ legal counsel;
- (i) granted the following charges against the Razor Entities’ current and future assets, undertakings, and properties, of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), for the purposes of securing the payment and performance of:
  - (i) the fees and the disbursements of the Monitor, the Monitor’s legal counsel, and the Applicants’ legal counsel (the “**Administration Charge**”), to be secured against all of the Razor Entities’ Property, in the maximum amount of \$100,000; and,
  - (ii) the Applicants’ obligations to indemnify the Applicants’ directors and officers for liabilities they may occur after the commencement of these proceedings (the “**Directors’ Charge**”), to be secured against all of the Razor Entities’ Property, in the maximum amount of \$335,000.
- (j) declared that the Administration Charge and the Directors’ Charge (collectively, the “**Initial Order Charges**”) rank in priority to all existing liens, security interests, encumbrances, or claims, with respect to, concerning, or as and against, all of the Property;
- (k) approved the Applicants’ SISP, and authorized, empowered, and directed the Applicants and the Sale Agent (as defined below), to carry out the SISP, in accordance with its terms, and to perform their respective obligations thereunder; and,
- (l) approved the engagement letter, dated January 25, 2024, between Razor Energy and Peters & Co. Limited, as sale agent under the SISP (in such capacity, the “**Sale Agent**”), and payment of all corresponding fees and expenses.



Initial Order, granted on February 28, 2024, at paras. 2 - 3, 5(b), 7, 14 - 15, 21 - 22, 24, 29, 31 - 33, 35, and 37.

**B. The Applicants' Activities Since the Date of the Initial Order**

10. The Applicants have continued to advance their restructuring plan since the granting of the Initial Order, on February 28, 2024. Specifically, among other things, the Applicants' are:
  - (a) working with the Sale Advisor and the Monitor to conduct and carry out the SISP;
  - (b) continuing to work with the Sale Advisor to: (i) provide information and respond, through the Sale Advisor, to enquiries made in connection with the SISP; and, (ii) prepare for the evaluation of any Offers received in connection with the SISP;
  - (c) working with the Monitor and the Applicants' professional advisors to prepare the Second Cash Flow Forecast (as defined below);
  - (d) engaging with potential lenders regarding the proposed Interim Financing Facility and the terms on which such interim lenders may advance financing to the Applicants. These discussions are anticipated to continue until the Bid Deadline and be affected and informed by any Offers received;
  - (e) obtaining an appraisal (the "**Blade Appraisal**") of the equipment in possession of Blade (the "**Blade Equipment**");
  - (f) working with the Monitor to refine the Applicants' form of a potential key employee retention plan ("**KERP**");
  - (g) providing information to the Monitor, as requested, and working with the Monitor to identify potential solutions to various issues arising under or in connection with the Applicants' CCAA Proceedings;
  - (h) responding to questions and issues, from creditors and other stakeholders concerning these CCAA Proceedings;
  - (i) working with the Monitor and the Applicants' professional advisors to identify and formulate appropriate relief, in connection with the Comeback Application;

- (j) negotiating with Conifer in connection with a potential commercial resolution to the dispute concerning the Judy Creek Gas Plant, which was the subject of the Supply Application (as described in the Initial Affidavit) and the corresponding Decision of Justice Lema, dated February 19, 2024; and,
- (k) carrying on operations in the ordinary course.

**Bailey #2 Affidavit at para. 8;  
The background regarding the Supply Application is described in the Initial  
Affidavit at paras. 47 - 48 and Exhibit "L" (body of the Affidavit of Doug Bailey,  
sworn on February 13, 2024, within the NOI Proceedings).**

11. The SISP remains ongoing. The SISP is a critical component of the Applicants' restructuring plan and, as described in further detail in the Initial Affidavit, contemplates that Offers may take a wide variety of forms (including restructuring proposals and asset sales, among other things). The Applicants require time to assess and evaluate bids following the Bid Deadline and discuss and negotiate such Offers with the Offerors and affected creditors and stakeholders, to determine which Offers, if any, the Applicants will seek approval of. It is anticipated that the Applicants will provide further details, to the Court, concerning the results of the SISP and any other or further proposes sales or transactions, in connection with a future application(s).

**Bailey #2 Affidavit at para. 11;  
Initial Affidavit at paras. 83 - 87.**

12. On February 28, 2024 (the date upon which the Initial Order was granted), the Monitor received an email, to which an employee of Razor Energy was copied, from the Alberta Petroleum Marketing Commission ("**APMC**"). The matter in issue is the status of pre-filing royalties owing by Razor Energy to APMC. APMC contends that Razor Energy is obligated to deliver 934.8 m<sup>3</sup> of crude oil to APMC. Based on strip pricing, the value of such crude is approximately \$600,000. Razor Energy is in discussions with APMC relative to such pre-filing amount. The Second Cash Flow Forecast (as defined and described below) contemplates delivery of post-filing production to APMC.

**Bailey #2 Affidavit at para. 9 and Exhibit "A".**

### **C. Extension of Stay Period**

13. The Stay Period is currently set to expire on March 12, 2024. If the Stay Period is not extended, the Applicants will not have sufficient time to review, negotiate, or seek Court

approval of any transactions under the SISP. The extension of the Stay Period is critical to the Applicants' ability to complete any transaction(s) under the SISP and maximize the value of their Property, to the benefit of all of the Applicants' creditors and stakeholders.

**Bailey #2 Affidavit at paras. 26 - 27.**

**D. Blade Equipment and Blade Appraisal (Confidential Exhibit)**

14. On February 7, 2024, Stride Capital ("**Stride**"), an equipment lessor, through its counsel, requested that Blade and Razor Energy return certain equipment financed by Stride (the "**Stride Collateral**").

**Initial Affidavit at para. 59;  
Bailey #2 Affidavit at para. 12.**

15. The Applicants have determined that in the circumstances, including because: (a) there is equity in the Stride Collateral; and (b) Blade is a wholly-owned subsidiary of Razor Energy and, as such, there may be an Offer that contemplates the acquisition of Razor Energy's shares in Blade, to continue retain possession of the Stride Collateral during the currency of any extension of the current Stay Period to permit the Applicants to assess whether Blade will be the subject of an executable Offer.

**Bailey #2 Affidavit at para. 12.**

16. The Blade Appraisal evidences that the Applicants have significant equity in the Blade Equipment.

**Bailey #2 Affidavit at para. 13.**

17. The Confidential Exhibit includes a copy of the Blade Appraisal, which contains certain commercially-sensitive and confidential information concerning the value of the Blade Equipment. The public disclosure of the Confidential Exhibit would pose a significant risk of causing irreparable harm to the interests of the Applicants and their stakeholders, including, but not limited to, the risk that such disclosure could affect any bids received in connection with the Blade Equipment.

**Bailey #2 Affidavit at para. 29 and Confidential Exhibit "1".**

**E. Second Cash Flow Forecast**

18. With the assistance of the Monitor and the Applicants' professional advisors, the Applicants have prepared a cash flow forecast (the "**Second Cash Flow Forecast**") for the period ending March 31, 2024 (the "**Forecast Period**").

**Bailey Affidavit #2 at para. 24 and Exhibit "B".**

19. The Second Cash Flow Forecast assumes that, post-filing crown royalties will be paid in kind, and that there will be no interim financing, revenue from the Judy Creek Gas Plant, or from non-operated production, during the Forecast Period. The Applicants have nevertheless forecasted to have sufficient liquidity to satisfy their post-filing obligations during the Forecast Period.

**Bailey Affidavit #2 at para. 25.**

**F. Corporate and Securities Relief**

20. Razor Energy was a publicly listed company with shares traded on the TSX-V, until trading was suspended on February 5, 2024. It is a reporting issuer in the provinces of British Columbia, Alberta, and Ontario. As a result, Razor Energy is required to comply with numerous filings and information provision requirements under the Securities Legislation (as defined in in the proposed form of ARIO).

**Initial Affidavit at para. 113.**

21. In the circumstances, the Applicants have determined that incurring further expenses to maintain the currency of Razor Energy's securities filings going forward on the TSX-V, and holding an AGM (if necessary due to the passage of time), is not appropriate at this juncture. The Applicants' resources and time are better directed towards their restructuring efforts, and in particular carrying out the SISP, which has the oversight of the Court.

**Initial Affidavit at para. 114.**

22. Razor Energy's last AGM was held on December 14, 2023 and the timing of the next AGM is not yet known, but not anticipated to occur in the near term. However, to the extent that these proceedings continue for a longer term, for any reason, preparation for holding an AGM would likely be a distraction from the Applicants' restructuring efforts.

**Initial Affidavit at para. 115.**

23. The Applicants' proposed form of ARIO would, among other things:
- (a) authorize and approve decision by the Applicants to incur no further expenses for the duration of the Stay Period in relation to any filings (including financial statements), disclosures, core or non-core documents, and press releases (collectively, the "**Securities Filings**") that may be required by any federal, provincial or other law respecting securities or capital markets in Canada, or by the rules and regulations of a stock exchange, including, without limitation, the *Securities Act* (Alberta) and comparable statutes enacted by other provinces of Canada, and the rules, regulations and policies of the TSX Venture Exchange (collectively, the "**Securities Legislation**"), provided that such authorization shall not prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of the Applicants failing to make any Securities Filings required by the Securities Provisions;
  - (b) order and declare that none of the directors, officers, employees, and other representatives of the Applicants nor the Monitor shall have any personal liability for any failure by the Applicants to make any Securities Filings required by the Securities Provisions during the Stay Period, provided that: (i) such declaration shall not prohibit any securities regulator or stock exchange from taking any action or exercising any discretion that it may have of a nature described in section 11.1(2) of the CCAA as a consequence of such failure by the Applicants; and, (ii) the corresponding ARIO provision will clarify that nothing therein: (a) is intended to or shall encroach on the jurisdiction of any securities regulatory authorities (the "**Regulators**") in the matter of regulating the conduct of market participants and to issue cease trade orders if and when required pursuant to applicable securities law; or, (b) shall constitute or be construed as an admission by the Regulators that the court has jurisdiction over matters that are within the exclusive jurisdiction of the Regulators under the Securities Legislation; and,
  - (c) grant Razor Energy and extension of the time limit to call and hold its AGM until after the conclusion of these CCAA Proceedings, subject to further order of the Court,

(collectively, the “**Corporate and Securities Relief**”).

24. The proposed form of ARIO has been revised to incorporate changes requested by the Alberta Securities Commission with respect to the Corporate and Securities Relief.

**Bailey Affidavit #2 at para. 21.**

### **III. ISSUES**

25. The issues this Bench Brief addresses are whether:
- (a) the Stay Period should be extended;
  - (b) the Initial Order Charges should be confirmed;
  - (c) the Corporate and Securities Relief should be granted; and,
  - (d) the Confidential Exhibit should be sealed on the Court record.

### **IV. LAW AND ARGUMENT**

#### **A. The Stay Period Should be Extended**

26. The stay of proceedings is critical to both supporting the underlying policy rationale for the CCAA and to optimizing outcomes once CCAA proceedings are commenced.

*Timminco Limited (Re)*, 2012 ONSC 506 at paras. 49 - 50 [BOA TAB 18];  
*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 [Century Services]  
at para 15 [BOA TAB 6].

27. Subsections 11.02(2) - (4) of the CCAA provide this Honourable Court with the jurisdiction to extend the Stay Period, and state:

#### **Stays, etc. — other than initial application**

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

### **Burden of proof on application**

(3) The court shall not make the order unless

(a) the applicant satisfies the court that **circumstances exist that make the order appropriate**; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that **the applicant has acted, and is acting, in good faith and with due diligence**.

### **Restriction**

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

[Emphasis added]

CCA at s. 11.02(2)-(4) [BOA TAB 1].

### ***The requested extension of the Stay Period is appropriate in the circumstances***

28. In assessing whether an extension of the Stay Period is “appropriate” in the circumstances, the focus of the inquiry is whether the extension advances the remedial purpose of the CCAA.

*Century Services* at paras. 15, 70 [BOA Tab 6];  
*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 [Callidus] at para. 50  
[BOA TAB 2], citing *Century Services* at para. 70 [BOA TAB 6].

29. The CCAA is a remedial regime primarily designed to rehabilitate an insolvent company. The provisions of the CCAA provide for a structured environment in which an insolvent company can continue to carry on business and retain control over its assets, while it attempts to gain the approval of creditors for a proposed arrangement that will enable it to remain in operation for the future benefit of all stakeholders.

*Canadian Airlines Corp. (Re)*, (2000), 19 CBR (4<sup>th</sup>) I, at para. 19 [BOA TAB 4].

30. In *Callidus*, the Supreme Court of Canada confirmed that the CCAA is not limited to debtor companies which seek to put forward a plan of arrangement, and a “liquidating CCAA proceeding” can be consistent with the remedial objectives of the CCAA:

44 CCAA courts first began approving these forms of liquidation pursuant to the broad discretion conferred by the Act. The emergence of this practice was not without criticism, largely on the basis that it appeared to be inconsistent with the CCAA being a “restructuring statute” (see, e.g., *Royal Bank v. Fracmaster Ltd.*, 1999 ABCA 178, 244 A.R. 93 (Alta. C.A.), at paras. 15-16, aff’g 1999 ABQB 379, 11 C.B.R. (4th) 204 (Alta. Q.B.), at paras. 40-43; A. Nocilla, “The History of the Companies’ Creditors Arrangement Act and the Future of Re-Structuring Law in Canada” (2014), 56 Can. Bus. L.J. 73, at pp. 88-92).

45 However, since s. 36 of the CCAA came into force in 2009, courts have been using it to effect liquidating CCAAs. Section 36 empowers courts to authorize the sale or disposition of a debtor company’s assets outside the ordinary course of business. Significantly, when the Standing Senate Committee on Banking, Trade and Commerce recommended the adoption of s. 36, it observed that **liquidation is not necessarily inconsistent with the remedial objectives of the CCAA, and that it may be a means to “raise capital [to facilitate a restructuring], eliminate further loss for creditors or focus on the solvent operations of the business”**(p. 147). Other commentators have observed that liquidation can be a “vehicle to restructure a business” by allowing the business to survive, albeit under a different corporate form or ownership (Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, at p. 169; see also K. P. McElcheran, *Commercial Insolvency in Canada* (4th ed. 2019), at p. 311). Indeed, in *Indalex*, the company sold its assets under the CCAA in order to preserve the jobs of its employees, despite being unable to survive as their employer (see para. 51).

46 Ultimately, the relative weight that the different objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval. Here, a parallel may be drawn with the BIA context. In *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5, [2019] 1 S.C.R. 150 (S.C.C.), at para. 67, this Court explained that, as a general matter, the BIA serves two purposes: (1) the bankrupt’s financial rehabilitation and (2) the equitable distribution of the bankrupt’s assets among creditors. However, in circumstances where a debtor corporation will never emerge from bankruptcy, only the latter purpose is relevant (see para. 67). **Similarly, under the CCAA, when a reorganization of the pre-filing debtor company is not a possibility, a liquidation that preserves going-concern value and the ongoing business operations of the pre-filing company may become the predominant remedial focus.** Moreover, where a reorganization or liquidation is complete and the court is dealing with residual assets, the objective of maximizing creditor recovery from those assets may take centre stage...”



[Emphasis added]

***Callidus* at paras. 44 - 46 [BOA TAB 2];  
*Mantle Materials Group (Re)*, 2024 ABKB 19 [*Mantle*] at paras. 24 - 29 [BOA TAB 11],  
citing *Callidus* [BOA Tab 2].**

31. A stay of proceedings helps achieve the purposes of the CCAA by preserving the *status quo* for the debtor company, facilitating the ongoing operations of the debtor company's business, preserving the value of the business, and providing the debtor company with the necessary time, flexibility, and "breathing room" to carry out a supervised restructuring or organised sale process. An extension of the stay of proceedings, in a liquidating CCAA proceeding, will be appropriate where it provides the best method by which the debtor company can accomplish a liquidation while continuing its restructuring.

***Re Lehndorff General Partners Ltd (1993)*, 17 CBR (3d) 24, 9 BLR 275 (Ont Gen Div) at paras 5 - 7  
[BOA TAB 14];  
*1057863 B.C. Ltd. (Re)*, 2020 BCSC 1359 at para. 118 [BOA TAB 3];  
*Mantle* at paras. 34 - 37 [BOA TAB 11].**

32. The requested extension of the Stay Period is intended to provide the Applicants with sufficient time to:
- (a) evaluate and assess the results of the SISP, with the assistance of the Monitor and the Sale Advisor;
  - (b) determine what further relief will be sought by the Applicants, within these CCAA Proceedings;
  - (c) if appropriate, finalize the terms of the proposed KERP and proposed Interim Financing Facility (as discussed in the Initial Affidavit and the Bailey #2 Affidavit), and seek Court approval of same;
  - (d) engage with Conifer and other creditors and stakeholders regarding the Applicants' proposed path forward; and,
  - (e) begin the process of completing one or more transactions under the SISP and seeking Court approval of same.

**Bailey #2 Affidavit at para. 28.**

33. Accordingly, the extension of the Stay Period, as requested by the Applicants, is appropriate in the circumstances as it will provide the Applicants with sufficient time to

complete the immediate next steps described above, while preserving the *status quo* pending the Applicants' anticipated request for further relief, following the conclusion of the SISP. The length of the requested Stay Period is reasonable in light of the Applicants' stated objectives. Further, as confirmed in the Second Cash Flow Forecast, the Applicants will have sufficient liquidity to satisfy their post-filing obligations during the Stay Period.

Bailey #2 Affidavit at para. 25 and Exhibit "B".

***The Applicants are proceeding in good faith and with due diligence***

34. With respect to the second requirement, good faith and due diligence:
- (a) the evidence is clear that the applicants are proceeding with due diligence and have made substantial progress toward their restructuring plan within the limited period of time provided by the ten (10) day initial Stay Period, including as set out in paragraph 10, above; and,
  - (b) the Monitor has confirmed its view that the Applicants are proceeding in good faith and with due diligence. No party has raised any allegations concerning any lack of good faith on the Applicants' part.
35. Based on the foregoing, the Applicants respectfully submit that the requested extension of the Stay Period is reasonable, appropriate in the circumstances, and should be granted.

**B. The Corporate and Securities Relief Should be Granted**

36. As described above, the Corporate and Securities Relief (as defined below) provisions in the draft form of proposed ARIO have been revised to incorporate comments from the Alberta Securities Commission. Provisions substantively identical to the Corporate and Securities Relief have been incorporated in a number of other recent CCAA amended and restated initial orders, in circumstances where the applicants were reporting issuers.

***In the Matter of a Plan of Compromise or Arrangement of Trees Corporation, et al., Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00711935-00CL, Second Amended and Restated Initial Order pronounced by the Honourable Justice Osbourne on January 29, 2024 at paras. 52 - 53 [BOA TAB 8];  
In the Matter of Application by IMV Inc., Immunovaccine Technologies Inc. and IMV USA Inc. for Relief Under the Companies' Creditors Arrangement Act, Supreme Court of Nova Scotia, Court File No. Hfx No. 523334, Amended and Restated Initial Order pronounced by the Honourable Justice Bodurtha on May 1, 2023 at paras. 20 - 21 [BOA TAB 10];***

*In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc, et al., Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00703350-00CL, Amended and Restated Initial Order pronounced by the Honourable Justice Penny on August 4, 2023 at paras. 45 - 46 [BOA TAB 7];*  
*In the Matter of a Plan of Compromise or Arrangement of Wolverine Energy and Infrastructure Inc., et al, Court of King's Bench of Alberta, Court File No. 2301-15988, CCAA Initial Order pronounced by the Honourable Justice Whitting on November 30, 2023 at paras. 39 - 40 [BOA TAB 9].*

37. The jurisdiction to grant the Corporate and Securities Relief is found in Section 11 of the CCAA, which states:

**General power of court**

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, **the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.**

[Emphasis added]

CCAA at s. 11 [BOA TAB 1].

38. The jurisdiction under section 11 of the CCAA has been described as “broad and flexible authority” and “the engine” driving the CCAA, which is famously “skeletal in nature” and does not expressly provide for all forms of relief which may be appropriate or necessary.

*Wiebe v Weinrich Contracting Ltd*, 2020 ABCA 396 at paras. 27, 30 [BOA TAB 19];  
*Century Services* at para. 57 [BOA TAB 6], citing *Stelco Inc (Re)*, 2005 CanLII 8671 (ONCA) at para. 36 [BOA TAB 17];  
*Callidus* at para. 48 [BOA TAB 2], citing *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587 at para. 44 per Blair J [BOA TAB 12].

39. In exercising the jurisdiction under section 11 of the CCAA to craft an appropriate remedy in the circumstances, Courts must give consideration to the three “baseline considerations”, that: (i) the order sought is appropriate in the circumstances; (ii) the applicant has been acting in good faith; and, (iii) the applicant has acted with due diligence. The order must promote the remedial objectives of the CCAA.

*Callidus* at para. 49 [BOA TAB 2], citing *Century Services* at paras. 59, 70 [BOA TAB 6].

40. The Corporate and Securities Relief is appropriate in the circumstances, will promote the remedial purposes of the CCAA, and should be granted, as:

- (a) compliance with the Securities Legislation, at this time, is a distraction to the Applicants' directors and officers and would require the Applicants to incur further expenses at a time when trading in Razor Energy's shares, on the TSX-V exchange, has already been suspended;
- (b) diverting the Applicants' resources is unlikely to benefit any stakeholder as the critical component of the Applicants' restructuring plan relates to the completion of a transaction or transactions under the SISP;
- (c) there is no prejudice to stakeholders given that detailed financial information and other information regarding the Applicants will continue to be made publicly available through the materials filed in these CCAA proceedings; and,
- (d) as set out above, the Applicants have acted in good faith and with due diligence.

**C. The Initial Order Charges Should Be Confirmed**

**(i) The Administration Charge should be confirmed**

41. The Initial Order established the Administration Charge, in the amount of \$100,000. The initial amount of the Administration Charge was intended to provide security, for the respective fees and disbursements of the beneficiaries of the Administration Charge, during the initial ten (10) day Stay Period, granted under the Initial Order. In connection with the Comeback Application, on the basis of the projected professional fees to be paid to the beneficiaries of the Administration Charge, the Applicants request that this Honourable Court confirm the Administration Charge in the amount of \$100,000. The Applicants have consulted with and obtained guidance from the Monitor and the Applicants' professional advisors in proposing the Administration Charge.

**Bailey #2 Affidavit at paras. 15 - 17;  
Initial Affidavit at para. 99;  
Initial Order at para. 31.**

42. Section 11.52 of the CCAA establishes jurisdiction to order the Administration Charge.

**CCAA, s. 11.52 [BOA TAB 1]**

43. While the Administration Charge has already been granted, the factors considered in determining whether an Administration Charge is warranted are also relevant in

considering whether the charge should be confirmed. Courts have considered the following non-exhaustive list of factors in deciding whether to grant an administration charge pursuant to section 11.52:

- (a) the size and complexity of the business being restructured;
- (b) the proposed role of the beneficiaries of the charge;
- (c) whether there is an unwarranted duplication of roles;
- (d) whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) the position of the secured creditors likely to be affected by the charge; and,
- (f) the position of the monitor.

*Canwest Publishing*, at para 54 [BOA TAB 5]

44. The requested confirmation of the Administration Charge is warranted given that:

- (a) these CCAA Proceedings have required, and will continue to require, the extensive involvement of professional advisors, who will provide essential legal and financial advice throughout the CCAA proceedings;
- (b) there is no unwarranted duplication of roles;
- (c) the Monitor expressed the view that it is appropriate for the beneficiaries of the Administration Charge to be afforded the charge, as they will be undertaking a necessary and integral role in these proceedings; and
- (d) the Monitor supports the Administration Charge.

**Second Report of the Proposal Trustee and First Report of the Proposed Monitor, dated February 21, 2024 at paras. 64 - 65 [“Pre-Filing Report”].**

**(ii) The Directors’ Charge should be confirmed**

45. The Initial Order established the Directors’ Charge, in the amount of \$335,000 for the initial ten (10) day Stay Period. In connection with the Comeback Application, the Applicants request that this Honourable Court maintain the quantum of the Directors’ Charge. The

Applicants have consulted with and obtained guidance from the Monitor in proposing such amount.

**Bailey #2 Affidavit at para. 19;  
Initial Order at para. 22.**

46. Section 11.51 of the CCAA provides the court with the jurisdiction to grant the Directors' Charge in an amount the Court considers appropriate, provided notice is given to the secured creditors who are likely to be affected by it.

**CCAA, s. 11.51 [BOA TAB 1]**

47. In *Re Jaguar Mining Inc.*, Morawetz J. set out a list of factors that the Court must be satisfied of prior to granting a directors' charge. These factors are:

- (a) that notice has been given to the secured creditors likely to be affected by the charge;
- (b) the amount is appropriate;
- (c) the applicant could not obtain adequate indemnification insurance for the director(s) at a reasonable cost; and,
- (d) the charge does not apply in respect of any obligation incurred by a director as a result of the director's gross negligence or willful misconduct.

***Re Jaguar Mining Inc.*, 2014 ONSC 494 at para 45 [BOA TAB 13].**

48. While there is directors' and officers' liability insurance in place, the Applicants' Directors and Officers have expressed their desire for certainty and that their continued service is conditional upon a charge securing their indemnification.

**Initial Affidavit at paras. 102 - 103.**

49. The Directors and Officers have played, and will continue to play, a critical role in the NOI Proceedings and these CCAA Proceedings, and, among other things:

- (a) the secured creditors have been notified of this Comeback Application;

- (b) it is the Monitor's view that the continued support and service of the Directors and Officers of the Applicants during the proceedings would be beneficial to the Applicants' efforts to preserve value and maximize recoveries;
- (c) the proposed Directors' Charge will not provide protection in the event a director or officer commits gross negligence or wilful misconduct; and,
- (d) the Directors' Charge will only be engaged if there is no coverage under the applicable insurance policies or the claim(s) exceed the coverage.

**Pre-Filing Report at paras. 69 - 70;  
Initial Affidavit at paras. 100 - 101, 104;  
Bailey #2 Affidavit at para. 20.**

50. Accordingly, the Applicants respectfully submit that this Honourable Court should exercise its discretion to confirm and maintain the quantum of the Directors' Charge.

**D. The Confidential Sale Agent Exhibit should be sealed**

51. This Court has jurisdiction to order that certain materials be filed under seal when:
- (a) court openness poses a serious risk to a "public interest", which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
  - (b) such an order is necessary in order to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
  - (c) as a matter of proportionality, the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the 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.

***Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41, at para 53 [BOA TAB 16];  
*Sherman Estate v Donovan*, 2021 SCC 25, at paras. 38, 41 - 43 [BOA TAB 15].**

52. The Confidential Exhibit contains commercially sensitive information regarding the value of the Blade Equipment. The disclosure of this information could affect the bids received within the SISF which encompass the Blade Equipment or, if the Offers under the SISF do not include the Blade Equipment, under any future marketing process within these

CCAA Proceedings. There is an important public interest in: (i) preserving the integrity of distressed sales processes within insolvency proceedings; and (ii) maximizing the value of the assets marketed within such processes. The request to seal the Confidential Exhibit until further order of the Court is necessary in order to prevent serious risk to the commercial interests of the Applicants and their creditors and stakeholders. As a matter of proportionality, the salutary effects of the Sealing Order outweigh its deleterious effects.

**V. CONCLUSION**

53. The Applicants respectfully request that this Honourable Court grant the Sealing Order and the ARIO, substantially in the forms attached to the Comeback Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4<sup>TH</sup> DAY OF MARCH, 2024.**

*“McCarthy Tétrault LLP”*

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Sean Collins / Pantelis Kyriakakis / Nathan  
Stewart

Counsel to the Applicants,  
Razor Energy Corp., Razor Holdings GP  
Corp., and Blade Energy Services Corp.



## VI. LIST OF AUTHORITIES

### Statutes

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, at sections 11, 11.02, 11.51, and 11.52;

### Case Law

2. *9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10;
3. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60;
4. *Canadian Airlines Corp. (Re)*, (2000), 19 CBR (4th) 1;
5. *Canwest Publishing Inc.*, 2010 ONSC 222;
6. *Century Services Inc v Canada (Attorney General)*, 2010 SCC 60;
7. *In the Matter of a Plan of Compromise or Arrangement of Aleafia Health Inc*, et al., Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00703350-00CL, Amended and Restated Initial Order pronounced by the Honourable Justice Penny on August 4, 2023;
8. *In the Matter of a Plan of Compromise or Arrangement of Trees Corporation*, et al., Ontario Superior Court of Justice (Commercial List), Court File No. CV-23-00711935-00CL, Second Amended and Restated Initial Order pronounced by the Honourable Justice Osbourne on January 29, 2024;
9. *In the Matter of a Plan of Compromise or Arrangement of Wolverine Energy and Infrastructure Inc.*, et al, Court of King's Bench of Alberta, Court File No. 2301-15988, CCAA Initial Order pronounced by the Honourable Justice Whitling on November 30, 2023;
10. *In the Matter of Application by IMV Inc., Immunovaccine Technologies Inc. and IMV USA Inc. for Relief Under the Companies' Creditors Arrangement Act*, Supreme Court of Nova Scotia, Court File No. Hfx No. 523334, Amended and Restated Initial Order pronounced by the Honourable Justice Bodurtha on May 1, 2023;
11. *Mantle Materials Group (Re)*, 2024 ABKB 19;
12. *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587;
13. *Re Jaguar Mining Inc.*, 2014 ONSC 494;
14. *Re Lehndorff General Partners Ltd (1993)*, 17 CBR (3d) 24, 9 BLR 275 (Ont Gen Div);
15. *Sherman Estate v Donovan*, 2021 SCC 25;
16. *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41;

17. *Stelco Inc (Re)*, 2005 CanLII 8671 (ONCA);
18. *Timminco Limited (Re)*, 2012 ONSC 506; and,
19. *Wiebe v Weinrich Contracting Ltd*, 2020 ABCA 396.