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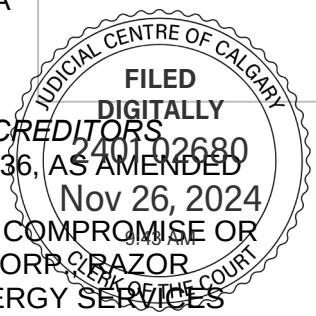

COURT FILE NUMBER	2401-02680
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.
DOCUMENT	**REPLY 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	McCarthy Tétrault LLP 4000, 421 - 7 Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins, KC / Pantelis Kyriakakis / Nathan Stewart / Samantha Arbor Phone: 403-260-3531 / 3536 / 3534 / 3506 Fax: 403-260-3501 Email: scollins@mccarthy.ca / pkyriakakis@mccarthy.ca / nstewart@mccarthy.ca / sarbor@mccarthy.ca

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REPLY BRIEF OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.

IN REPLY TO THE BENCH BRIEF AND SUPPLEMENTAL BRIEF SUBMITTED BY ARENA INVESTORS, LP OPPOSING THE APPLICATION OF RAZOR ENERGY CORP. TO APPROVE THE PROPOSED TRANSACTION BETWEEN RAZOR ENERGY CORP. AND TEXCAL ENERGY CANADA INC.

TO BE HEARD BY
THE HONOURABLE JUSTICE B.E.C. ROMAINE

November 27, 2024 at 10:00 a.m.

Clerk's Stamp

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I. INTRODUCTION

1. This reply brief is submitted by the Applicants in reply to the bench brief submitted by Arena Investors, LP ("**Arena**") on November 5, 2024 and the supplemental bench brief submitted by Arena on November 21, 2024.

2. Arena has asserted that:

   (a) the Applicants, Razor Royalties Limited Partnership (collectively, the "**Razor Entities**"), and the Purchaser have not acted in good faith in their dealings with Arena. Arena asserts that there has been undue delay by Razor Energy in advising Arena of a change in the Texcal Transaction structure; namely, as it pertains to the non-assumption of the Arena debt, which assumption was initially contemplated by non-binding term sheets signed in April 2024, to that which is manifest in the Subscription Agreement, dated October 27, 2024; non-assumption of the Arena debt with a proposed payment of $750,000.00; and,

   (b) the payment of certain post-filing claims, cure costs, transaction costs and regulatory claims, as contemplated in the Waterfall (as defined below), should not be approved and, instead, the amounts proposed to be paid to these creditors should be paid to Arena.[1]

3. From the outset it must be noted that neither the Applicants, nor its officers, directors, and shareholders stand to "reap any benefits"[2] from the proposed transaction.

4. Rather, as has been consistently communicated to <u>all</u> stakeholders, since the receipt of the indicative non-binding bid from Texcal,[3] the transaction structure is designed to allow Razor Energy to continue as a going concern, avoiding the social, economic, and environmental consequences of a liquidation or bankruptcy of Razor Energy.

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1 Arena's original brief sought relief that included requesting the Court to refuse the vesting of Arena's secured claim or, alternatively, that the within application be dismissed. The Applicants accept that the fluid nature of these proceedings results in changes in position, on all sides, and as of the date of filing this Reply Brief, are proceeding on the basis that Arena, rather than opposing the transaction, *in toto*, is advancing a claim to certain of the proceeds in the proposal waterfall.

2 See Arena original brief at para. 92.

3 The original party was Solidarity Holdings Inc. For ease of reference, the purchaser throughout is referred to as "Texcal".

5. Razor Energy's present circumstances are dire and the contrast between the transaction proceeding or not, is stark. If the transaction does not close, creditors will receive virtually nothing, Razor Energy will be left with no alternative other than to turn its property over to the OWA, and Razor Energy's approximate $123 million in ARO will have to be dealt with by the OWA.

6. Extensive negotiations with creditors and counterparties (including following the execution of the Subscription Agreement and since the adjournment of the November 8, 2024 application) have resulted in a transaction which now has the support or non-opposition of almost all of the Applicants' material stakeholders; including municipalities, significant joint venture partners, CNRL and Conifer[4], and the regulatory authorities, the OWA, AER, and APMC. The proposed Waterfall (as defined below) for the distribution of proceeds of the Texcal Transaction is the direct result of the Applicants' efforts to satisfy the competing interests of a diverse array of stakeholders, and represents the compromises reached with each stakeholder.

7. Contrary to the assertion that the Applicants have not acted in good faith, the record discloses: (i) significant efforts by the Applicants to reach an executable transaction, to the benefit of all creditors and stakeholders, while attempting to balance numerous competing interests; and, (ii) that the Applicants informed Arena of the potential changes to the structure of the evolving transaction in a timely fashion.

II. FACTS

A. The Original Hearing and Subsequent Developments

8. The Application was initially returnable on November 8, 2024 (the "**Original Hearing**") before the Honourable Justice Bourque. Negotiations between the major stakeholders were ongoing at the time of the Original Hearing, continued on the courthouse steps, and, with the concurrence of the Court, continued past 10am. The parties determined that it would be beneficial if negotiations continued and thus sought an adjournment which was granted on the following conditions:

[4] Subject to the finalization of a proposed settlement between Conifer and Texcal, which is not yet completed as of the time of this Reply Brief.

(a) the Court granted an order which: (i) deemed service of the Application and related materials to be good and sufficient and made ancillary declarations concerning service; (ii) extended the Stay Period, to November 27, 2024, and, (iii) adjourned the balance of the Application to November 27, 2024; and,

(b) Justice Bourque signed the forms of order sought by the Applicants, on the parties' agreement that, among other things: (i) the orders would be held in trust, and not entered pending the completion of negotiations, with a deadline for the completion of negotiations being set for November 15, 2024 (the "**Consent Deadline**"); (ii) the Consent Deadline could be extended, by the written agreement of Razor Energy, Arena, Conifer, Texcal, and the Monitor; and, (iii) if an agreement was not reached, the orders would not be entered.

9. After further negotiations, the deadline was extended to noon on November 19, 2024. The parties were unable to agree to a further requested extension in the required timeframe. The Consent Deadline expired on November 19, 2024, with the result that the signed orders are of no force or effect and will not be entered.

10. The Applicants and Texcal are in the process of finalizing an amendment to the Subscription Agreement to address stakeholder concerns and to clarify certain terms, which is anticipated to include amendments to the following effect:

(a) confirming that the Environmental Liabilities and Abandonment and Reclamation Obligations (as defined in the Subscription Agreement) include past, present and future obligations;

(b) clarifying the scope of certain references to IOGC, at IOGC's request;

(c) amending schedules to include assets which were inadvertently excluded in the original Subscription Agreement; and,

(d) clarifying the scope of the vesting provisions to confirm that encumbrances registered against certain equipment, excluded from the transaction, will not be vested but will be transferred to ResidualCo on closing.

11. The Applicants understand that a copy of the amended Subscription Agreement, once executed, will be appended to the forthcoming Monitor's Supplemental Report.

12. The cash consideration to be paid by Texcal under the Subscription Agreement remains $8.375 million. As at the time of this Reply Brief, the proposed distribution of the sale proceeds is as follows:

Razor Energy Corp., Razor Royalties Limited Partnership,
Razor Holdings GP Corp., and Blade Energy Services Corp. (the "Razor Entities")

Waterfall Analysis		
(C$ 000s)	Notes	29-Nov
Receipts	(a)	
Subscription Price		$ 8,375
Statement of Adjustments		1,342
Total - Receipts		**9,717**
Secured Lender (Arena)	(b)	(750)
Regulatory Payments	(c)	
2024 AER Admin Fee		(370)
2024 OWA Levy		(733)
APMC (Royalties)		(492)
Post-Filing Municipal Taxes		(2,967)
Restricted Retained Contracts Cure Costs	(d)	
TAQA		(225)
PGI		(274)
Enercapita		(37)
CNRL		(488)
Forty Mile Gas Co-op Ltd.		(4)
Paramount		(36)
Post-Filing Joint Venture	(e)	
Conifer		(771)
CNRL		(453)
Paramount		(163)
Outlier		(48)
Journey		(44)
TAQA		(32)
Cenovus		(2)
Other Disbursements	(f)	
Sale Advisor Fee		(320)
Professional fees		(50)
Total - Payments at Close		**(8,258)**
Net cash flow at close		**1,459**
Opening cash balance		**248**
Ending cash balance transferred to ResidualCo	(g)	**1,708**

(the "**Waterfall**").[5]

B. Arena

13. Following the March 12, 2024 bid deadline under the SISP, the non-binding Solidarity LOI was selected because it represented the best value available in the circumstances and was the only bid which addressed all of the Razor Entities' assets, liabilities, and associated ARO.

Affidavit #11 of Doug Bailey, sworn on October 28, 2024, at paras. 17(f), 23-24 ["Bailey #11 Affidavit"].

[5] The cash balance transferred to ResidualCo will be held in trust, by the Monitor, to (i) secure the Admin Charge, the D&O Charge and a potential trust or property claim by Sabre Energy; and (ii) pay post-filing obligations which are currently forecasted to be approximately $1.267MM.

14. The initial March 28, 2024 version of the Solidarity LOI did not contemplate the assumption of the Applicants' indebtedness to Arena. The next version of the Solidarity LOI, executed on or around April 22, 2024 (the "**April 22 LOI**"), contemplated the assumption of the Arena loan.

Bailey #11 Affidavit, at Exhibit "B" (Bates Nos. 9 – 13);
Affidavit #1 of Gregory White, sworn on November 5, 2024 at para. 36 and Confidential Exhibit "1" ["White #1 Affidavit"].

15. Following the execution of the April 22 LOI, Razor Energy convened a meeting with its major stakeholders to describe the proposed transaction and its proposed impact on stakeholders.

16. CNRL is a major stakeholder. It is the operator of Swanhills Unit 1. Razor Energy owes CNRL approximately $12 million, as at January 19, 2024.

Affidavit #1 of Doug Bailey, sworn on February 20, 2024, at para. 46 and Exhibit "K" ["Bailey #1 Affidavit"];
Supplemental Affidavit of Ron Laing, sworn on November 25, 2024 at paras. 8 – 9 and Exhibits "A" – "B".

17. CNRL advised Razor Energy, in July 2024, that, as one of the conditions to it not opposing the transaction, it required Texcal to post a letter of credit, in the amount of $97 million, on account of Razor Energy's share of ARO.

Transcript of the Questioning of Doug Bailey on Affidavit, held November 4, 2024, at 15:25 – 27 and 16:1 – 5 [Questioning Transcript].

18. Razor Energy and Texcal continued negotiations over the months of May, June, July, and early August, in an attempt to solve for CNRL's requirement of posting a letter of credit and to deal with other matters that arose as Texcal proceeded further with its due diligence. The negotiations resulted in the first draft subscription agreement on August 16, 2024 (the "**Original Draft Subscription Agreement**") with the following essential terms:

    (a) total consideration of approximately $10,000,000;

    (b) including the assumption of all Arena debt; and,

    (c) the exclusion or disclaimer of the Swan Hills Unit 1 Assets.

Bailey #11 Affidavit, at para. 32.

19. By letter dated August 23, 2024 (the "**August 23 Letter**"), the AER advised Razor Energy that: "[i]f any of Razor's non-operated working interest holdings are not included as part of

the corporate transaction or assumed by another responsible party, the AER would not support that transaction."

Bailey #11 Affidavit, at para. 34.

20. Following the receipt of the August 23 Letter from the AER, it became clear that the transaction contemplated by the Original Draft Subscription Agreement, including the disclaimer of the Swan Hills Unit 1 Assets, could not be completed.

Bailey #11 Affidavit, at para. 35;
Questioning Transcript, at 16:23 – 17:7.

21. The possibility that Arena's debt would not be assumed by Texcal in the revised corporate transaction was communicated by Razor Energy's CEO, Doug Bailey, to Arena on September 4, 2024 (the "**September 4 Meeting**") when Mr. Bailey travelled to Arena's office in Miami, Florida to discuss the treatment of Arena's debt with the Managing Director of Natural Resources of Arena, Mr. Gregory White.

White #1 Affidavit, at para. 50.

22. At the September 4 Meeting, Mr. Bailey informed Mr. White that he was concerned that Texcal (then Solidarity) might not assume the Arena debt.

White #1 Affidavit, at para. 50;
Questioning Transcript, at 18:1-18:13.

23. Specifically:

(a) as stated by Arena's affiant, Mr. White:

> "On September 4, 2024, I met with Mr. Bailey, who flew down to Florida to have meetings with me to discuss the Debtors' ongoing CCAA Proceedings and challenges with finalizing the Corporate Transaction. During this meeting Mr. Bailey told me that the Corporate Transaction structure was in flux and he was concerned that Solidarity did not intend to honour their previously stated intention of assuming the Arena Lender's debt. […]"

White #1 Affidavit, at para. 50.

(b) as stated at Mr. Bailey's cross-examination held on November 4, 2024:

> *Q: In your meeting with Mr. White, you expressed to him a concern that Solidarity might not assume the debt?*
>
> *A: Yes. And I think some colour around – the reasoning why is because in late August, there was some discussions internally about the validity of the*

> *security itself, and that was what prompted me to think that this is probably a piece of information that's – that's useful for your client –*
>
> *Q: M-hm.*
>
> *A: -- or Greg to be able to chart a – a commercial course.*

Questioning Transcript, at 18:1-18:13.

24. At the September 4 Meeting, Mr. Bailey and Mr. White also discussed the treatment of the GORR, in respect of which Arena holds an assignment by way of security:

(a) as stated by Arena's affiant, Mr. White:

> "[…] However, he [Mr. Bailey] also reassured me that due to the nature of the GORR structure and fact that it was an interest in land, the GORR would be Arena's "hammer" and the Arena Lender's would receive monthly cheques even if the debt obligations were not assumed."

White #1 Affidavit, at para. 50.

(b) as stated at Mr. Bailey's cross-examination held on November 4, 2024:

> *Q: You also indicated to him during that meeting that you believed Arena's interests would be protected by the GORR?*
>
> *A: I'm not a lawyer, and that was not my opinion –*
>
> *Q: M-hm.*
>
> *A: -- but, given the GORR isn't what I presumed was an interest in land and was reviewed by his own legal counsel prior to entering into the said lending or GORR agreement or security agreement, there was no reason for me not to believe that; however, again, I'll qualify it·that there was some belief by some other legal people around the table that it may not be a valid security.*

Questioning Transcript, at 18:14-18:25.

25. The assumption of the Arena debt was first excluded from the proposed corporate transaction in a later draft form of the Subscription Agreement, on or around September 16, 2024. This was the first time that it became clear to Mr. Bailey that the Arena debt was no longer going to be assumed under the corporate transaction:

> *Q: And when did it become clear to you that the Solidarity corporate transaction would no longer include the assumption of Arena's debt?*

> *A: Well, it didn't become clear to me until it was excluded from -- I think it was Draft 16 of the subscription agreement on September 16th, ·that -- unlike Draft 15 from August 16th, which did include the provision to assume Arena's debt was no longer in that Version 16 – Draft Version 16.*

Questioning Transcript at 19:2-19:11.

26. On October 22, 2024, Arena was advised by the Razor Entities, through their respective counsel, that the Texcal Transaction would not include an assumption of the Arena debt and the proposed form of vesting order would vest out Arena's interest in the GORRs.

White #1 Affidavit, at para. 68.

27. The Razor Entities and Texcal continued to negotiate what became the Texcal Transaction up until a definitive agreement on the final terms was reached and the Subscription Agreement was executed on October 27, 2024.

Affidavit #11 of D. Bailey, at para. 37.

28. Arena was provided with a copy of the finalized Subscription Agreement when it was served to all parties on the CCAA service list, on October 28, 2024.

Replies to Undertakings Requested of Doug Bailey at Questioning on Affidavit conducted November 4, 2024, at Reply to Undertaking Request 2.

C. GORRs and Assignment Agreement

29. The GORRs consist of a ten percent (10%) gross overriding royalty interest in all of Razor Energy's petroleum and natural gas lands and interests, as granted to Razor Royalties Limited Partnership, by Razor Energy.

Bailey #11 Affidavit at paras. 72 – 73.

30. Arena's interest in the GORRs arose under the Assignment Agreements, which are each between Razor Royalties Limited Partnership, by its general partner, Razor Holdings, as borrower and assignor, and the Agent, as assignee.

Bailey #11 Affidavit at para. 74.

31. The Subscription Agreement contemplates that the GORRs will not be extinguished, as between Razor Royalties Limited Partnership and Razor Energy. However, the Assignment Agreements, are proposed to be vested out of the Razor Entities as Excluded Liabilities and Excluded Contracts.

Affidavit #11 of D. Bailey, at para. 76.

D. Proposed Waterfall

32. The current Waterfall contemplates that payments will be made to various stakeholders from the following sources:

(a) the direct proceeds of the Subscription Agreement, in the aggregate amount of $8.375 million (the "**Purchase Price Proceeds**"); and,

(b) the funds to be paid by Texcal, to ResidualCo, on account of the adjustment provision under Section 2.5 of the Subscription Agreement, which are currently estimated to be in the amount of approximately $1,342,000 in the aggregate, subject to final sales volumes and oil and gas pricing being determined (the "**Adjustment Proceeds**").

33. The Waterfall currently includes the following amounts which are contemplated to be paid, distributed, or held by the Monitor, in connection with the closing of the Texcal Transaction:

(a) **Payment to Arena**: $750,000, to Arena, on account of Arena's secured claim;

(b) **Regulatory Payments**: $370,146.41 to the AER; $732,600.91 to the OWA; and $491,584.72 to the APMC (collectively, the "**Regulatory Payments**"), in relation to: (i) the 2024 Orphan Fund Levy and AER administration fee; and, (ii) Razor Energy's unremitted Crown royalty share for the month of January 2024;

(c) **Post-Filing Municipal Taxes**: the aggregate amount of approximately $2,967,000, to various municipal governments (collectively, the "**Municipalities**"), in respect of post-filing municipal tax arrears and accrued penalties;

Affidavit #11 of D. Bailey, at Exhibit "C", Schedule K.

(d) **Cure Costs**: to the counterparties to the Restricted Retained Contracts, as identified in the Retained Contracts Order (collectively, the "**Restricted Retained Contracts Payments**"), in the aggregate amount of approximately $1,064,000;

(e) **Payments on account of post-filing obligations to joint venture partners**: the aggregate amount of approximately $1,513,000 Razor Energy's joint venture partners providing ongoing services under executory contracts after the Filing Date (collectively, the "**JV Payments**"), including Conifer, CNRL, Paramount Resources

Ltd., Outlier Resources Ltd., Journey Energy Partnership, TAQA North, and Cenovus Energy Inc.; and,

(f) **Professional fees**, in the aggregate amount of approximately $370,000 inclusive of the Sales Advisor, the Monitor, the Monitor's counsel, and the Applicants' counsel,

(collectively, the "**Waterfall Payments**").

34. It is also anticipated that the following amounts will be dealt with utilizing funds to be transferred to ResidualCo, following the completion of the Waterfall Payments:

(a) **Restricted funds**, in the total amount of $615,000, to be held back by the Monitor pending further court order, on account of: (i) obligations accrued or which may accrue under the Directors' Charge and the Administration Charge; and, (ii) a potential trust claim or property claim by Sabre Energy Ltd.; and,

(b) **Payments on account of forecast operating disbursements:** the aggregate amount of approximately $1,276,000 to be paid in relation to post-filing payables (together, the "**Forecast Operating Disbursements**").

III. ISSUES

35. The additional issues raised by Arena with respect to the Application are whether:

(a) the Razor Entities have acted in good faith;

(b) it is appropriate to vest Arena's claims under the Assignment of GORR Agreement; and,

(c) the proposed Waterfall Payments are appropriate and should be approved.

IV. LAW

A. Requirement to Act in Good Faith

36. It is trite law that parties involved in insolvency proceedings must act in good faith. The Supreme Court of Canada confirmed such duty in *Callidus Capital Corp*.

***9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10, at para. 50 [Book of Authorities ("BOA") at TAB 3].**

37. Section 18.6 of the CCAA codifies this requirement, and states:

> Good faith
>
> 18.6 (1) Any interested person in any proceedings under this Act shall act in good faith with respect to those proceedings.
>
> Good faith - powers of court
>
> (2) If the court is satisfied that an interested person fails to act in good faith, on application by an interested person, the court may make any order that it considers appropriate in the circumstances.

CCAA, s. 18.6 [BOA at TAB 1].

V. ARGUMENT

A. The Razor Entities Have Acted, and Continue to Act, In Good Faith

38. The Razor Entities have acted, and continue to act, in good faith.

39. Determining whether a party lacked good faith is an objective analysis:

> Lack of good faith (a term that should not be casually equated with "bad faith") is an assessment made regarding actual objective facts of things done or not done and is not premised solely on questionable motives.

***Bank of Montreal v. 592931 Ontario Inc.*, 2021 ONSC 4412, at para. 48 [BOA at TAB 6].**

40. The fact that a party may be unsatisfied with the outcome of a restructuring in CCAA proceedings does not necessarily reflect that the other party failed to act in good faith:

> Restructurings are not easy and often result in treatment that a party can consider to be extremely harsh. However, that does not necessarily mean that the other party has not been acting in good faith.

***Laurentian University of Sudbury*, 2021 ONSC 3272, at para. 72 [BOA at TAB 10] (leave to appeal refused, *Laurentian University of Sudbury (Re)*, 2021 ONCA 448)**

41. As the Supreme Court of Canada has held, the duty to act in good faith and with honesty in contractual performance can extend to knowingly misleading a counterparty by way of silence and omissions:

> At the end of the day, whether or not a party has "knowingly misled" its counterparty is a highly fact-specific determination, and can include lies, half-truths, omissions,

> and even silence, depending on the circumstances. I stress that this list is not closed; it merely exemplifies that dishonesty or misleading conduct is not confined to direct lies.
>
> ***C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 (CanLII), [2020] 3 SCR 908, at para. 91 [*Callow v Zollinger*] [BOA at TAB 8].**

> A party to a contract has no general duty to subordinate his or her interest to that of the other party. However, contracting parties must be able to rely on a minimum standard of honesty from their contracting partner in relation to performing the contract as a reassurance that if the contract does not work out, they will have a fair opportunity to protect their interests.
>
> ***Bhasin v Hrynew*, 2014 SCC 71, [2014] 3 SCR 494, at para. 86 [BOA at TAB 7].**

42. In *C.M. Callow Inc. v. Zollinger* ("***Callow v Zollinger***"), the Supreme Court of Canada determined that a party, Baycrest, had breached the duty of honesty in its dealings with its contractual counterparty, Callow, by way of silence and omissions. The circumstances in *Callow v Zollinger* included that:

(a) Baycrest and Callow were parties to a winter maintenance contract and a separate summer maintenance contract. The winter maintenance contract incorporated a unilateral termination clause exercisable on 10 days' notice. In March or April of 2013, Baycrest specifically decided that it would not renew the winter maintenance contract, and would instead exercise its option to terminate the contract, but determined that it would not advise Callow of its decision at that time;

***Callow v Zollinger*, at paras. 1, 9 – 10 [BOA at TAB 8].**

(b) throughout the spring and summer of 2013, representatives of Callow and Baycrest had discussions regarding renewal of the winter maintenance contract. Baycrest did not inform Callow of its prior decision to terminate the winter maintenance contract, despite being aware that Callow was performing additional work under the summer maintenance contract as an incentive for Baycrest to continue the winter maintenance contract. Instead, Baycrest led Callow to believe that Baycrest was satisfied with their existing arrangement;

***Callow v Zollinger*, at paras. 11 – 14 [BOA at TAB 8].**

(c) as a direct result, Callow performed work above and beyond the requirements of the summer maintenance contract, at no charge; and,

***Callow v Zollinger*, at paras. 12 – 13 [BOA at TAB 8].**

(d) Baycrest finally informed Callow of its March or April decision on September 12, 2013, having had the benefit of Callow's free work due to Baycrest's silence.

Callow v Zollinger, at para. 14 [BOA at TAB 8].

43. The present circumstances are markedly different and disclose no knowing decision to mislead Arena. Specifically:

(a) as of August 16, 2024, the Original Draft Subscription Agreement contemplated the assumption of the Arena debt, as proposed under the final Solidarity LOI;

Bailey #11 Affidavit, at para. 32.

(b) the change to the treatment of Arena's debt arose as a result of the August 23 Letter from the AER, which caused the parties to realize that the corporate transaction could not proceed in the form then contemplated;

Bailey #11 Affidavit, at paras. 34 – 35;
Questioning Transcript at 16:23 – 17:7.

(c) at some point between August 23, 2024 and September 4, 2024, Razor Energy's representatives became aware of the possibility – though not yet a certainty – that the Arena debt may ultimately not be assumed in the transaction;

Questioning Transcript at 17:5-17:27, 18:1-18:13, and 19:2 – 19:11.

(d) Razor Energy's representative, Mr. Bailey, travelled to Florida to advise Arena's representative, Mr. White, that the Arena debt might not be assumed. Arena was advised of this possibility on September 4, 2024, prior to Razor Energy obtaining certainty that this was the case; which occurred on September 16, 2024; and,

White #1 Affidavit, at para. 50;
Questioning Transcript at 18:1-18:13 and 19:2 – 19:11.

(e) Arena was definitively advised by Razor Energy, through their respective counsel, that the Arena debt would not be assumed, on October 22, 2024, at which time negotiations with Texcal remained ongoing.

Affidavit #11 of D. Bailey, at para. 37; Affidavit #1 of G. White, filed November 5, 2024, at para. 68.

44. Razor Energy acted promptly to advise Arena of the potential change in circumstances, both on September 4, 2024 before it was certain that the transaction would exclude the assumption of the Arena debt, and more definitively on October 22, 2024 when the Subscription Agreement was nearly finalized. This is not the sort of deliberate

determination to remain silent as seen in *Callow v Zollinger*, and Arena suffered no prejudice as a result. Specifically:

(a) Arena's determination to appear at the September 11, 2024 application by Conifer, and to support the Applicants' position at that application, came after Arena had already been advised that its debt might not be assumed. That determination was, in any event, aligned with Arena's interests as a creditor that would be prejudiced if Conifer were granted a super-priority post-petition supplier charge, as sought by Conifer; and,

(b) the only other application in these proceedings between September 11, 2024 and October 22, 2024, when Arena was definitively advised that the Arena debt would not be assumed, was a stay extension application heard on October 7, 2024.

Order (Extension of Stay Period), granted by the Honourable Justice Feasby on October 7, 2024.

45. Faced with divergent stakeholder interests and competing demands, the Razor Entities have acted in the best interests of all of their stakeholders, including Arena, by negotiating the only available transaction that contemplates Razor Energy continuing as a going concern and results in payments to creditors and counterparties. In the face of opposition to the transaction continuing up to the Original Hearing, the Razor Entities: (i) continued negotiations with the material stakeholders, including Arena, up to the expiration of the Consent Deadline on November 19, 2024; (ii) obtained agreements from certain stakeholders to forego a portion of their claims; and, (iii) are in the process of finalizing an amendment to the Subscription Agreement, to address the additional concerns raised by IOGC and CNRL. These actions underscore the Applicants' ongoing, good faith efforts to reach an executable transaction, while balancing stakeholder interests.

46. Furthermore, the Monitor, which is the party best placed to assess whether the Applicants are acting in good faith, has consistently provided its view that the Applicants have acted, and are continuing to act, in good faith and with due diligence.

Eighth Report of the Monitor, dated November 6, 2024, at para. 104(c).

B. It Is Appropriate to Vest Arena's Interest in the Assignment Agreements

47. The Subscription Agreement, in the form ultimately agreed to by the parties, contemplates that the GORRs will not be extinguished and will continue to be held by Razor Royalties

LP, but that any Claims, Liabilities (each as defined in the Subscription Agreement), interests or rights, in relation thereto, will constitute "Excluded Liabilities" to be transferred to ResidualCo.

48. Following the filing of the Applicants' initial brief, which addressed the proposed treatment of the GORRs in the Texcal Transaction, this Honourable Court issued its decision in *Alphabow Energy Ltd. (Re)*, 2024 ABKB 652 ("***Alphabow***").

49. In *Alphabow*, the parties had entered into a contract related to a multi-year drilling and completion plan. As part of the contract, and to provide security for Alphabow's performance, the debtor company Alphabow granted a gross overriding royalty in favour of its counterparty, Advance. Following Alphabow's default, the parties entered into a new gross overriding royalty agreement in 2021. In connection with a proposed sale transaction, to facilitate a vesting order, Alphabow sought a declaration that the royalty was not an interest in land. Although the gross overriding royalty agreement included a clause confirming that the parties intended to create an interest in land, the Court found that the gross overriding royalty was a security interest, as the royalty was entered into to secure a monetary obligation:

> "In my view, the circumstances surrounding the 2021 GORR Agreement reveal that Advance's true and only intention in entering the 2021 GORR Agreement was to give itself a backup collection tool if AlphaBow became insolvent. […]
>
> For all these reasons, I find that the parties to the 2021 GORR Agreement did not intend to create an interest in land. Accordingly, AlphaBow's application for a declaration that the 2021 GORR Agreement did not create an interest in land is granted.
>
> Had I found that the 2021 GORR Agreement created an interest in land, I would have vested it off pursuant to the broad discretionary authority granted to the Court by section 11 of the CCAA. I do not accept the submission that the 2021 GORR is "much more" than a fixed monetary interest that attaches to the property. In my view, a GORR resembles a fixed monetary interest more closely than a fee simple. A GORR is a future right that may or may not come into existence because the GORR holder only becomes entitled to anything of value if the leaseholder or working interest holder chooses to extract substances from the land. A 17.5% GOR[R] would very likely detract producers from acquiring these assets.
>
> While it is understood that Advance is unlikely to consent to vesting off if the 2021 GORR was an interest in land, I would give little weight to that factor in determining whether vesting it off would be appropriate given the circumstances in which they obtained it. In essence, obtaining the 2021 GORR was nothing more than an attempt by Advance to improve its debt's status to others' detriment."

***Alphabow Energy Ltd. (Re)*, 2024 ABKB 652, at paras. 24, 26 – 28 [BOA at TAB 5].**

50. Even if the GORRs themselves are interests in land, Arena's interest in the GORRs under the Assignment Agreements is a contractual claim or security interest which is capable of being vested under the Approval and Reverse Vesting Order. In the circumstances, it is appropriate to vest such interest in order to facilitate the closing of the Texcal Transaction and as Arena's claims may be asserted against the proceeds thereof.

51. Arena candidly concedes that it initially proposed to finance Razor Energy by purchasing a GORR but determined not to proceed with such a financing owing to unfavourable income tax treatment of the proposed GORR. As stated by Arena's affiant, Mr. White:

> Initially, the GORR was going to be purchased from Razor Energy by Arena for its own account and no credit facility was contemplated; however, the tax implications of that arrangement were so onerous, the parties agreed to modify the transaction structure. This resulted in the parties agreeing that a limited partnership (Razor Royalties LP) would be established for the purposes of borrowing funds from Arena to purchase the GORR from Razor Energy, and then subsequently assigning the GORR to Arena. This transaction was consented to by Razor Energy's then senior secured lender, Alberta Investment Management Corporation ("**AIMCo**").

White #1 Affidavit, at para. 10.

52. The synthetic nature of the GORR and the fact that Arena's interest is in the nature of security, is manifest in the payment terms of the loan. Section 2.6 of the Arena loan agreement states:

> 2.6 Repayment of Term Loans
>
> (a) Principal
>
> (i) Term Loan 1 and Term Loan 2. Razor LP has paid, and shall continue to pay to the Agent, for the account of the Lenders, on the first Business Day of each calendar month, or if any such day is not a Business Day, on the immediately succeeding Business Day, a payment of principal as follows: (i) in the amount set out in the Payment Schedule attached hereto as Schedule 2.6, and (ii) the remainder upon the Maturity Date applicable to Term Loan 1 and Term Loan 2.
>
> (ii) Term Loan 3. The Borrowers shall pay to the Agent, for the account of the Lenders, on the first Business Day of each calendar month beginning May 1, 2024, and continuing on the first day of each calendar month thereafter, or if any such day is not a Business Day, on the immediately succeeding Business Day, a payment of principal as follows: (i) in monthly instalments based on an amortization of 5% per month, and (ii) the remainder upon the Maturity Date applicable to Term Loan 3.

(b) Interest

(i) Each Term Loan shall bear interest on the principal amount thereof from the date of advance, as applicable, at a rate per annum equal to the Applicable Rate. Interest shall be calculated monthly and payable in arrears in cash on each Interest Payment Date. Interest on past-due principal and, to the extent permitted by applicable law, past-due interest, shall accrue at the Default Rate and shall be payable upon demand by the Agent. While any Event of Default exists or after acceleration, interest shall accrue and Razor LP, or the Borrowers, as the case may be, shall pay interest (after as well as before entry of judgment thereon to the extent permitted by applicable law) on any amount payable by such Borrowers hereunder, at a per annum rate equal to the lesser of (i) the Highest Lawful Rate and (ii) the Default Rate.

(ii) Payment-in-Kind Interest for Term Loan 3. In addition to the interest accruing and owing as set out above, Term Loan 3 shall bear additional interest on the amount thereof outstanding from time to time from the Term Loan 3 Advance Date until such principal is repaid at the rate of three percent (3.00%) per annum to be paid-in-kind by being capitalized and added to the outstanding principal amount of Term Loan 3 on each Interest Payment Date, and shall thereafter be deemed to be a part of the principal amount owing under Term Loan 3 and payable upon the Maturity Date applicable to Term Loan 3 (the "**PIK Interest**"). The Borrowers shall not be required to provide any Notes to the Lenders on account of the PIK Interest, however such amounts shall form part of the Obligations and be recorded by the Agent as amounts due and payable in accordance with the terms and conditions herein.

White #1 Affidavit, at Exhibit "A", Section 2.6.

53. The Applicants' repayment obligations, to Arena, are to repay monthly principal and payment-in-kind interest. No mention is made of the GORR in the repayment provision.

54. The assignment of the GORR from Razor Royalties LP to Arena expressly provides that the assignment of the GORRs is collateral security for performance of Razor Royalties LP's obligations under the Loan Agreement.

White #1 Affidavit, at Exhibit "A", Section 2.

55. Moreover, the assignment terminates upon repayment of the loan.

White #1 Affidavit, at Exhibit "G", Section 9.

C. The Proposed Waterfall Payments

56. Arena has objected to the Texcal Transaction on the basis of alleged preferential payments to creditors to be made under the Waterfall.

57. The proposed Waterfall is both necessary and appropriate, for reasons including:

(a) in a typical asset sale transaction, there is typically no distribution of proceeds (claims are typically asserted against the proceeds of the sold assets at a later date), and no need to determine the allocation of the Purchase Price Proceeds and the Adjustment Proceeds. This case contemplates an Approval and Reverse Vesting Order which will permit the Razor Entities to continue operating as going concerns and, to continue in business up to and following the closing of the Texcal Transaction;

(b) the payments contemplated under the Waterfall are the result of negotiated agreements with the key stakeholders designed to permit the Razor Entities to continue in business. In other cases, particularly the Forecast Operating Disbursements, the payments are simply the cost of doing business in the ordinary course, as authorized to be made under the Amended and Restated Initial Order ("**ARIO**"), and required to reach closing;

Amended and Restated Initial Order, pronounced by the Honourable Justice Burn on March 6, 2024, at paras. 5(b), 7, 10(c), 18, 33 [ARIO].

(c) in the case of the post-filing JV Payments and the Forecast Operating Disbursements, such payments are akin to an adjustment of the Purchase Price under the Subscription Agreement rather than a distribution of the proceeds thereof; and,

(d) Razor Energy is subject to significant AROs. Specifically, Razor Energy's deemed AROs, as calculated by the AER, as at February 3, 2024, were in the estimated amounts of approximately $123 million on a magnitude of liability basis (inclusive of all pipelines, wells, and facilities) or approximately $115 million on a historical model basis (exclusive of pipelines but inclusive of wells and facilities). In the absence of a transaction addressing all of Razor Energy's petroleum and natural gas interests, these amounts would need to be satisfied prior to any distributions being made to Razor Energy's creditors. The results of the SISP confirm that there is no value in any security interest held by any creditor of Razor Energy, except in a transaction – like the Texcal Transaction – which results in all of the AROs being addressed.

58. The specific Waterfall Payments contemplated under the current iteration of the Approval and Reverse Vesting Order and the Subscription Agreement, including the anticipated forthcoming amendments, are appropriate for, among other reasons, the following:

(a) **Regulatory Payments**: in addition to being conditions to the consent of the AER, OWA, and APMC, the Regulatory Payments:

(i) are in respect of amounts which have not been made by Razor Energy during the CCAA Proceedings;

(ii) in the case of AER and OWA, would be considered, by the AER, as part of the transfer process under *Directive 067 – Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals*, if the transaction were to proceed by way of an asset sale, and are secured, for the reasons set out in the AER's bench brief; and,

(iii) APMC's claim relates to royalty amounts which this Honourable Court has determined were the property of APMC. Furthermore, APMC retains the power to direct withholdings from future production after the expiration of the Stay Period, which could negatively affect Razor Energy's post-closing operations if the amounts are not paid or would prevent the transaction from closing as Texcal would not obtain the assets free and clear;

***Razor Energy Corp. v Companies' Creditors Arrangement Act*, 2024 ABKB 534, at paras. 16 – 18, 31 [BOA at TAB 12].**

(b) **Payment to Sales Agent:** It is a longstanding common law principle that an agent is entitled to commission if they are the effective cause of the ultimate sale, even if such party does not hold a registered charge against the sold property. This principle applies in direct fashion to payments to be made to the Sales Advisor and with equal force to the proposed payments of professional fees. In addition, the same underlying principle justifies the payment of amounts to parties committing to compromises in order to enable the Texcal Transaction to proceed;

***Nicholson v. Debuse*, 1927 CanLII 288 (AB CA), [1927] 3 W.W.R. 799 [*Debuse*] [BOA at TAB 11];**
***Clark & Associates Real Estate Ltd. v. Winroc Corp*., 1990 CanLII 5593 (AB KB) [*Winroc*], at para. 58 [BOA at TAB 9].**

(c) **Municipal Government Payments**: The amounts contemplated to be paid to the Municipalities are in respect of post-filing tax arrears and penalties, representing a compromise by the Municipalities with respect to pre-filing arrears (which, for clarity, will be transferred to ResidualCo). These amounts are subject to a priority

lien under the *Municipal Government Act* (Alberta) and the payment is a condition to the Municipalities' consent to the Texcal Transaction;

***Municipal Government Act,* RSA 2000, c M-26, ss. 344, 346, 348(d), and 348.1 [BOA at TAB 2]; Bailey #11 Affidavit at Exhibit "C" (Subscription Agreement, Schedule "K") [Bates No. 208].**

(d) **Cure Costs**: as detailed in the Applicants' Brief, the payment of cure costs pursuant to the Restricted Retained Contracts Payments would be a necessary precondition to ordering an assignment of the Restricted Retained Contracts. While assignments are not strictly required under the Approval and Reverse Vesting Order, as all of the Restricted Retained Contracts will be retained by Razor Energy, such payments are necessary to attempt to ensure that the applicable counterparties are no worse off as a result of the reverse vesting order structure. The approval of the Retained Contracts Order is a condition precedent to the Subscription Agreement, and the amounts to be paid: (i) have in some cases been settled between Razor Energy and the applicable counterparties; and, (ii) in all other cases are based upon the amounts disclosed as owing in relation to the Restricted Retained Contracts in Razor Energy's books and records maintained in the ordinary course of business;

(e) **Post-filing JV Payments**: the JV Payments in relation to CNRL, Conifer, and Paramount, are part of negotiated settlements (in the case of Conifer, still in progress) of the amounts owing by Razor Energy to its joint venture partners arising after the Filing Date and are conditions to the consent or non-opposition of such parties to the Texcal Transaction. The remaining JV Payments are to be made to similarly situated creditors. All of these parties are necessary in order for the Texcal Transaction to close, and for Razor Entity to continue operations following closing. Additionally, while Arena has registered its security interests with Alberta Energy and in the Personal Property Registry (the "**PPR**"), CNRL and Paramount, have both registered evidence of their secured claim in the PPR ;

Bailey #1 Affidavit, at Exhibit "N" (PPR registrations against Razor Energy, as at January 18, 2024); *Accel Canada Holdings Limited (Re)*, 2020 ABQB 182, at para. 136 [BOA at TAB 4].

(f) **Forecast Operating Disbursements**: the Applicants do not seek any specific relief in relation to the Forecast Operating Disbursements and same are not addressed, in any direct fashion, in the Approval and Reverse Vesting Order. The projected amounts will be required to be paid from the Purchase Price Proceeds

and the Adjustment Proceeds due to the Applicants' limited liquidity. Post-filing ordinary course payments have already been authorized to be made, under the terms of the ARIO;

ARIO, at paras. 5(b), 7, 10(c), 18, 33.

(g) **Professional fees**: the ARIO provides a first-ranking $100,000.00 Administration Charge against the Razor Entities' Property and the involvement of restructuring professionals in these CCAA Proceedings has led to a more favourable outcome, in the form of the Texcal Transaction, than any viable alternative;

ARIO, at paras. 31, 35 - 39.

(h) **Restricted funds**: the Waterfall contemplates a holdback of $615,000 to account for an asserted but as yet unresolved trust or property claim, as well as amounts which may be accrued under the priority charges (including during the administration of ResidualCo). It is appropriate to hold back an amount in respect of these claims given their priority, and to enable ResidualCo to be administered following the closing of the Texcal Transaction; and,

(i) **Payment to Arena**: It is not disputed that Arena holds the first-ranking security interest against, among other things, Razor Energy's present and after-acquired personal property. Any remaining funds, after accounting for those Waterfall Payments which are necessary to consummate the Texcal Transaction should presumptively be distributed to Arena on account of its secured claims;

D. Releases / Channeling

59. The Applicants have set out their argument relative to the Releases and Channeling Relief in their initial brief. Since the date of that brief:

(i) on November 15, 2024, Arena through counsel advised of an intention to commence an action against the officers and directors of Razor Energy and demanded that notification be provided to Razor Energy's D&O insurers;

(ii) on November 22, 2024, Razor Energy provided notice of the claim in a letter to its D&O insurers;

(iii) on November 22, 2024, Arena commenced an action against Razor Energy's current and former directors and officers; and,

(iv) on November 25, 2024, Razor provided a further notice of the claim arising under the Statement of Claim to its D&O insurers.

The Applicants understand that the Monitor will provide copies of the foregoing in its supplemental report. In anticipation of the Monitor so doing, copies are attached as BOA TABS 13 - 16 hereto.

VI. CONCLUSION

60. The Applicants respectfully request that this Court grant the relief sought by the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25th DAY OF NOVEMBER, 2024.

Sean Collins, KC / Pantelis Kyriakakis /
Nathan Stewart / Samantha Arbor
Counsel to the Applicants,
Razor Energy Corp., Razor Holdings GP Corp., and Blade Energy Services Corp.

VII. LIST OF AUTHORITIES

STATUTES

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, at section 18.6;
2. *Municipal Government Act*, RSA 2000, c M-26, at sections 344, 346, 348(d), and 348.1;

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3. *9354-9186 Québec inc. v. Callidus Capital Corp*., 2020 SCC 10;
4. *Accel Canada Holdings Limited (Re)*, 2020 ABQB 182;
5. *Alphabow Energy Ltd. (Re)*, 2024 ABKB 652;
6. *Bank of Montreal v. 592931 Ontario Inc.*, 2021 ONSC 4412;
7. *Bhasin v Hrynew*, 2014 SCC 71, [2014] 3 SCR 494;
8. *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45 (CanLII), [2020] 3 SCR 908;
9. *Clark & Associates Real Estate Ltd. v. Winroc Corp*., 1990 CanLII 5593 (AB KB);
10. *Laurentian University of Sudbury*, 2021 ONSC 3272;
11. *Nicholson v. Debuse*, 1927 CanLII 288 (AB CA), [1927] 3 W.W.R. 799;
12. *Razor Energy Corp. v Companies' Creditors Arrangement Act*, 2024 ABKB 534;

EVIDENCE

13. Letter from counsel to Arena to counsel to Razor Energy, dated November 15, 2024;
14. Letter from counsel to Razor Energy to its D&O insurers, dated November 22, 2024;
15. Statement of Claim filed on November 22, 2024, by Arena Limited SPV, LLC and 405 Domolite LLC; and,
16. Letter from counsel to Razor Energy to its D&O insurers, dated November 25, 2024.